

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

S.S. as next friend of minor L.M.; D.S. as next friend of minor S.D.; M.J. as next friend of minor M.S.; D.C. as next friend of L.B.; T.F. as next friend of minors D.F., I.D., and F.C.; and L.H. as next friend of minor C.M.; on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

STATE OF MICHIGAN; STATE BOARD OF EDUCATION; MICHIGAN DEPARTMENT OF EDUCATION; MICHAEL P. FLANAGAN, Superintendent of Public Instruction in his official capacity; JOYCE PARKER, Emergency Manager of Highland Park in her official capacity; HIGHLAND PARK SCHOOL DISTRICT; HIGHLAND PARK PUBLIC SCHOOL ACADEMY SYSTEM and THE LEONA GROUP, L.L.C.

Defendants.

Case No. 12-009231-CZ

12-009231-CZ

Hon. Robert L. Ziolkowski FILED IN MY OFFICE
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AMENDED COMPLAINT AND PETITION 2:57:33 PM
FOR WRIT OF MANDAMUS CATHY M. GARRETT

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COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

/s/ Kary L. Moss

INTRODUCTORY STATEMENT

1. This is a civil rights complaint brought on behalf of students in the Highland Park School District (“HPSD”) who have been denied the instruction necessary to attain basic literacy skills and reading proficiency expected of all students by the State of Michigan. Among other things, this suit seeks the immediate implementation of MCL 380.1278(8), which provides that every regular education student who does not show proficiency on the reading portion of the Michigan Educational Assessment Program (“MEAP”), the State’s standardized reading proficiency test, in 4th or 7th grade shall receive “special assistance reasonably expected to enable the pupil to bring his or her reading skills to grade level within 12 months.”

2. Plaintiffs and countless other students in HPSD are typically reading many grade levels below their actual grade in school. This gap most often expands over the course of their school careers. See generally Leila Fiester & Ralph Smith, *Learning to Read: Early Warning! Why Reading by the End of Third Grade Matters* (Baltimore: Annie E. Casey Foundation, 2010) [hereinafter “*Learning to Read: Early Warning!*”]. Stated most directly, the Highland Park School District is among the lowest performing school districts in the State of Michigan and will remain so unless research-based methodologies for improving basic literacy skills and reading proficiency are immediately implemented and rigorously administered by well-trained and supported professionals and monitored strictly according to accepted standards of the profession. See Mich Dep’t of Ed, *2011 Top to Bottom Individual School Lookup* <http://www.michigan.gov/mde/0,1607,7-140-37818_56562---,00.html> (accessed July 11, 2012) (listing HPSD’s three schools as within the bottom 8%, 6%, and 1% of Michigan schools, respectively).

3. The Constitution of the State of Michigan singles out education as a uniquely important state function and states that “the means of education shall forever be encouraged.” Const 1963, art 8, § 1. Our Constitution specifically places the duty to educate our youth on the state: “The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law.” Const 1963, art 8, § 2.

4. To execute this constitutional mandate, our Legislature enacted the “right to read provision” embodied in section 380.1278 of the Michigan Compiled Laws, titled “Core academic curriculum.” Subsection 8 of this provision states:

Excluding special education pupils, pupils having a learning disability, and pupils with extenuating circumstances as determined by school officials, a pupil who does not score satisfactorily on the 4th or 7th grade [MEAP] reading test shall be provided special assistance reasonably expected to enable the pupil to bring his or her reading skills to grade level within 12 months. [MCL 380.1278(8).]

5. In enacting MCL 380.1278(8), the Legislature recognized that at a bare minimum, the ability to achieve basic literacy as represented by achieving reading proficiency appropriate to age and grade level constitutes the root of all learning. This is consistent with the empirical reality that students who fall behind in learning to read will be unable to “read to learn” or “us[e] their skills to gain more information in subjects such as math and science, to solve problems, to think critically about what they are learning, and to act upon and share that knowledge in the world around them.” *Learning to Read: Early Warning!*, *supra* at 9. Accordingly, the opportunity to achieve basic proficiency in reading sufficient to allow a student to access curricular content is a constitutional “bottom line,” codified in statute by the Legislature consistent with its constitutional obligation to maintain and support a public education system. This bottom line applies to all students.

6. In HPSD, however, two thirds of all students lack the basic literacy skills to meet ground-level standards of proficiency on the MEAP as a consequence of systemic deficiencies within HPSD. According to data published by the State of Michigan, for the 2011-12 school year, only 35% of 4th grade students in HPSD scored “Proficient” or higher on the MEAP

Reading test, and only 25% of 7th grade students scored “Proficient” or higher on the MEAP Reading test. Nonetheless, HPSD has, for years, violated MCL 380.1278(8) by failing to provide the state-mandated remedial reading programs necessary to address deficits in basic literacy demonstrated by students who fail the MEAP Reading test in 4th and 7th grades.

7. These deficiencies are long-standing and well-known to the State and HPSD officials who have ignored them and instead have propagated and continue to propagate policies and practices which assure that the overwhelming majority of HPSD students will not achieve basic reading proficiency, effectively setting these children up for predictable and persistent academic failure.

8. This systemic failure to address a clear problem in the educational system is not an abstract policy matter, but a crisis with real-world and devastating impacts on children, including the Plaintiffs in this action. As a result of the broken educational delivery system in HPSD, countless children’s reading skills are many grade levels below the grade in which they are enrolled, assuring that they cannot access the relevant curricular content because they cannot read and comprehend the information in their class textbooks. For example:

- Plaintiff S.D. has attended HPSD schools since 1st grade and just completed the 8th grade. S.D. failed the 2010 and 2011 MEAP Reading tests, and, according to an assessment administered on May 19, 2012, his reading proficiency level is appropriate for the 2nd or 3rd grade. Nevertheless, S.D. has never received any individualized reading intervention or remedial literacy instruction from an adult employed by HPSD. When asked to write about what he would like to tell the Governor, S.D. recently wrote:

My name is [redacted] and I go too barber Focus school. The thing I whis the govern could do for my school is fix our bathroom, get us new computers, help us get more books, and more learning programs. [See Exhibit A.]

- Plaintiff D.F. just completed the 7th grade in HPSD. He scored “Not Proficient” on the 2011 MEAP Reading test and, according to an assessment administered on June 4, 2012, has reading skills appropriate for the 1st grade. Despite never having passed the MEAP Reading

test since enrolling in HPSD three years ago, D.F. has not received any individualized reading intervention instruction from an adult employed by HPSD. When asked to write about what he would like to tell the Governor, D.F. recently wrote:

My name is [redacted] and you can make the school gooder by geting people that will do the jod that is pay for get a football tame for the kinds mybe a baksball tamoe get a other jamtacher for the school get a lot of tacher. [See Exhibit B.]

As a result of his substantial deficits in basic literacy skills, D.F. is afraid to read out loud in his regular English Language Arts (“ELA”) class.

9. Plaintiffs - - all of whom are students enrolled at Barber Focus Elementary School of Math, Science and Technology (“Barber”), Henry Ford Academy for Communications/Performing Arts (“Ford”), or Highland Park Community High School (“HPS”) - - are children whose education the State of Michigan and those entities of State and local government mandated to provide K-12 public education cannot afford to ignore or impede. These children, no different from children of all races, ethnicities and socioeconomic classes throughout Michigan, have dreams of college and productive careers. These children have hopes to vote and participate in their communities. These children have desires to challenge themselves and to learn to fulfill their potential.

10. But those dreams and hopes and desires will be forever frustrated if Michigan and HPSD continue to relegate these children to learning conditions that manifestly fail the standards and criteria demanded by MCL 380.1278(8) and the Michigan Constitution - - conditions that shock the conscience of all citizens who care about the well-being of these children, their families and their communities. As matters now stand (and have historically stood), children enrolled in HPSD have no option of fully realizing their aspirations to become educated and successful members of their state community.

11. Defendants State of Michigan, State Board of Education, State Superintendent of Public Instruction, State Emergency Manager and the Highland Park School District have failed to deliver to all students enrolled in HPSD adequate educational services such that all students

possess basic literacy skills appropriate to their age and development and have failed to take proper steps to effectively remediate these deficiencies where they exist. These failures deny children throughout HPSD their statutory right under MCL 380.1278, and, foreseeably, deny them equal access to a public education system that will teach them the knowledge and skills that are the foundation of membership in modern society. These children are consigned to schools and classrooms that, practically speaking, are separate and fundamentally unequal to other public schools and classrooms throughout the State.

12. As but one ramification, children within HPSD who cannot meet basic reading proficiency levels appropriate to their grade level are per se unable to achieve proficiency in the Grade Level Content Expectations promulgated by the Michigan Department of Education for all core academic curricula for each grade and subject. Unsurprisingly too, failure to read proficiently is linked to higher rates of school dropout, which impairs individual earning potential, undermines self-esteem, and destabilizes family cohesion. At a State level, this failure saps the general productivity and competitiveness of the State of Michigan, needlessly costing our taxpayers hundreds of millions of dollars each year in lost tax revenues and increased social welfare, health care and criminal justice costs.

13. There is no excuse for the deprivations of educational opportunity described in this Complaint. Consistent with the statutory and constitutional provisions cited, it has been repeatedly recognized that nearly all children can learn to read and achieve literacy skills and knowledge appropriate to their age and development with adequate intervention where necessary. Under the State's own content standards, all students should be able to read fluently, accurately, and with appropriate intonation and expression by second grade. Education research has demonstrated the effectiveness of structured, systematic, direct and explicit teaching of the English language reading code to all children, including older students who are substantially behind in their reading ability and related skills.

14. Rather than take action to remedy the abysmal conditions in HPSD schools, Defendants the State of Michigan, State Board of Education, State Superintendent, HPSD and

the State Emergency Manager have purported to delegate responsibility for HPSD to charter operator The Leona Group, L.L.C and established a new “public school academy system” otherwise known as a charter school, named Highland Park Public School Academy System (“HPPSAS”). Upon information and belief, the State Department of Treasury and the State Superintendent of Public Instruction oversaw and approved the State Emergency Manager’s selection of The Leona Group, L.L.C. as the charter operator. The Leona Group, L.L.C. is bound by the same statutory and constitutional obligations as are the remaining Defendants, and is responsible, along with the other Defendants, for remedying the deficiencies in the schools in the Highland Park School District and ensuring that those schools comply with MCL 380.1278 and the Michigan Constitution.

15. By this lawsuit, Plaintiffs seek, among other relief: (1) the State’s immediate implementation of MCL 380.1278(8); and (2) implementation of a plan to assess all HPSD students’ literacy levels and offer the compensatory education necessary to bring them up to the reading proficiency levels appropriate to their grade level.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action for declaratory and injunctive relief pursuant to MCL 600.605, MCR 2.605 and MCR 3.310.

17. This Court has personal jurisdiction over Defendants named herein because each is a public official of the State of Michigan who is sued in his or her official capacity in order to enforce the performance of his or her official duties, MCR 2.201; the State consented to be sued for violation of its own Constitution and statutes; and The Leona Group, L.L.C. is a limited liability company organized under the laws of the State of Michigan and maintains its corporate offices in East Lansing, Michigan.

18. Venue is proper in this Court because some of the wrongs alleged in this Complaint occurred in Wayne County and each Defendant is located or has a principal place of business in Wayne County.

PARTIES

A. PLAINTIFFS

19. Plaintiffs L.M., S.D. and M.S. reside in the County of Wayne in the City of Highland Park within the boundaries of HPSD. Plaintiff L.B. resides in the County of Wayne in the City of Hamtramck and is lawfully enrolled in HPSD. Plaintiffs D.F., I.D., F.C., and C.M. reside in the County of Wayne in the City of Detroit and are lawfully enrolled in HPSD. Plaintiffs S.D., L.M., D.F., I.D., C.M., F.C., L.B., and M.S. thus attend schools within HPSD, and, as minors, are in fact legally required to attend school. None of the Plaintiffs is a special education pupil, a pupil having a learning disability, or a pupil with extenuating circumstances as determined by school officials. Each Plaintiff, a minor child, is represented by his or her legal parent or guardian.

20. S.D. just completed the 8th grade at Barber, which he has attended since 1st grade.

21. S.D. scored “Not Proficient” on the 2010 and 2011 MEAP Reading tests, *i.e.*, he failed to score satisfactorily on both the 7th and 8th grade MEAP Reading tests.

22. During the 2011-12 school year, his regular English class was a “Virtual ELA” course, in which he and other students received no instruction or assistance from a teacher. As a result, students sometimes slept or talked to one another throughout this class period. S.D. was also enrolled in Read 180, another online program in which he read books on the computer or listened to audio books. In Read 180, S.D. did not receive direct instruction from any adults.

23. S.D.’s school previously utilized a program labeled Drop Everything and Read (“DEAR”). In DEAR, approximately once every two months, students were informed that it was time for DEAR and they were then to read a book in class. Students were afforded time to read in class, though only on one occasion did that period approach an hour. Students were directed to write down the names of the books they read, but were not given any written assignments such as book reports, summaries or thematic analyses, by which a teacher would be able to assess whether students understood the material they read.

24. When asked to write what he would like to tell the Governor, S.D. recently wrote:

My name is [redacted] and I go too barber Focus school. The thing I whis the govern could do for my school is fix our bathroom, get us new computers, help us get more books, and more learning programs. [See Exhibit A.]

25. On May 19, 2012, S.D. was administered a Qualitative Reading Inventory – 5 (Leslie & Caldwell, 2006) (“QRI”) assessment examination to evaluate his reading proficiency. The results of this assessment were that S.D. has a “Narrative” reading proficiency appropriate for 3rd grade and an “Expository” reading proficiency appropriate for 2nd grade, five and six grade levels below his current grade level, respectively.

26. L.M. just completed the 7th grade at Barber, which he has attended since the 4th grade. He also attended public school in HPSD from grades 1 through 3.

27. L.M.’s scores on the 2009, 2010, and 2011 Reading MEAPs, *i.e.*, for 5th, 6th, and 7th grades, were all “Not Proficient.”

28. During the 2011-12 school year, as a 7th grader, L.M. was enrolled in a class called “Virtual Learning English Language Arts,” in which he answered questions on the computer. While he worked on the computer, his teacher graded papers or did other work on her own computer. His teacher did not lecture or use the blackboard for instruction. L.M. did not receive direct instruction from his teacher and was frustrated that, although the computer program would indicate whether he answered a question correctly, it never explained why a particular answer was correct.

29. In January 2012, L.M. began using Read 180 during his homeroom period. In that program, he answered questions on a computer. Occasionally, his teacher assisted students around the room, but she generally sat at her desk and kept track of how students did on the computer exercises. In this program, L.M. did not receive any explicit instruction from an adult.

30. When asked to write about his experience at Barber, L.M. recently wrote:
My name is [redacted] I go to Barber focus school. I wish it was a batter [illegible] in the clean bathroom. batter teachers and batter Lunch. [See Exhibit C.]

31. On May 19, 2012, L.M. was administered a QRI assessment examination to evaluate his reading proficiency. The results of this assessment were that L.M. has “Narrative” and “Expository” reading proficiencies appropriate for the 3rd grade, four grades below his current grade level.

32. D.F. just completed the 7th grade at Barber, which he has attended since the 5th grade.

33. D.F. scored “Not Proficient” on the 2011 MEAP Reading test. During the 2011-12 school year, D.F. was enrolled in a regular ELA class and Read 180 during the same class period. He chose which class to attend each day. In the Read 180 classroom, the teacher did not provide any instruction while the students read books on their own, or in groups, or completed self-directed work on the computer, which involved learning word definitions. When D.F. attended his regular ELA class, he was scared to read out loud.

34. The longest writing assignment that D.F. had to complete this year was a three paragraph summary of a book.

35. When asked to write what he would like to tell the Governor about his school, D.F. recently wrote:

My name is [redacted] and you can make the school gooder by geting people that will do the jod that is pay for get a football tame for the kinds mybe a baksball tamoe get a other jamtacher for the school get a lot of tacher. [See Exhibit B.]

In this writing sample, D.F. spelled his own name incorrectly.

36. On June 4, 2012, D.F. was administered a QRI assessment examination to evaluate his reading proficiency. The results of this assessment were that D.F. has “Narrative” and “Expository” reading proficiencies appropriate for the 1st grade, six grades below his current grade level.

37. I.D. just completed the 4th grade at Barber, which she has attended since the 2nd grade.

38. I.D. scored “Not Proficient” on the 2010 and 2011 MEAP Reading tests, *i.e.*,

during her 3rd and 4th grade years. She has not received any specialized reading intervention since arriving at Barber.

39. I.D. cannot take home any of her textbooks and is not able to get books from the library at Barber. Since enrolling at Barber, I.D. has never been assigned to write anything longer than one paragraph.

40. When asked to write what she would like to tell the Governor about her school, I.D. recently wrote:

My name is [redacted] this is what I what to do when I what grow
up at Bussness laddy And can you give my a favorite By helping
me to work my way up to keep up Jobs.

from
[redacted]

love
govonor [See Exhibit D.]

41. On June 4, 2012, I.D. was administered a QRI assessment examination to evaluate her reading proficiency. The results of this assessment were that I.D. has an “Expository” reading proficiency appropriate for a kindergartener (primer) and “Narrative” reading proficiency appropriate for the 1st grade, four and three grades below her current grade level, respectively.

42. C.M. just completed the 3rd grade at Ford. This is her first year in HPSD.

43. As is true for most Plaintiffs, C.M.’s academic records are in a state of disarray, so it is impossible to reconstruct her academic history. In fact, her academic records appear to consist of only MEAP scores for 2011 and a print-out of grades for 3rd grade. It appears that she received all C’s, D’s and F’s in the 3rd grade and scored “Not Proficient” on the 2011 MEAP Reading test, taken during the 3rd grade.

44. When asked to write what she would like to tell the Governor about her school, C.M. recently wrote:

Name: [redacted]
Henry Ford.

Well we can have playtime. And write lot of things. And read

books. And have fun. The state government will come and come to the school. Tell the Teacher what to do! To help. [See Exhibit E.]

45. F.C. just completed the 6th grade at Barber, which he has attended since 4th grade.

46. F.C. failed the 2009, 2010 and 2011 MEAP Reading tests, *i.e.*, during his 4th, 5th, and 6th grade years. He did not receive any specialized reading intervention in 4th or 5th grades.

47. During the 2011-12 school year, F.C. was enrolled in a regular ELA class during the fall. At some point during the winter, he was enrolled in Read 180. His class was composed of ten students from each of the 6th, 7th, and 8th grades. The students were split into two groups. One group read stories aloud while the other group accessed self-directed work on computers. The teacher did not provide any direct instruction.

48. When asked to write a letter to the Governor explaining things that would make his school better, F.C. recently wrote:

Hi My is [redacted] and i go the school at Barber focus and i would like you to make Better reading Books and cleaner water and supply for the classroom [See Exhibit F.]

49. On June 4, 2012, F.C. was administered a QRI examination to evaluate his reading proficiency. The results of this assessment were that F.C. has a “Narrative” reading proficiency appropriate for 3rd grade and an “Expository” reading proficiency appropriate for the 2nd grade, three and four grades below his current grade level, respectively.

50. L.B. just completed the 11th grade at HPHS, which she has attended since the 9th grade. Prior to that, L.B. attended HPSD schools in grades 5 through 7.

51. As is true for most Plaintiffs, HPSD records for L.B. are incomplete. The most recent records that include her MEAP results are from 2005 and 2006. L.B.’s scores on the Reading, English Language Arts, Math, Writing, Social Studies and Science MEAP tests were all below “Proficient.” She had a composite score of 10 on an ACT exam given to her when she was in the 9th grade; that score placed her in the bottom 5% of the nation overall and the bottom

1% of the nation in English.

52. L.B.'s second period class this year was an online English class called "Michigan Virtual." There was no teacher physically present in the classroom to instruct her during this period. When L.B. first entered the class, she did not know how to utilize the program and no adult was present to provide assistance to her.

53. On May 19, 2012, L.B. was administered a QRI assessment examination to evaluate her reading proficiency. The results of this assessment were that L.B. has a "Narrative" reading proficiency appropriate for the 5th grade and an "Expository" reading proficiency appropriate for the 3rd grade, six and eight grades below her current grade level, respectively.

54. M.S. just completed the 10th grade at HPHS, which she has attended since 9th grade. Prior to attending HPHS, she was enrolled in Barber from K-8. Her GPA since entering HPHS is around 1.0.

55. On May 19, 2012, M.S. was administered a QRI assessment examination to evaluate her reading proficiency. The results of this assessment were that M.S. has a "Narrative" reading proficiency appropriate for the 5th grade and an "Expository" reading proficiency appropriate for the 3rd grade, five and seven grades below her current grade level, respectively.

B. DEFENDANTS

56. Defendant State of Michigan is the legal and political entity with plenary responsibility for educating all Michigan public school children, including the responsibility to establish and maintain the system of common schools and a free education under the Michigan Constitution, including Article 8, §§ 1, 2 and 3. The State must also assure that all Michigan public school children receive their right to an equal education under the Equal Protection Clause of the Michigan Constitution, Article 1, § 2, and their rights pursuant to MCL 380.1278.

57. Defendant State Board of Education and its members are responsible for determining and enforcing the policies governing Michigan's K-12 public schools, including those necessary to carry out constitutional and statutory mandates, and for adopting rules and regulations for the supervision of all local school districts, including the Highland Park School

District. Defendant State Board of Education is also the “planning and coordinating body for all public education.” Defendant State Board of Education is required to supervise local school districts to ensure that they comply with State and Federal law requirements concerning educational services. Its members are elected at large on a partisan basis. Const 1963, art. 8, § 3; MCL 388.1009 *et seq.*; MCL 16.400 *et seq.*

58. Defendant Michigan Department of Education (“MDE”) is the department of the State of Michigan government responsible for administering and enforcing laws related to public education. MCL 16.400-16.402.

59. Defendant Michael P. Flanagan, sued here in his official capacity, is the Superintendent of Public Instruction (“SPI”) of the State of Michigan. The SPI is appointed by and responsible to the State Board of Education. Const 1963, art 8, § 3; MCL 388.1014. As the principal executive officer of the Department of Education, the SPI sits on the Governor’s Cabinet and the State Administrative Board, and acts as chair and a non-voting member of the State Board of Education. The SPI advises the Legislature on education policy and funding needs, as defined by the State Board of Education. The SPI is responsible for implementation of bills enacted by the Legislature and the policies established by the State Board of Education. The SPI is the primary liaison to the United States Department of Education and provides management of State and Federal resources.

60. Defendant Joyce Parker, sued here in her official capacity, is the Emergency Manager for the Highland Park School District, appointed on May 12, 2012, by Governor Rick Snyder pursuant to Michigan Public Act 4 to succeed Jackie Martin, who had been appointed on January 27, 2012. Governor Snyder ordered the State takeover of HPSD after the district’s financial review board unanimously recommended appointment of an Emergency Manager. Upon being placed in receivership, the Highland Park School Board and Superintendent of HPSD are prohibited from exercising any of their powers of offices without written approval of the Emergency Manager.

61. Defendant Highland Park School District is the agent of the State of Michigan for

purposes of delivering public education to students attending schools within the geographic boundaries of HPSD as constitutionally and statutorily mandated or otherwise required by the State Board of Education, Emergency Manager, or other State entities charged with responsibilities for public education.

62. Defendant Highland Park Public School Academy System is a creation of the State which will provide educational services to the children of Highland Park. The HPPSAS does not operate independently of the State. As set forth in the June 18, 2012 HP Emergency Manager Financial and Operating Plan, “The Emergency Manager will maintain control over the HPPSAS. As public school academy authorizer, the EM will perform oversight functions.” Upon information and belief, Defendant HPPSAS is controlled by the Emergency Manager and operated on a day to day basis by the Leona Group. HPPSAS is an agent of the State of Michigan for purposes of delivering public education to students attending schools within the geographic boundaries of the HPSD as constitutionally and statutorily mandated or otherwise required by the State Board of Education, Emergency Manager, or other State entities charged with responsibilities for public education.

63. Defendant The Leona Group, L.L.C. is a Michigan limited liability company headquartered in East Lansing, Michigan. In July 2012, The Leona Group, L.L.C. entered into a contract or series of contracts to manage and operate the schools within the Highland Park School District as HPPSAS, a charter school system, which will lease its facilities from HPSD. The Leona Group, L.L.C. is the agent of the State of Michigan for purposes of delivering public education to students attending schools within the geographic boundaries of HPSD as constitutionally and statutorily mandated or otherwise required by the State Board of Education, Emergency Manager, or other State entities charged with responsibilities for public education. Further, The Leona Group, L.L.C. is bound by the same statutory and constitutional obligations as are the remaining Defendants, and is responsible, along with the other Defendants, for remedying the deficiencies in the schools in the Highland Park School District (and/or the Highland Park Public School Academy System) and for ensuring compliance with MCL

380.1278 and the Michigan Constitution.

FACTUAL ALLEGATIONS

Michigan's System for K-12 Public Education

64. Article 8, §§ 1 and 2 of the Michigan Constitution impose an obligation on the State of Michigan to provide a free K-12 public education to all students. This is in keeping with the broad national recognition that regulation of education and school is a traditional state function. Although State courts have noted that public education is not a fundamental right granted by the Federal Constitution, our Supreme Court has recognized that at the same time “it is not merely some governmental benefit which is indistinguishable from other forms of social welfare legislation.” *Snyder v Charlotte Pub Sch Dist, Eaton Co*, 421 Mich 517, 525, 365 NW2d 151 (1985) (quoting *Plyler v Doe*, 457 US 202, 221; 102 S Ct 2382; 72 L Ed 2d 786 (1982)). As the Michigan Supreme Court has stated, “education is perhaps the most important function of state and local governments.” *Snyder*, 421 Mich at 154-155 (quoting *Brown v Topeka Bd of Educ*, 347 US 483, 493, 74 S Ct 686 (1954) (internal alteration omitted)). And our courts have also recognized that “[w]henver the state has undertaken to provide education to its people, this right must be made available to all on equal terms.” *Id.* at 155-156.

65. Article 8, § 3 of the Michigan Constitution vests general supervision over K-12 public education in the State Board of Education. Local school districts are agents of the State of Michigan for purposes of effectively delivering public education as constitutionally and statutorily mandated or otherwise required by the Board or other State entities charged with responsibilities for public education like the Michigan Department of Education. Such local school districts and their officers possess only those powers that statutes expressly, or by reasonably necessary implication, have granted to them.

66. Though the State of Michigan is ultimately responsible for compliance with all constitutional and statutory mandates regarding public education, section 1282 of the School Code sets forth certain duties and responsibilities belonging to local school districts in the first instance:

The board of a school district shall establish and carry on the grades, schools, and departments it considers necessary or desirable for the maintenance and improvement of its schools and determine the courses of study to be pursued.

The board of a school district shall provide a core academic curriculum, learning processes, special assistance particularly for students with reading disorders or who have demonstrated marked difficulty in achieving success on standardized tests, and sufficient access to each of these so that all pupils have a fair opportunity to achieve a state endorsement under section 1279. [MCL 380.1282(1) and (2).]

The Critical Importance of Literacy Is Recognized in the Michigan Public School System

67. Recognizing the fundamental nature of literacy to educational success, the educational standards for the State of Michigan underscore English Language Arts, and basic literacy in particular, as crucial for success in college and the workplace. In March 2006, MDE published its final version of “Michigan’s Grade Level Content Expectations in English Language Arts (“ELA”) and Mathematics” (“Expectations”). A cover letter to this publication addressed to “Michigan Educators” from Defendant SPI Michael P. Flanagan stated, “[T]he Content Expectations provide educators with clearly defined statements of what all students should know as they progress from kindergarten through eighth grade.”

68. The “Purposes and Overview” of the Grade Level Content Expectations for ELA, which Defendant Flanagan was describing in his cover letter, states:

In this global economy, it is essential that Michigan students possess personal, social, occupational, civic, and quantitative literacy. Mastery of the knowledge and essential skills defined in Michigan’s Grade Level Content Expectations will increase students’ ability to be successful academically, contribute to the future businesses that employ them and the communities in which they choose to live.

69. The ELA Content Expectations are organized for each grade level into four strands with multiple domains: Reading, Writing, Speaking, and Listening & Viewing. At each level, the ELA Content Expectations state that “students will know the meaning of words encountered frequently in grade-level reading and oral language contexts,” possessing the ability to develop strategies for determining the meaning of unknown words and phrases along with skills of self-monitoring and constructing meaning by predicting and self-correcting, applying

knowledge of language, sound/symbol/structural relationships, and context. Thus, basic reading literacy is at the core of what Michigan public school students are expected to know and is, in fact necessary to access knowledge as they move through school.

70. By grade two, the Expectations state that all students will “be enthusiastic about reading and learning how to read” and will “do substantial reading and writing on their own during free time in school and at home.” By grade three, the Expectations state that all students “will be enthusiastic about reading and do substantial reading and writing on their own.”

71. These and the other expectations for all students enumerated in the ELA Content Expectations are regarded by MDE as foundational to mastery of all curricular subject areas and to the mission of Michigan’s K-12 educational system: “Students must be able to apply knowledge in new situations, to solve problems by generating new ideas, and to make connections between what they learn in class to the world around them.”

72. MCL 380.1278 demonstrates that the Michigan Legislature understands the importance of student literacy in fulfilling the State’s constitutional obligation to provide education. This statute guarantees that a student who reads below grade level will receive special assistance to close that gap within 12 months:

Excluding special education pupils, pupils having a learning disability, and pupils with extenuating circumstances as determined by school officials, a pupil who does not score satisfactorily on the 4th or 7th grade Michigan educational assessment program reading test shall be provided special assistance reasonably expected to enable the pupil to bring his or her reading skills to grade level within 12 months. [MCL 380.1278(8).]

73. Overwhelming scholarly research confirms that the Legislature was correct to conclude that the ability to achieve literacy is at the root of all learning. “Reading is the catalyst for learning. As the reader evolves from words to sentences, the mental realization of meaning emerges and knowledge, or learning, replaces the mechanics of reading.” Jim Agee, *Literacy, Aliteracy, and Lifelong Learning* (New Library World, 2005), Vol 106, Iss 5/6, pp 244-252. Furthermore, the expectation in our education system is that students will access knowledge

through written texts as they advance through school, so failing to address literacy deficits effectively curtails students' ability to access the subject-matter content in all courses: "Up until the end of third grade, most children are *learning to read*. Beginning in 4th grade, however, they are *reading to learn*, using their skills to gain more information in subjects such as math and science, to solve problems, to think critically about what they are learning, and to act upon and share that knowledge in the world around them." *Learning to Read: Early Warning!*, *supra* at 9 (emphasis in original).

74. Additional research shows that acquisition of math and science skills is interwoven with literacy. "Literacy in general, but reading in particular, is important across the content areas. Mathematics teachers who integrate literature into mathematics recognize that mathematical understanding involves reading and writing." Kimberly K. Cuero, Elsa C. Ruiz & Jenifer Salter Thornton, *Integrating Literature in Mathematics: A Teaching Technique for Mathematics Teachers*, (School Science and Mathematics, 2010), Vol 110, Iss 5, pp 235-237. "Certain science inquiry skills, such as communicating, predicting, observing, and classifying, are common to the language arts curriculum, and writing is an important way to instill understanding of science concepts." Margaret A Moore-Hart, Peggy Liggitt, & Peggy Daisey, *Making the Science Literacy Connection: After-School Science Clubs* (Maryland: Association for Childhood Education International Subscriptions, Sum 2004), Vol 80, No 4, pp 180-186, 181.

75. Thus, the State of Michigan has imposed these Grade Level Content Expectations for grade levels K-8, and the Legislature has recognized, through MCL 380.1278(8), the central and indispensable role of ensuring basic reading literacy to students if they are to have any chance of meeting these curricular standards as they progress through school. Notwithstanding this clear statutory mandate, which is consistent with the State's ultimate constitutional duty to ensure that the right to public education is available to school children on equal terms, Defendants have denied and continue to deny Plaintiff class members *any* viable chance to obtain essential knowledge and skills by failing to deliver adequate teaching, learning conditions, and remediation at each grade level.

**HPSD Has Systematically Deprived Students of Any Meaningful
Opportunity to Attain Basic Literacy**

76. The City of Highland Park (“Highland Park”) occupies 2.97 square miles. Highland Park is bounded by the City of Detroit and the City of Hamtramck. According to the 2010 U.S. Census, Highland Park is home to 11,776 people, and its population is 93.5% African American.

77. Children and parents in Highland Park principally rely on HPSD to deliver primary and secondary education that meets statewide standards. HPSD consists of three schools - - HPHS, Ford, and Barber. Barber and Ford are K-8 schools, and HPHS is for students in grades 9-12.

78. According to MDE data, there are 973 students enrolled in HPSD, and 99.59% of these students identify as African American. About 82% of students in HPSD qualify for the Federal Free or Reduced Lunch program.

79. For years, HPSD has failed to provide appropriate instruction so that students learn to read and can therefore read to learn as they progress through their education. MEAP scores, which the Michigan Legislature has identified as the sole criterion for determining which students must receive literacy interventions under MCL 380.1278(8), disclose just how abysmally HPSD schools are performing. According to these data, published by MDE, for the 2011-12 school year:

- Only 35% of 4th grade students in HPSD scored “Proficient” or higher on the MEAP Reading test, and less than that, 13%, were “Proficient” or higher on the MEAP Math exam.
- Only 25% of 7th grade students scored “Proficient” or higher on the MEAP Reading test, and only 7% scored “Proficient” or higher on the MEAP Math test.

Thus, nearly two thirds of HPSD’s 4th grade students and three quarters of its 7th grade students are entitled to reading intervention services under MCL 380.1278(8), and these data are consistent with MEAP data from past years.

80. Broken down by school, about 94% of students at Barber scored below “Proficient” in Reading and Math on the 2011 MEAP tests; of 4th grade students at Barber, nearly 70% scored below “Proficient” in Reading and 87% scored below “Proficient” in Math. Of 7th grade students at Barber, 77% scored below “Proficient” in Reading, and 95% scored below “Proficient” in Math. Not a single student at Barber scored “Advanced” in either Math or Writing on the 2011 MEAP test.

81. At Ford, the results are essentially the same or worse. About 88% of students at Ford scored below “Proficient” in Reading and Math on the 2011 MEAP tests; and of 4th grade students at Ford, more than 60% scored below “Proficient” in Reading and 86% scored below “Proficient” in Math. And of 7th grade students, 73% scored below “Proficient” in Reading and 88% scored below “Proficient” in Math. Just 3% of 6th graders at Ford achieved “Proficient” on the 2011 Social Studies MEAP and 0% of 5th and 8th graders achieved “Proficient” on the 2011 Science MEAP.

82. The academic performance results for HPHS are, if anything, bleaker than for either Barber or Ford and demonstrate that poor literacy is a problem that only worsens as students move into the later grades. The failure rates at HPHS on the 2011-12 Michigan Merit Examination (“MME”), the final standardized test administered to students in the State of Michigan, were 90% or higher for all subjects tested: for Reading, the failure rate was 90%; for Math, 97%; for Writing, 94%; for Social Studies, 100%; and for Science, 100%. Moreover, according to MDE graduation data - - regarded by the federal government as understating actual dropout numbers - - about 42% of HPHS’s students to not graduate in four years. HPHS currently has a dropout rate of 23%, double that of schools statewide. Of those students who have not dropped out before 11th grade, 0% score “Proficient” overall on the MME.

83. Further proof of Defendants’ failure to provide HPSD students a meaningful opportunity to master basic literacy skills and reading competency is found in the experience of students who have managed to graduate from HPSD, only to find they were woefully underprepared for higher learning. Countless of these graduates, after overcoming the deficient

educational opportunities provided by HPSD, must take remedial courses, including basic English courses, before they can even begin to take college-level courses, forced by Defendants' failures to provide statutorily and constitutionally required services to extend their college careers at great cost to them.

84. Despite the fact that, year after year, children in HPSD have failed to "score satisfactorily," MCL 380.1278(8), on the MEAP Reading test, HPSD has systematically refused to provide these students with the state-mandated remedial reading programs necessary to address these deficits in basic literacy. In fact, on information and belief, HPSD has not developed or implemented a plan, much less a district-wide program, through which all students who fail to score satisfactorily on the MEAP Reading test in 4th or 7th grade are provided access to research-based reading remediation instruction that is designed to address the particular areas where students are deficient in literacy skills.

85. To the extent that HPSD has sporadically utilized reading programs, like Read 180 and DEAR, those programs are not made available to all students who fail the 4th or 7th grade MEAP Reading test (and are certainly not provided to all students known to school officials to need intensive literacy remediation). Moreover, the programs rely upon online learning but are often held in classrooms with an insufficient supply of computers. Finally, teachers assigned to these programs have not been trained adequately or at all to utilize the software and offer no or insufficient individualized assistance or guidance. Thus, these programs, when they have existed, cannot be "reasonably expected," MCL 380.1278(8), to address the students' literacy deficits. Indeed, there is simply no scientific or pedagogical justification for the approach used in these programs. No empirical basis exists to expect that students who have severe literacy deficits can somehow teach themselves how to read on their own, sometimes without access to a computer on which the program is available, and without the support and assistance of adults with some understanding of or training in literacy acquisition.

86. In addition to the failure to meet the statutory mandate to provide literacy intervention to certain students, Defendants have allowed conditions to persist in HPSD that

ensure that numerous students will be in need of those absent interventions because the schools in HPSD are incapable of delivering literacy instruction that meets statewide curricular standards or professional norms. Specifically, conditions in HPSD schools do not meet prevailing professional standards for the effective delivery of basic literacy skills and reading proficiency appropriate for K-12 public school students and are substantially inferior to conditions at most public schools in the State of Michigan, as follows:

- a. **Textbooks.** There is a critical lack of textbooks in most classrooms such that students are only rarely able to take home textbooks, and in many instances cannot take books home at all. This makes it very difficult for children to complete homework, constrains the nature of homework that can be assigned, and requires that valuable classroom time be allotted so that students can do homework. Many existing textbooks are outdated and in unacceptable condition. Often, students must share textbooks in the classroom, undermining their ability to learn at their own pace.
- b. **Paper and copying machines.** There is a critical lack of paper and copying machines in HPSD schools. Currently, teachers at Barber and Ford must make their own copies at their own expense. Thus one important variable affecting the nature and quality of classroom instruction is teachers' personal finances and willingness to procure copies on their own.
- c. **Temperature of classrooms.** Many classrooms have no or inadequate heat. Especially in Michigan winters, students must wear their winter parkas and gloves in class, impeding their ability to concentrate and learn.
- d. **Academic support and instruction time.** Barber and Ford have no counselors or vice principals. This prevents these schools from developing sensitivity to individual needs of students, offering them meaningful academic assistance, working with teachers to develop effective classroom management skills and practices, and permitting principals to fulfill their responsibilities as instructional leaders by having to take on other roles. As a result, classroom time for many core curricular subject areas is not efficiently utilized

such that students idly spend many hours each week left to their own devices rather than receiving needed instruction and learning assistance.

- e. **Staff credentials.** The level of professional education achieved by teachers and administrators in HPSD lags behind both the state and similarly situated districts. In 2010, 32% of the teachers in the District held a Masters or higher degree. This number was 74% in the Hamtramck Public Schools and 77% in the Detroit Public Schools. Thirty percent (30%) of administrators in the District held a Master's degree. Statewide, the number was 59%.
- f. **Class size and teacher support.** HPSD teachers are overworked, cannot rely on consistent pay, and are being asked to work in unreasonable conditions. One 7th grade class at Barber had over 50 students for an entire semester. Students had to sit on the floor or stand at the back of the classroom.
- g. **Bathrooms.** These facilities are not properly maintained, often smeared with feces, lack toilet paper and paper towels, and missing stall doors and other fixtures.
- h. **Safety, security and maintenance.** School buildings are unsecured such that a homeless man was able to live and sleep in the facilities without detection by school officials. Classrooms and hallways are often filthy and damp from leaks.
- i. **Libraries.** The libraries within these schools are inadequately resourced with books and staff. Students are prohibited from checking out books.
- j. **Recordkeeping.** Files for all students typically do not include assessments of grade level performance, current and post MEAP assessments, counseling records, attendance records or discipline records. Files for students transferring from other districts or charter schools are missing MEAP results and other information necessary to address academic deficiencies. Student files are not readily accessible to parents as mandated by Federal and State law, and school personnel sometimes actively resist disclosing their contents.

In short, HPSD's ability to deliver the instruction necessary to ensure that students acquire the basic literacy skills, reading proficiency and knowledge that are essential to mastering the State's

Grade Level Content Expectations falls far below accepted and prevailing nationwide professional standards.

87. HPSD is, simply put, among the worst school districts in the state, in terms of providing its students with the most basic tool - - literacy - - without which children cannot participate meaningfully in their own education and without which they are set up for future failure. As a result, students who have relied on HPSD to provide literacy instruction, including Plaintiffs and their peers, have incurred devastating real-life consequences. The following represent but a few examples of these experiences:

- S.D. just completed the 8th grade at Barber, which he attended since 1st grade. He failed both his 2010 and 2011 MEAP Reading tests, yet he did not receive any direct instruction from a teacher in either his regular ELA class, which was a virtual class in which he completed self-directed work on the computer, or in the Read 180 program, in which he also completed self-directed work on a computer. According to a recent reading assessment, he has the literacy skills and reading proficiency expected of 2nd or 3rd graders.
- L.M. just completed the 7th grade at Barber and has attended HPSD schools since 1st grade. He failed the 2009, 2010, and 2011 Reading MEAP tests, yet this past year he was enrolled in a virtual learning ELA class, in which he completed self-directed work on a computer and received no direct instruction from his teacher. According to a recent assessment, L.M. has the literacy skills and reading proficiency expected of 3rd graders.
- D.F. just completed the 7th grade at Barber and failed the 2011 MEAP Reading test. Although he was enrolled in a reading program for part of the past school year, he had to choose between attending that class and his regular ELA class each day, and the teacher assigned to the reading program did not provide any direct instruction to students. According to a recent assessment, he has the literacy skills and reading proficiency expected of 1st graders, and, as a result of his literacy deficits, he is afraid to read out loud in his ELA class.

- I.D. just completed the 4th grade at Barber and has been a student there since 2nd grade. Although she scored “Not Proficient” on the 2010 and 2011 MEAP Reading tests, she has not received any specialized reading intervention since arriving at Barber. According to an assessment recently administered to I.D., she has the literacy skills and reading proficiency expected of kindergarteners or 1st graders.
- C.M. just completed the 3rd grade at Ford and failed her 2011 MEAP Reading test. She received all C’s, D’s, or F’s this past year and has not received any individualized assistance in reading.
- F.C., who just completed the 6th grade at Barber, failed the MEAP Reading tests in 2009, 2010, and 2011, yet he did not receive any specialized intervention in 4th or 5th grade and was enrolled in a reading program for part of 6th grade in which he did not receive direct instruction from a teacher and instead read aloud or completed self-directed computer work. According to a recent assessment, he has the literacy skills and reading proficiency expected of 2nd or 3rd graders.
- L.B., who just completed 11th grade at HPHS, has a reading comprehension level between 3rd and 5th grades and her ACT exam score places her in the bottom 1% in English proficiency in the nation. Yet she was enrolled in an ELA class called Michigan Virtual, in which she sat in a computer lab with students from other classes and received no instruction from an adult, either on how to use the program or if she required assistance on an assignment.
- M.S. just completed the 10th grade at HPHS and has attended HPSD schools her entire career. According to a recent assessment, however, she has the literacy skills and reading proficiency expected of 3rd or 5th graders.

88. Defendants know that children enrolled in HPSD schools, including Plaintiffs and their peers, face severe literacy deficits, yet they have taken no meaningful action to address this crisis, which is, in fact, of Defendants’ own making. The causes of these deficiencies are as obvious as they are appalling and perpetuate a cruel hoax on children, demanding that they

master middle school and high school curricular content without first ensuring that they know how to read.

89. Experts have emphasized that children should not have to become used to or acclimated to a failure on the part of their schools to afford literacy skills and knowledge appropriate to age and development. A reality of failure crushes their hearts and minds forever, creating and exacerbating learning deficits from which, without effective remediation, children can never recover. Furthermore, these substandard conditions are decimating their families and communities. The psychological, emotional and sociological toll is inestimable.

Although Fully Aware of the Failure to Provide Basic Literacy Instruction in HPSD, the State Defendants Have Done Nothing

90. The State of Michigan's responsibility for this failure, confirmed by the constitutional structure of governance of the statewide public education system, is all the more inexcusable in light of its direct involvement in the management of HPSD through the State-appointed Emergency Manager who superintends the district and is now responsible for its day-to-day operation.

91. As a result of severe financial difficulties within HPSD, on January 27, 2012, Governor Rick Snyder appointed Jackie Martin as Emergency Manager of HPSD. Governor Rick Snyder then appointed Joyce Parker, president of Ann Arbor-based The Municipal Group L.L.C., as Martin's replacement in the school district, effective May 21, 2012. Pursuant to Public Act 4 of 2011, the Emergency Manager had to develop a written financial operating plan for HPSD within 45 days of appointment, and, upon appointment of the Emergency Manager, neither the Highland Park School Board nor the Superintendent of HPSD are authorized to exercise any of their powers of office without written approval of the Emergency Manager.

92. From the initial appointment of the Emergency Manager to superintend the financial conditions and dealings of HPSD, little or no attention has been paid by that office to the deficient learning conditions described in this Complaint. Upon information and belief, though the Emergency Manager effectively controls all operations within HPSD, neither

Emergency Manager has developed an effective plan to address the systemic conditions responsible for the majority of HPSD students' inability to achieve appropriate reading proficiency.

93. On or about June 18, 2012, the Emergency Manager announced that she would place the operation of HPSD out for bidding to charter school operators. Under the proposal, Defendant MDE must approve the bid accepted by the Emergency Manager and, upon MDE approval, the Emergency Manager would then draft a lease and operating agreement with the operator. The charter operator with the winning bid would manage the day-to-day operations of HPSD schools, while the Emergency Manager would maintain ultimate authority and control over HPSD. On or around July 27, 2012, the Emergency Manager announced the selection of The Leona Group, L.L.C. as the charter operator for HPSD schools.

94. Upon information and belief, Defendants State of Michigan, State Board of Education, State Superintendent of Public Instruction, and State Emergency Manager did not exercise diligent efforts to cause the schools in the HPPSAS to be operated lawfully, i.e., to ensure that The Leona Group had a track record showing that it had the ability and commitment to comply with MCL 380.1278(8) and the Michigan Constitution and ensure that all students could achieve basic literacy skills. As evidence of this lack of ability and commitment, the Leona Group has repeatedly failed to raise or maintain academic proficiency in other charter schools it has operated in Michigan such as Saginaw Preparatory Academy, nor has it put into place programs or personnel sufficiently experienced and trained to do so. For example, in the five years since Leona Group took over operations for Saginaw Preparatory Academy, the percentage of students scoring at a satisfactory level on the MEAP has failed to show any substantial improvement and in some instances has actually decreased. The decision to award operating responsibilities to the Leona Group reflects a continuing cavalier determination by State defendants to attempt to deflect responsibility for the illegal and unacceptable academic results at Highland Park schools to an entity they should know is incapable of producing appropriate results.

95. Upon information and belief, consistent with the State's indifference to whether students of HPSD attain basic reading literacy, the State Defendants have not made delivery of the reading intervention programs required by MCL 380.1278(8) a prerequisite for qualifying to operate schools, nor have they even inquired as to the track record that the applicants to operate HPSD's schools have in addressing basic literacy needs of their students or as to the quality of literacy services (if any) that the operators have provided.

96. In short, although the State has intervened on account of extreme financial mismanagement on the part of officials within HPSD, it has not done the same with regard to the severe instructional failures in the schools which are no less devastating in their impact on Plaintiffs and, in the course of assuming control of HPSD's operations, has not taken meaningful or any steps to assure compliance with MCL 380.1278(8).

97. The MEAP and MME results and the facts and conditions described in this Complaint are matters generally of public knowledge and are known or should be known by all Defendants, especially in light of the takeover of HPSD by the Emergency Manager. Nevertheless, the State of Michigan, MDE, SBE, SPI and Emergency Manager have exercised no authority or supervision in assuring that intervention programs for children in HPSD who do not score satisfactorily on the Reading portion of the 4th or the 7th grade MEAP (or indeed at any grade level at which children fall substantially below their grade level reading proficiency) are provided special assistance reasonably expected to enable them to bring their reading skills to grade level within 12 months, as mandated by MCL 380.1278(8).

98. As one indicator of this fact, the Freedom of Information Act Coordinator for MDE responded in writing on May 8, 2012, to a request seeking documents "relat[ing] to reading intervention programs designed to meet the requirements of MCL 380.1278(8) or otherwise provid[ing] remedial reading instruction" in HPSD (among other school districts) by stating: "To the best of my belief and knowledge, the Michigan Department of Education does not possess the documents you requested." [See Exhibit G.]

99. As another indicator, neither the Emergency Manager nor any other Defendant

has ever announced, let alone implemented, a strategic plan for providing “special assistance” reasonably expected to bring students’ reading skills up to grade level within 12 months (or any time period for that matter). Nor have Defendants otherwise made meaningful efforts to address the systemic problems in affording learning conditions so as to effectively teach basic literacy skills at early grades and maintain proficiency levels appropriate to grade level.

100. The systematic failure in HPSD to ensure that school children can read is both unacceptable and unnecessary. In schools across the nation with similar demographics to those of HPSD, children are taught successfully such that they achieve, and in many cases exceed, appropriate age and developmental proficiencies and become lifelong learners with the promise of finding and fulfilling their potentialities. As but one example, a recent report by the Education Trust-Midwest spotlighted the stellar academic performance of students of all races and ethnicities at North Godwin Elementary School, located just outside of Grand Rapids. The Education Trust-Midwest, *Becoming a Leader in Education: An Agenda for Michigan* <<http://www.edtrust.org/midwest/publication/becoming-a-leader-in-education-an-agenda-for-michigan>> (accessed July 11, 2012). As a further example, the Baylor Woodson School in Inkster, Michigan is demographically similar to HPSD, yet 98% of its students met reading and math standards on the 2010 MEAP. In the 5th grade, 73% of students scored “Advanced” in Math and 63% scored “Advanced” in Reading. The Education Trust-Midwest, *What Our Students Deserve: Facing the Truth About Education in the Great Lakes State* <<http://www.edtrust.org/midwest/publication/what-our-students-deserve-facing-the-truth-about-education-in-the-great-lakes-st>> (accessed July 11, 2012).

101. The failure by the State of Michigan and HPSD to ensure that Plaintiffs, along with all students enrolled at Barber, Ford and HPHS, receive an education providing them basic literacy skills, reading proficiency, and knowledge appropriate to their age and development, leaves them without minimally sufficient skills. They are, therefore, deprived of an education by which they can master the curricula required by the State’s Grade Level Content Expectations and otherwise achieve their potentials.

102. In sum, these children have been and are being denied their statutory rights under MCL 380.1278 and their constitutional rights under Article 1, § 2 of the Michigan Constitution and Article 8, §§ 1 and 2 of the Michigan Constitution. This civil rights action seeks injunctive and declaratory relief to enforce these enumerated statutory and constitutional rights, and appropriate remedial services to compensate for past denial in the form of the administration of proven pedagogical instructional programs to teach basic literacy skills, reading proficiency, and knowledge appropriate to age and development.

CLASS ACTION ALLEGATIONS

103. This action is properly brought as a class action pursuant to MCR 3.501.

104. Class A is defined as all students, excluding special assistance pupils, pupils having a learning disability, and pupils with extenuating circumstances as determined by school officials, who are currently enrolled or will enroll in public schools in HPSD and who have not scored or will not score satisfactorily on the 4th or 7th grade MEAP Reading exam.

105. Class B is defined as all students, excluding students identified as eligible for special education services under the Individuals with Disabilities Education Act, who are currently enrolled or will enroll in public schools in HPSD and who do not meet reading proficiency levels appropriate to their grade level.

106. Both of the Classes are sufficiently numerous to make joinder impractical. According to data compiled by the MDE, there are hundreds of students currently enrolled in HPSD who have not scored or will not score satisfactorily on the 4th or 7th grade Reading MEAP and similarly for each grade level throughout HPSD. The total number of students who do not meet reading proficiency levels appropriate to their grade level is necessarily larger than the number of students in only two grade levels.

107. The questions of law and fact raised by the named Plaintiffs' claims are common to, and typical of, those raised by both Classes they seek to represent. Each Plaintiff is currently enrolled in public schools in HPSD and relies upon HPSD, the Emergency Manager, and the State of Michigan, through its entities and officers constitutionally obliged to deliver free, public

education, to deliver basic literacy skills and reading proficiency and knowledge so as to score satisfactorily on the MEAP Reading test at all grade levels, including the 4th and 7th grades. Each named Plaintiff fails to meet reading proficiency levels appropriate to his or her grade level, and several named Plaintiffs also failed to score satisfactorily on the MEAP Reading test for either the 4th or 7th grades, or both. None of the named Plaintiffs has been identified by school officials as a special assistance pupil, a pupil with a learning disability, or a pupil with extenuating circumstances.

108. Questions of fact or law common to Class A, without limitation, include:
 - a. Whether Defendants are required, pursuant to MCL 380.1278(8), to provide special assistance to members of Class A reasonably expected to enable each member to bring his or her reading skills to grade level within 12 months, based on his or her MEAP reading scores in the 4th and/or 7th grades;
 - b. Whether Defendants have failed, in violation of MCL 380.1278(8), to provide special assistance to members of Class A reasonably expected to enable each member to bring his or her reading skills to grade level within 12 months, based on his or her MEAP reading scores in the 4th and/or 7th grades; and
 - c. Whether Defendants have failed to adequately teach or adequately ensure teaching of basic literacy skills and reading proficiency to members of Class A as is required for students to master the State of Michigan's "Grade Level Content Expectations" in core curricular subject areas, at each grade level.
109. Questions of fact or law common to Class B, without limitation, include:
 - a. Whether Defendants have failed to adequately teach or adequately ensure teaching of basic literacy skills and reading proficiency to members of Class B;
 - b. Whether Defendants have afforded unequal educational opportunity to members of Class B by failure to adequately teach or adequately ensure teaching of basic literacy skills and reading proficiency; and
 - c. Whether Defendants' failure to adequately teach or adequately ensure teaching of

basic literacy skills and reading proficiency to members of Class B violates the Michigan Constitution.

110. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class A and B members.

111. Plaintiffs, as class representatives, will fairly and adequately protect the interests of the Plaintiffs. Plaintiffs' counsel know of no conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of both Classes; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys employed by the American Civil Liberties Union ("ACLU") and the ACLU of Michigan, nonprofit legal organizations whose attorneys have substantial experience and expertise in litigation to secure adequate public education and equal educational opportunity. Plaintiffs will also be represented by Wilson, Sonsini, Goodrich & Rosati, LLP, a law firm with extensive complex civil litigation experience, if *pro hac vice* motions are granted, and by Nacht, Roumel, Salvatore, Blanchard & Walker, P.C., a law firm based in Ann Arbor with extensive civil rights litigation experience. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Classes.

112. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice.

113. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Classes.

114. The action will be manageable as a class action.

115. In view of the expense of litigating separate claims for each member of the two Classes, it is unlikely that the individual members of the Classes would be able to pursue these claims individually as separate actions. Further, individual members of the Classes do not have a significant interest in controlling the prosecution of their individual claims in a separate action.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(All Plaintiffs Against All Defendants for Violation of MCL 380.1278(8))

116. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

117. Defendants have violated and continue to violate Plaintiffs' and members of Plaintiff Class' rights pursuant to MCL 380.1278(8), including by failing to provide the assistance expected to enable students to bring their reading skills to grade level within 12 months.

SECOND CAUSE OF ACTION

(All Plaintiffs Against All Defendants for Violation of Article 8, §§ 1 and 2 of the Michigan Constitution)

118. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

119. Defendants have violated and continue to violate Plaintiffs' and members of Plaintiff Class' rights to a basic and adequate education affording them elemental literacy skills and knowledge appropriate to their age and development.

THIRD CAUSE OF ACTION

(All Plaintiffs Against All Defendants for Violation of Article 1, § 2 of the Michigan Constitution)

120. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

121. Defendants have violated and continue to violate Plaintiffs' and members of Plaintiff Class' rights to receive equal protection of the law with respect to basic educational opportunities equal to those that children in schools in other districts receive.

FOURTH CAUSE OF ACTION

(All Plaintiffs Against All Defendants for a Petition for a Writ of Mandamus Under MCL 600.4401, MCL 600.4411, MCL 600.4421, MCL 600.4431 and MCR 3.305)

122. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

123. MCL 380.1278(8) imposes a clear legal duty upon Defendants to provide the remedial reading services described.

124. Plaintiffs have a clear legal right to the benefits of MCL 380.1278(8).

125. The obligations imposed by MCL 380.1278(8) are ministerial in nature. The statute imposes duties that are clearly defined by law with precision and certainty. The statute also imposes an unqualified duty on Defendants and does not afford Defendants any discretion as to whether they must provide the services.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Assert jurisdiction over this action;
- B. Certify this case as a class action pursuant to MCR 3.501 on behalf of the proposed Plaintiff Classes and designate the Plaintiffs as representatives of the Classes and their counsel of records as Class Counsel;
- C. Declare unlawful Defendants' violation of Plaintiffs' rights as pursuant to MCL 380.1278(8);
- D. Issue a Writ of Mandamus compelling the Defendants to, by a date certain, implement a process to assess compliance with literacy standards in HPSD schools and show specific initiatives to achieve system-wide compliance with MCL 380.1278(8), including, but not limited to, ensuring that teachers with appropriate training and credentials are assigned to deliver the reading remediation services to eligible students;
- E. Declare as unconstitutional Defendants' violation of Plaintiffs' rights under Article 8, §§ 1 and 2 of the Michigan Constitution;
- F. Declare as unconstitutional Defendants' violation of Plaintiffs' rights under Article 1, § 2 of the Michigan Constitution;

G. Permanently enjoin Defendants from subjecting Plaintiffs to policies and practices that violate their rights under MCL 380.1278(8); Article 8, §§ 1 and 2 of the Michigan Constitution; and Article 1, § 2 of the Michigan Constitution;

H. Order appropriate relief to remediate the denial to Plaintiffs of “special assistance reasonably expected to enable the pupil to bring his or her reading skills to grade level within 12 months” upon failure to score satisfactorily on the Reading portion of the 4th or 7th grade MEAP;

I. Order appropriate relief to remediate the denial to Plaintiffs of such elemental educational instruction as to enable them to master basic literacy skills appropriate to their age and development.

J. Award to Plaintiffs the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys’ fees; and

K. Grant such other and further declaratory and equitable relief as this Court deems appropriate, just and proper to protect Plaintiffs from further harm by Defendants.

Respectfully Submitted,

/s/ Kary L. Moss

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