



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

DELAWAREANS FOR )  
EDUCATIONAL OPPORTUNITY and )  
NAACP DELAWARE STATE )  
CONFERENCE OF BRANCHES, )

*Plaintiffs,* )

v. )

JOHN CARNEY, Governor of the State )  
of Delaware; SUSAN BUNTING, )  
Secretary of Education of the State of )  
Delaware; KENNETH A. SIMPLER, )  
Treasurer of the State of Delaware; )  
SUSAN DURHAM, Director of Finance )  
of Kent County, Delaware; BRIAN )  
MAXWELL, Chief Financial Officer of )  
New Castle County, Delaware; and )  
GINA JENNINGS, Finance Director )  
for Sussex County, )  
Delaware, )

*Defendants.* )

Civil Action No. \_\_\_\_\_

VERIFIED COMPLAINT

Introduction

1. The Delaware Constitution’s requirement of a “general and efficient system of free public schools” guarantees all children a meaningful opportunity to

obtain an adequate education. Yet the state knowingly implements an education funding and governance system that prevents it from meeting that obligation.

2. There is widespread agreement—embodied by legislative resolutions, state-chosen testing standards and their results, and the conclusions of state-selected expert panels—that the current system is a failure for too many students, even with the valiant efforts of many Delaware school teachers, staff, administrators, parents, and school board members.

3. According to the Every Student Succeeds Act (“ESSA”) Plan issued by the Delaware Department of Education on April 3, 2017, 64% of low income students, 85% of English language learners and 86% of students with disabilities did not meet the state standards in grades three through eight for English Language Arts established by the state. Likewise, 74% of low income students, 81% of English language learners and 89% of students with disabilities did not meet the state’s math standards in those grades. The results for high school students in those groups were even worse.

4. The state’s education funding often provides more support for children who are well off than it provides for children living in poverty. The failure to provide a meaningful opportunity to obtain an adequate education is the result of policies and practices that deprive public schools of the resources and organizational structure needed for all children to receive necessary services and support:

- a. Schools with a higher percentage of low income students receive less state financial support for education, on a per student basis, than schools with a lower percentage of low income students;
- b. Local real estate taxes for education are based on property values determined as if it were still 1983 in New Castle County, 1986 in Kent County and 1974 in Sussex County;
- c. The state provides virtually no additional financial support for the education of English language learners, unlike 46 other states;
- d. The state provides no additional financial support for the education of low income children, unlike 35 other states;
- e. Basic special education funding is not provided by the state for students with disabilities in kindergarten through third grade, causing them to fall farther and farther behind in their early school years;
- f. The taxpayers of the Red Clay Consolidated School District and Christina School District are required to pay real estate taxes that are transferred to Brandywine School District and Colonial School District to educate children who live in those districts, a transfer of resources away from disadvantaged students; and

g. The state requires a local governance system for City of Wilmington public schools that reduces the political ability of the parents of disadvantaged students to advocate meaningfully for their children.

5. As a result of defects in its system of education funding and governance, Delaware fails to provide all low income children, children with disabilities, and children whose first language is not English (collectively, “Disadvantaged Students”) with a meaningful opportunity to obtain an adequate education, one that will enable them to participate as active citizens in a democracy, to be employed in a modern economy, and to enjoy the benefits of our country’s social and cultural life.

6. From 1990 to 2011, 26 states substantially increased funding for low income students and high poverty schools to ensure meaningful educational opportunity for all—the majority as a result of court orders. As a result, we now have two decades of robust empirical evidence about whether and how school funding affects student achievement. It demonstrates that adequate funding leads to increased achievement, even among students who face significant barriers to achievement because of their socioeconomic circumstances.

7. Delaware, too, must increase funding and restructure its policies for the education of Disadvantaged Students in order to comply with its constitution.

## Parties

### Plaintiffs

8. Delawareans for Educational Opportunity is a nonprofit association of Delawareans concerned about the state's failure to provide all children with an adequate education. They have joined together for the purpose of improving the Delaware education system so that all children have a meaningful opportunity to obtain an adequate education regardless of where they live, their economic circumstances, their health, their disability status or their first language.

9. The membership of Delawareans for Educational Opportunity includes the parents of low income students, English language learners, children with disabilities in kindergarten through grade 3, and other students attending high poverty schools, who are harmed by the deficiencies alleged in this Verified Complaint, as well as other concerned Delawareans.

10. The NAACP Delaware State Conference of Branches ("NAACP-DE") is a non-partisan organization affiliated with the National Association for the Advancement of Colored People. NAACP-DE has seven branches located throughout the state. NAACP-DE's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination.

11. NAACP-DE is dedicated to ensuring that all students in Delaware have an equal opportunity to obtain a high quality public education. It has worked since 1915 to remove barriers to the participation of minority students on a fully equal basis, and to ensure that all students receive the services they need to succeed.

12. Members of NAACP-DE and its branches are parents of children enrolled in public schools in Delaware who suffer harm because of the deficiencies described in this Verified Complaint.

13. NAACP-DE and its members are aggrieved by Defendants' actions and omissions described in this Verified Complaint because they substantially impede NAACP-DE's ability to further its goals and institutional purpose of improving educational opportunities for students by diverting resources of its chapters and members to addressing the actions and failures of the Defendants.

#### Defendants

14. Defendant John Carney is Governor of the State of Delaware. He is obligated by the Delaware Constitution to take care that the laws of Delaware are faithfully executed in accordance with the Delaware Constitution.

15. Defendant Susan Bunting is Delaware Secretary of Education and head of the Delaware Department of Education. She is responsible for supervising, directing and accounting for the Department of Education's exercise of general control and supervision over the public schools of Delaware. She is also responsible

for enforcing the state's obligation to provide a statewide public school system that satisfies the Delaware Constitution.

16. Defendant Kenneth A. Simpler is Treasurer of the State of Delaware. He is responsible for paying the moneys appropriated by the state in accordance with law, including the Delaware Constitution.

17. Defendant Susan Durham is the Director of Finance for Kent County. She is responsible for the collection of taxes due to Kent County and the school districts located therein.

18. Defendant Brian Maxwell is the Chief Financial Officer for New Castle County. He is responsible for the collection of taxes due to New Castle County and the school districts located therein.

19. Defendant Gina Jennings is the Finance Director for Sussex County. She is responsible for the collection of taxes due to Sussex County and the school districts located therein.

20. All defendants are sued only in their official capacities.

**Delaware is Obligated to Provide All Students with A Meaningful Opportunity to Obtain an Adequate Education and to Apportion Funds Equitably**

21. Article X § 1 of the Delaware Constitution of 1897 (the “Education Clause”) states that the “General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools.”

22. Delaware constitutions dating to the Eighteenth Century had not contained a mandate for funding public schools, and the Delaware Constitutional Convention of 1896 debated the necessity of mandating funding, as opposed to merely empowering the General Assembly to provide funding. The majority of members regarded the issue as too important to be potentially threatened by budget shortfalls or transient decisions about state priorities, and adopted the Education Clause.

23. The Convention regarded the Education Clause as mandating that the General Assembly create and maintain a system of public schools that would be effective at educating Delaware children.

24. The Education Clause creates a constitutional right for every school-age child in Delaware to attend free public schools that provide a meaningful opportunity to obtain an adequate education. An adequate education is one that prepares children for their roles as citizens, full participants in American society, and competitors in the labor market.

25. Delaware created its public school system, with local school districts as its instrumentalities, to comply with the Education Clause.

26. The state is obligated to provide each local school district with the financial resources needed to provide all children with a meaningful opportunity to obtain an adequate education, and the flexibility to use those resources most appropriately, and it must do so in an equitable manner.

### **Education Funding Deficiencies**

#### **Delaware's Education Funding System**

27. The public schools have three sources of funding: state, federal and local. The most recent data reported on the Department of Education website shows that for Fiscal Year 2016 the state provided 60% of the \$2,066,368,730 spent on public schools in Delaware, while the local districts provided 31% and the federal government provided 9%.

28. Most of the state funding for public schools is provided through three categories referred to as "divisions." Division I money funds the payment of school district personnel costs in accordance with the state salary schedule, 14 *Del. C.* §1702(a), and those cafeteria costs that are not covered by fees charged to students and subsidies from the federal government. Division II money pays for energy, materials and supplies, and any other school costs except for transportation and debt

service. 14 *Del. C.* §1702(a). Division III, referred to as “equalization funding,” supplements Division I and Division II funding. The purpose of Division III funds is to compensate for the different abilities of local school districts to raise additional funds through real estate taxes, 14 *Del. C.* § 1707, but it does not fulfill that purpose.

29. The Division I, II and III funding in the Fiscal Year 2018 budget totals \$1,112,000,100. Most of that money, 89% or \$987,745,000 is Division I funding. Division II funding and Division III funding amount to \$30,261,000 and \$93,993,700, respectively.

30. Additional state funding is supplied for certain costs. The Fiscal Year 2018 budget provides \$92,393,900 for transportation, \$53,296,500 for block grants, and \$58,496,900 for special needs and pass through programs, such as early childhood assistance and initiatives (\$26,786,200) and prison education (\$4,873,800). Lastly, the FY2018 budget provides \$53,269,000 for miscellaneous costs, including \$13,461,300 in contingency funds and \$28,150,900 for the Educational Sustainment Fund.

31. Calculation of the amount of Division I, II and III funding a school district receives begins with determination of the number of “units” of students in the district. This is done each year by determining the number of students enrolled in the school district as of the last day of September and applying a statutory formula. Because the number of units is irrevocably fixed as of that date, the Division I, II

and III funding will not change during the school year if a school or school district has a substantial change in its overall number of students or enrollment of children with disabilities after September 30.

32. The number of students that comprise one unit varies with the type or grade of the students. For example, 20 “Regular Education” students in grades 4 through 12 make up one unit, as do 8.4 “Basic Special Education” students. On the other hand, 16.2 students in kindergarten through grade 3 make up one unit whether they are regular education students or basic special education students. 14 *Del. C.* §§1703-04.

33. The number of units is calculated for each school in addition to being calculated for each school district. At least 98% of the Division I funding associated with a school’s units must be used at that school, and the remaining 2% may be used elsewhere in the district. 14 *Del. C.* §1704. The school district decides how it will use the unit funding for personnel at each school, but the number of units at that school—which determines the size of the staff—is fixed. If a school needs a reading specialist and a counselor and uses its unit funding to hire them, it has two fewer units available for teacher salaries.

#### Consequences of Unit Funding Approach

34. Division I financing is provided in accordance with a state salary schedule, 14 *Del. C.* §1705, which provides more funding for more senior teachers.

Because those teachers tend not to teach at high poverty schools, the state sends more funding per student to the schools with wealthier students than to the schools populated by low income students.

35. The Delaware Department of Education reports that it does not determine the amount spent at each school on a per student basis. But an analysis of teacher salary data at every school shows that, in at least seven school districts, the per student expenditure at a school decreases as the percentage of low income students in the student body of a school increases. The districts where Division I funds are spent at a higher rate on wealthier students than on low income students are the Appoquinimink, Capital, Caesar Rodney, Christina, Indian River, Milford, and Red Clay Consolidated School Districts.

36. In addition to funding disparities within individual districts, the most recent data available to plaintiffs also shows funding disparities between different districts. For example, in 2013-2014, Delaware allocated \$1,694 per pupil less Division I funding to Woodbridge School District than to Brandywine School District, even though Brandywine's per student wealth (property value divided by the number of school children) is more than one and one-half times that of Woodbridge. Similarly, the state spent \$450 per pupil less in Caesar Rodney School District than it did in Appoquinimink School District, although Appoquinimink's per student wealth exceeds Caesar Rodney's by approximately \$100,000.

37. This data also shows substantial inequality statewide in teacher pay between schools with a greater number of higher income students and schools with a greater number of lower income students. In 2013-2014, teachers in the poorest quartile of districts (by % of low income students) received an average annual salary of \$55,600, while teachers in the top quartile had an average annual salary of \$61,600. Teachers at the poorest quartile of schools (by % of low income students) receive an average annual salary of \$55,000, while teachers at the top quartile receive an average salary of \$67,000.

38. The state's method of providing Division I funding also perpetuates spending inequities by obscuring variations in financial support for education across school districts and within school districts, since it enables the state to avoid sending those funds directly to the districts or earmarking the funds to specific schools. Instead, the state pays the teachers directly.

39. Since high poverty schools have a large proportion of students with extra needs but lack the resources to address them adequately, they are difficult schools for teachers. Those with seniority choose to teach in other schools in their districts, so the high poverty schools have a substantial portion of staff that is relatively junior, while schools with a smaller proportion of students who need extra help have a higher proportion of more experienced teachers.

40. As a result, the state supplies less Division I money for the units of students attending schools where teaching is more difficult.

41. By requiring that the Division I funds, which are such a large proportion of state funding, be used for salaries, the unit funding law also limits the manner in which an individual school may use most of the state funds provided for that school. It prevents uses of funds that would make high poverty schools more attractive to staff and enable those schools to attract and retain more experienced teachers.

42. With minor exceptions, 14 *Del. C.* §1706 requires the Division II funding to be allocated among school districts on the basis of the district's units. Thus, the statute mandates that that funding, which is for most non-personnel costs, be distributed without regard to the extra needs of the Disadvantaged Students or the relative wealth of the district where they attend school.

#### Equalization Funding

43. The state's approach to funding education requires local school districts to rely, in part, on local real estate taxation to support education. Wealthier districts are able to raise more funds and are able to raise funds more easily than other districts. This causes an inequality between school districts, which the General Assembly recognized by providing for Division III equalization funding. 14 *Del. C.* §1707.

44. In theory, Division III funding considers the amount of property taxes a school district would be able to raise if it taxed at a level the state considers reasonable, and then sends more state funding to districts with less potential to raise money through local property taxes.

45. Division III funding for a district is based on the product of the number of units in a district and the “State share per unit” for that district, calculated based on evaluations of each district’s ability to raise local taxes and effort in doing so. 14 *Del. C* § 1707.

46. The equalization statute does not take into account the greater needs of Disadvantaged Students.

47. Moreover, the “equalization” it provides would be inadequate even if the Disadvantaged Students did not need extra support in order to receive an adequate education.

48. The Division III funding does not raise the financial support for the less wealthy school districts to a level approaching what would be available to the wealthier districts from taxing at what the state considers an appropriate local tax rate. To the contrary, as shown by the March 2017 report of the Equalization Committee appointed by the Secretary of the Department of Education in accordance with 14 *Del. C*. § 1707(i), adding the equalization funding to the revenue a school district could receive by levying what the committee determined was an appropriate

local tax would still produce dramatically different educational support for different school districts. The per-unit support in the traditional (non-vocational) districts would range from a high of \$71,152 to a low of \$28,896.

49. In May 2015, April 2016, and March 2017, the Equalization Committee reported the sizable difference in the ability of school districts to raise funds and the resulting inequitable burden on poorer districts. The Equalization Committee also reported in May 2015, April 2016, and March 2017 that there was a misalignment of equalization dollars because of the lack of real property reassessment. In each of those years the committee urged the Governor and General Assembly to take action to address the deficiencies in the equalization process.

50. Corrective action has not been taken.

#### Property Reassessment

51. Compounding the problems with state funding, the local funding for education that is derived from local real estate taxes is reduced and stagnant because it is based on an assessment of real estate done in the last century. The Delaware Court of Chancery, in a recent case, criticized the ongoing failure to provide a mechanism for ensuring updated and accurate assessments, *Young v. Red Clay Consolidated School District*, but the state has made no changes in response to the court's observation.

52. Delaware law, 9 *Del. C.* § 8306(a), requires that each property be assessed for tax purposes at its “true value in money.” Nevertheless, property assessments are based on the value of property in 1987 (Kent County), 1983 (New Castle County) and 1974 (Sussex County).

53. The result of the failure to reassess property values is that the recognized value of the underlying tax base in each school district has remained flat for decades while the costs of running those school districts have risen substantially because of inflation and other factors.

54. This means that the school districts must regularly seek approval of tax rate increases from local voters—a costly endeavor that often fails. The burden on the local districts resulting from the failure to provide for regular reassessment adds to the problems caused by the deficiencies in the state funding system.

## New Castle County Tax Pool

55. Pursuant to a statute enacted as a part of the state's reaction to a federal court order in the *Evans v. Buchanan* desegregation case, the State Board of Education created a special school tax district encompassing four of the current school districts in New Castle County: Brandywine, Christina, Colonial and Red Clay Consolidated. A current expense tax rate was set for that area, based on conditions that existed then, in 1980-81. That special rate is still in effect. 14 *Del. C.* 1924-25.

56. Each of the four districts is required to levy a tax on the real property in the district at that special rate, in addition to other property taxes it decides to levy. State statute, not the local residents or district boards of education, determines where the special tax is sent. This results in funds collected in Red Clay and Christina on property located in those school districts being sent to Brandywine and Colonial to provide for their students. 14 *Del. C.* 1028(k).

57. The state's decision to transfer tax receipts is not based on relative student need. To the contrary, Christina, which has the highest percentage of low income students among those four districts is required to transfer tax revenue out, and Brandywine, which has the lowest percentage of low income students, receives tax revenue collected elsewhere.

**Delaware Policies Have Concentrated Disadvantaged Students, Primarily Students of Color, in the Lowest-Funded Schools and Diluted the Political Power of Their Parents**

58. Delaware was one of 17 states where racial segregation of schools was law. To the state's credit, the Court of Chancery and the Delaware Supreme Court required in 1952 that African-American children be admitted to previously segregated whites-only schools in *Gebhart v. Belton*. This holding for racial equality was unique among the cases consolidated into the United States Supreme Court's ruling in *Brown v. Board* in 1954.

59. In 1957, black students led by Delaware's first black attorney, Louis L. Redding, brought a federal lawsuit in Delaware to enforce the U.S. Supreme Court's 1955 desegregation mandate issuing from *Brown*. That case, *Evans v. Buchanan*, abolished formal, explicit school segregation within a decade.

60. For much longer, advocates like Redding and Irving Morris had to fight in and out of court to push the state to take action to comply with the *Brown/Buchanan* decision. In particular, the *Evans* court retained jurisdiction to address the problem of residential segregation replicating formal school segregation—a problem that was particularly acute in the City of Wilmington, where all of the “colored” schools that remained open in 1974 continued to be operated as virtually all-black schools.

61. The *Evans* court identified this *de facto* school segregation as a problem created primarily by housing segregation. Writing for the court in 1975, Judge Caleb M. Wright observed with respect to Wilmington that “the net outmigration of white population and increase of city black population in the last two decades[] resulted not exclusively from individual residential choice and economics, but also from assistance, encouragement, and authorization by governmental policies.”

62. Judge Wright identified the causes of residential segregation: racially-discriminatory FHA underwriting policies; racially-restrictive covenants (still recorded in Delaware for decades after the United States Supreme Court had ruled them unconstitutional); state real estate licensing guidelines that encouraged racial segregation; and public housing policies placing just 2% of affordable housing units outside the City. Judge Wright could also have included in the list of laws that led to continued school segregation the federal incentives to include racial covenants in neighborhood development and many other state and federal policies that created residential segregation, to say nothing of the many non-housing-related policies that led to substantial household wealth disparities. The collective effect of these policies was dramatic residential segregation and the concentration of poverty in Wilmington.

63. To mitigate the effect of residential segregation on school segregation, in 1975 the court ordered the consolidation of all school districts near Wilmington and ordered a plan for transporting students to schools outside their segregated neighborhoods.

64. For putatively administrative reasons, in 1981 Delaware divided the consolidated district into four new districts (the same districts that exist in 2018), but did not change the pupil assignment criteria in order to avoid interfering with the integration efforts ordered in 1975.

65. The effect of the integration policy on overcoming the effects of residential segregation on school segregation was dramatic. In 1995, the federal court found that New Castle County had among the most integrated schools in the country.

66. Finding that its role was complete in 1995, the federal court removed supervision over the operations of the New Castle County districts.

67. However, Delaware abandoned the enrollment and transportation policies that led to racial integration. In 2000, the General Assembly passed the Neighborhood Schools Act, 14 Del. C. § 220, which required, with limited exceptions, that the four New Castle County districts develop plans that assign every student to the school closest to the student's residence, without regard to any

consideration other than geographic distance and the “natural boundaries” of neighborhoods.

68. As foreseen by Judge Wright in 1975, these so-called “natural boundaries”—which in fact were boundaries created by formal and informal racial segregation—led to the rapid re-segregation of schools in New Castle County, because the degree of racial segregation in housing is little changed since 1975.

69. In the same year as the lifting of federal supervision, the General Assembly passed the Charter School Act, enabling individual schools to employ admissions requirements with a disparate impact on low income students, students with disabilities and students of color.

70. The result of the Neighborhood Schools Act and Charter School Act has been overwhelming re-segregation. For example, in the 2016-2017 school year, Warner and Shortlidge Elementary Schools were 2.6% and 3.3% white, respectively (while the district in which they are located is 43.6% white). By contrast, Heritage Elementary School, in the same district but outside the City of Wilmington, was 70% white. The highest-performing charter school in the area, the Charter School of Wilmington, was 6.3% black. The percentage of black students enrolled in predominantly non-white schools in 2010 was ten times higher than 1989.

71. The effect of these policies is to place the most disadvantaged students in racially segregated, high poverty schools, which are the same schools least served by the education policies of the state.

72. Compounding this history, the high poverty students living in Wilmington remain divided among four different school districts, so that the parents of those children do not have the political ability to compel those four school districts to increase the support for those children.

73. This structure for New Castle County districts has divided the local responsibility for addressing the needs of Wilmington's disadvantaged children among four school boards and administrations, making addressing those needs more difficult and less urgent to each of the school boards.

74. In addition, the division of this population-dense area into four districts causes Wilmington children to be transferred between school districts when their families move short distances within the city. Both school transfers and district transfers harm student achievement.

75. There are more than 8,000 students living in the City of Wilmington, but because they are split into four districts (and a number of charter schools), they constitute a minority of students in each district. Moreover, even when they are successfully organized and mobilized for change, they must win change from four (or more) independent bodies to see change city-wide.

76. The state requires at-large voting for school board positions in the four northern New Castle County school districts. Although candidates must nominally reside within the nominating district of the seat for which they are running, this at-large voting scheme gives the suburban, wealthier residents of those districts the ability to determine which candidates for the school board positions from the high poverty areas of Wilmington will be elected to the boards of education.

77. This division of political power means that the interests of privileged students in the suburbs are prioritized over disadvantaged students in the City of Wilmington on subjects such as the distribution of local funding; pupil assignment policies; the selection of school sites and attendance zones; and the creation or modification of school discipline policies that have a disparate impact on disadvantaged students.

**Student Testing Shows that the Education of Disadvantaged Students is Deficient**

78. In 2015 Delaware replaced its existing standardized testing for grades three through eight with the new Smarter Balanced Assessment Consortium testing, which it touted as a significant improvement over the former testing. The new testing was developed to measure how well children are mastering the “Common Core State Standards” adopted by Delaware and more than 40 other states in recent

years, and to identify areas in which individual children need help in preparing for future success in college and careers. In the 2015-16 school year, the state also initiated use of the SAT for determining the adequacy of high school educations.

79. A student's scores on the test are used to determine whether the student meets the proficiency standards for that student's grade. Only students whose scores meet the proficiency standard are considered to be on track to demonstrating the knowledge and skills necessary for college and career readiness.

80. The assessment results show how badly Delaware has failed its Disadvantaged Students. For example, in the third grade only 39% of low income, 40% of English language learners and 24% of children with disabilities tested proficient in math in 2016-17, and only 37% of low income students, 32% of English language learners and 21% of children with disabilities tested proficient in English Language Arts.

81. The results were even worse for eighth graders. In the 2016-17 statewide testing, only 34% of low income students, 11% of students with disabilities and less than 5% of English language learners met the state standard for proficiency for English Language Arts. Only 25% of low income students, 7% of students with disabilities and 5% of English language learners met the state standard for proficiency for math.

82. In the 2016-17, statewide SAT testing used to determine the proficiency of eleventh and twelfth graders, only 12% of low income students, and less than 5% of the English language learners or students with disabilities met the standard for math. Likewise, only 34% of low income students, 6% of English language learners and 7% of students with disabilities met the reading standard, and only 32% of low income students, 10% of students with disabilities and 7% of English language learners met the standard for essays.

83. The inadequacy of the education provided to Disadvantaged Students that is shown by these test scores results from deficiencies in the state's support of education, including its: (a) allocation of more financial support to the education of wealthier students than to students living in poverty; (b) its failure to provide students living in poverty with the supportive services they need in order to succeed academically; (c) its failure to recognize and fund the cost of basic special education for students who have not reached fourth grade; (d) its failure to recognize and fund the additional expense of adequately educating low income students; (e) its failure to recognize and fund the additional expense of adequately educating students whose first language is not English; and (f) failure to provide adequate programmatic support, technology, facilities and educator support for children in high poverty schools.

## **Additional Resources Would Address the Educational Needs of Low Income Children**

### **The Needs of Low Income Children**

84. As of the 2013-14 school year, the state changed its methodology for determining which students should be characterized as “low income,” thereby reducing the number of those students it recognizes. It currently considers a student as low income if the student receives benefits under the Temporary Assistance for Needy Families laws or the Supplemental Nutrition Assistance Program.

85. Using this measure during the 2016-17 school year, the state recognized 51,319 children, more than 37% of Delaware public school students, as low income.

86. Low income students can succeed in school, but often require additional supports beyond those of other students:

- a. Students from low income families frequently start school behind their wealthier peers in reading, writing and mathematics because the difficulties of living in poverty often reduce the knowledge base they acquire at home. Moreover, unlike their wealthier peers, they may not have had the benefits of pre-school programs.
- b. The ability of these students to learn in school is often reduced by the harsh circumstances of their lives: lack of safe and affordable housing;

little access to a healthy diet; violence and instability at home and in their neighborhoods; high unemployment rates; pervasive stereotypes about children of color who live in poverty; magnification of the effects of institutionalized racism and classism; and emotional challenges and trauma.

- c. Impoverished conditions put low income students at increased risk for developing emotional and behavioral problems and deficits in their ability to self-regulate, to focus and pay attention, and to deal with frustration (such as the frustration produced by trying to learn difficult material), and make it less likely they will productively engage with teachers and others at school.
- d. Low income students are more likely than their peers to experience mental health disorders and less likely to receive outside mental health services, increasing the risk that they will not excel educationally, will have low productivity later in life, and may develop substance abuse issues.
- e. Many of these students have recurring medical issues that interfere with their ability to learn.

87. These problems can be successfully addressed by smaller class sizes, expanded learning opportunities, wider availability of after school programs,

supplemental supports in counseling, school psychologists and social workers, dual-language teachers, additional reading, math, computer and talented and gifted specialists, expanded school-to-work partnership programs, outside mental health services, wellness centers, and more concerted efforts to reach and engage families in student learning and to connect them to available services and supports.

88. Unless these services are provided, many low income students will not obtain an adequate education.

89. Small classes help schools close socioeconomically-based achievement gaps by facilitating instruction. They also increase early identification of students' special educational needs and the likelihood that children will aspire to enroll in college following high school.

90. Problems resulting from deficits in the ability to self-regulate, to focus and pay attention, to deal with frustration and to engage with teachers and others at school can be overcome when there is a sufficiently strong relationship between the teacher and child. But a personal connection to each student cannot be created unless the class is small enough to enable the teacher to develop and maintain such a relationship.

91. Additionally, in order to develop the necessary relationships, teachers must understand the internal problems of these children and the role of the teacher-student relationship in overcoming them.

92. Schools serving low income students must attract and retain quality teachers if the schools are to provide a meaningful opportunity to obtain an adequate education. The state's ESSA Plan in April 2017 examines categories it calls "high need schools" and "ineffective teachers." The state's data shows that the rate at which low income students attending high need schools are taught by an ineffective teacher is more than five times the rate at which non-low income students enrolled in other schools are taught by an ineffective teacher.

93. Professional treatment services within schools can aid low income students in meeting the challenge of behavioral disabilities and resulting discipline problems that disrupt education. Absent those supportive services, discipline and punishment become the norm. Teachers must take time away from teaching subject matter in order to deal with the disciplinary problems.

94. The medical issues that interfere with education of younger students can be addressed by wellness centers in elementary schools and middle schools. But those schools rarely have wellness centers. Because of the state's method of allocating state funds for public schools, especially the unit funding approach, the funds needed to provide them are not available.

95. Many middle school children have the same problems that are addressed in high school wellness centers, such as parental rejection of a student's sexual orientation, alcohol use, early sexual activity, and relationship problems. Yet

they have no access to the important support that wellness centers can provide. The Christina elementary schools in Wilmington also lack wellness centers.

96. More funding is necessary if the needs of low income students are to be met. But unlike 70% of the states in this country, Delaware does not provide extra funding for low income students.

### Students with Disabilities

97. More than 20,000 children, 14.7% of Delaware's public school students, have diagnosed disabilities.

98. The state's own evaluation data shows it has failed to provide what these children need to receive an adequate education. When tested in the eleventh and twelfth grades, 92% of students with disabilities did not meet the state standards for English Language Arts proficiency and more than 95% of students with disabilities did not meet the state's math standards.

99. The state has recognized its obligation to provide students with disabilities access to the same curriculum as their nondisabled peers. It has acknowledged that these students must have their social, emotional and behavioral needs addressed.

100. Nevertheless, it provides no special education funding for students with disabilities in kindergarten through third grade who have an Individualized

Education Program (“IEP”) unless they need educational supports designated “intensive” or “complex” for funding purposes.

101. The absence of special education funding for students with disabilities in kindergarten through third grade continues while Delaware experiences an anomaly in its identification of students with disabilities in those grades. The percentage of students recognized in the early grades as needing IEPs has been increasing throughout the country, while falling in Delaware. There is no reason to believe that is because Delaware children are different. Rather, it is because of Delaware’s policies, including the failure to identify children with disabilities.

102. Funding for basic special education for kindergarten through third grade is necessary to enable Delaware's public schools to improve the identification of children who need special education when they start school, and to provide them with the extra help they need in their early school years, before they fall irrevocably behind.

103. The failure to recognize all students who need IEPs is not limited to students in kindergarten through third grade. Students who have problems that should prompt testing to determine whether they need IEPs are not tested because the schools do not have enough professionals to do the testing. In addition, school administrators do not receive the training they need to identify all students who should be tested.

104. For example, children attending Bayard Middle School and Marshall Elementary School in Christina School District who need IEPs are often delayed in getting them, or are never provided with one, because there are too many children who need IEPs for the number of available specialists. Likewise, Seaford School District does not have enough special education specialists to do the testing needed to identify many of the children who need IEPs.

105. Other problems result from the insufficient number of special education specialists. Children with IEPs do not receive the full support they need because the IEP managers' caseloads are too large. For example, managers in Christina have caseloads of more than 100 students.

106. An additional problem is that because school districts lack adequate funding for children with disabilities, they have had to resort to hiring teachers with dual certifications. This enables schools to meet their obligations under federal law to have students with IEPs taught by certified special education teachers, without hiring a special education teacher in addition to the general classroom teacher. The dual certified teachers are spread thin, since they are responsible for providing special education services and teaching non-special education students throughout the day.

## English Language Learners

107. English is a second language for 9,980 Delaware public school students, 7.2% of the statewide K-12 population. There are 6,343 English language learners (12% of the total student body) in high poverty schools.

108. Many children whose native language is not English need help learning the language that native English speakers routinely use to communicate about academic, social and personal issues, and they need help overcoming the hurdles to attaining grade level academic literacy that native English speakers do not have.

109. Yet, unlike 92% of the states, Delaware provides no additional funding for educating its English language learners.

110. Because many school districts have too few English as a Second Language (ESL) teachers for the number of students whose primary language is not English, students do not receive all of the ESL teaching they need.

111. For example, at New Castle Elementary School in Colonial School District an ESL teacher sees students for 45 minutes twice every week, when they should be seen five days a week. English language learners at Calvin R. McCullough Middle School in Colonial School District who are not in the intensive newcomer program are not taught any text-based course by an ESL teacher. They

receive supportive instruction from ESL teachers three times per week, and that is an insufficient replacement.

112. Similarly, English language learners at Kirk Middle School in Christina School District are not able to spend as much time in ESL class as needed because there are 46 English language learners in the school and only one ESL teacher. Moreover, while that teacher is fluent in Spanish, many of the students speak languages other than English or Spanish, and no teacher at the school is trained to teach ESL to children who speak other languages.

113. Likewise, English language learners at Central Middle School in Capital School District are not able to spend the time needed for adequate ESL instruction because the ESL teacher is shared with another middle school in the district.

114. In some cases, there is no ESL teacher fluent in the language spoken by the students. For example, there is a substantial Haitian student population in the Seaford School District, but the ESL teachers do not speak Haitian Creole. The teachers at Seaford High School can get limited help from a staff member at the school who speaks the language, but that is not the same as having an ESL teacher who speaks Haitian Creole.

115. A substantial number of students also have parents who do not speak English. Schools need the ability to translate important written materials being sent

home into the parents' language, and they need interpretation services so that they can speak with the parents and involve them appropriately in their children's educations. But when schools do not have an available staff member who speaks the parents' language they cannot purchase publicly available translation or interpretation services because they lack the financial resources.

116. Some schools have staff members fluent in a parent's language who can be pressed into translating an English document into that language. But when that happens, it is fortuitous. There is often no staff member who can write the parents' language. For example, Kirk Middle School in Christina has a large population of students whose parents immigrated from Yemen, but no ability to translate documents into Arabic.

117. As an example of the problems that result, Colonial School District was unable to speak with the Haitian Creole-speaking parents of three students in Southern Elementary School to tell them that the children would not be able to attend school until after they had received tuberculosis immunizations. That resulted in the three children being excluded from school for two weeks because of the delay in their being immunized.

#### The Burden of Attending a High Poverty School

118. Because of the large percentage of Delaware's children living in poverty, 93 out of 166 public schools in Delaware are considered "high poverty

schools." Between 41.1% and 89.3% of the children in each of those schools are low income.

119. In addition to the other problems faced by low income children, English language learners and children with disabilities, there are educational barriers that arise when such children are concentrated in schools with other children in poverty.

120. High poverty schools have less funding for advanced classes, higher rates of student behavior problems, less highly qualified teachers, and a lack of family involvement. Students who attend high poverty schools tend to have worse academic performance, less reading, lower attendance rates, and a higher likelihood of serious developmental delays and untreated health problems than if they would have attended schools with less concentrated poverty.

121. High poverty schools are more likely to lack the social workers, psychologists and counselors who are needed to work with the children and their families in order to give the low income children a realistic opportunity to obtain an adequate education.

122. A majority of students in high poverty schools are students of color, so they are affected by societal discrimination issues in addition to the other problems that plague poor children. These children need teachers who are culturally

competent to work with children of color and others from families who have had to deal with discrimination.

123. There is exceedingly high turnover among teaching staff at the high poverty schools. Many of the teachers employed at the high poverty schools transfer to schools in more affluent areas when their seniority gives them the opportunity to do so. Thus, many high poverty schools have fewer experienced mentors available and a large proportion of teachers who have not had the opportunity to develop the necessary cultural competency.

124. The annual rate of teaching staff turnover at high poverty schools is much higher than the statewide average of 15%. For example, the usual annual turnover at Bayard Middle School in Christina School District is approximately 30%, and in the 2015-16 school year it was more than 60%.

125. Because of the higher numbers of children with IEPs at the high poverty schools and an insufficient number of special education teachers, classroom teachers are required to spend large amounts of time preparing IEP paperwork, which takes away from the time they spend doing other important preparation.

126. That loss of preparation time could be addressed by providing those teachers with assistance, reducing class size or by paying teachers overtime so they would work the hours necessary to do all the preparation and IEP paperwork, but the schools lack the funds necessary for that.

127. The high percentage of children with reading problems at the high poverty schools necessitates the hiring of extra reading specialists at some of those schools. Since the state does not provide additional funding for reading specialists, schools must use Division I unit funding, at the cost of foregoing a full-time librarian, or art, music or gym teacher, or hiring fewer classroom teachers and accepting correspondingly larger class sizes.

128. For example, as of October 31, 2017 at Smith Elementary School, two of the fifth grade classes had 36 students, and the other class had 32 students. In the fourth grade, there were classes of 29, 30 and 32 students. At Oberle Elementary School, each class had 33 to 35 students in the fifth grade and 31 or 32 in the fourth grade. Keene Elementary School had 30 or 31 in each fifth grade class and 28 to 30 in each fourth grade class. At the Kirk Middle School, there are 40 students in the honors social studies class, 35 students in career and technical education, art, music, physical education and health classes. Math, English, social studies and science classes have more than 30 students. These are all high poverty schools in the Christina School District.

129. As another example, there are 30 to 32 students in the classes at Central Middle School in Capital School District.

130. Besides depriving students of the attention they need, the overlarge classes can prevent schools from giving a textbook to each child. Science and math

curriculum materials are sold in units of 30. Unless a school purchases an extra set, each student in a class of more than 30 cannot have his or her own book. As a result, for example, there are not separate math and science books for each child in the fifth and sixth grade classes at Smith Elementary School.

131. Because there are not enough copies of some textbooks for one to be assigned to each student, students are not able to bring the books home after school. This occurs, for example, at Skyline Middle School in Red Clay and at Kirk Middle School.

132. Schools do not have the books needed for students not performing at grade level. For example, at Bayard Middle School, while there may be enough books for students performing at grade level, books are not available for those who need more rudimentary materials.

133. Another result of the increase in class size in high poverty schools is that school districts use paraprofessionals in place of certified teachers. State law provides that unless a waiver is granted there may not be more than 22 students in a kindergarten through third grade class. In response to that law, schools in Christina use paraprofessionals to assist certified teachers in 30 student classrooms.

134. Another problem resulting from oversized classes is that they render the amount of available technology insufficient. For example, at Kirk Middle School when students go to the library, where they are expected to use computers, there are

often more students than computers. Another technology deficiency is that the wireless connectivity at Kirk is poor, and the school does not have a dedicated IT specialist who can address technology problems.

135. Sometimes school districts avoid losing a unit's funding for a classroom teacher by refraining from hiring a needed specialist. For example, there is no reading specialist at Seaford High School, a high poverty school. The most recent state testing found more than 65% of its students fail to meet the state proficiency standards for English Language Arts.

136. A lack of adequate funding also means that some schools are using textbooks that are old and outdated.

137. In the Caesar Rodney School District, middle school counseling staff is overwhelmed by the amount of counseling needed by the students and the limited time they have available to provide counseling to each student who needs it. As a result, children do not receive necessary counseling.

138. Similarly, at Alexis I. du Pont High School in Red Clay, the guidance counselors are overwhelmed by student requests for help, and a child in need may often wait a week to see a counselor. Likewise, in Christina School District students may wait a week to see a counselor because each counselor's caseload is so high.

139. There are other gaps in staffing as well. For example, Christina plans for rotation of special classes in the fifth grade, so that students will have one day

each of art, music, physical education, library and computer. But last year, Smith Elementary School had no computer teacher. Students would get an extra art class in the place of a computer class, or receive computer instruction from a non-computer specialist.

140. There is no librarian at Linden Hill Elementary School in Red Clay. The school's technology teacher must double as a part-time librarian. The high schools and middle schools in Christina do not have full-time librarians.

141. Necessary tutoring is not available. For example, Caesar Rodney schools lack sufficient staff to provide the tutoring students need. Likewise, Christina School District is unable to fund after school tutoring, and its teachers are not contractually required to provide that tutoring. Students needing tutoring only receive it when teachers donate their time.

142. Schools such as Highlands Elementary School in Red Clay lack sufficient technology. For example, in one third grade special education class, all twelve children had to share one computer.

143. Other needed materials are lacking as well. A second grader at Highlands Elementary School was taught in a classroom that had no crayons, construction paper or glue sticks for art class.

144. The same student had Attention Deficit Hyperactivity Disorder and a mood disorder. Medication kept him from misbehaving, so the school did not focus

on his problems. His guardian tried in each of the schools he attended to have him provided with an IEP, and never succeeded.

145. A child attending A.I. DuPont High School had a long-term substitute in 11th grade English for almost the entire year. The substitute teacher did not know he had an IEP, and never provided the extra help in English called for by that IEP. Problems with this teacher resulted in the district superintendent telling parents at the end of the school year that all students' English grades would be discarded.

146. Children in high poverty schools cannot participate in robust special programs like those available to children attending wealthier schools. For example, North Star Elementary School in Red Clay has a strong gifted and talented program that contrasts markedly with the under-resourced one at the high poverty Highlands Elementary School in the same district. Highlands has to spend money that could have been used for a gifted and talented program to pay for social service support.

147. The children attending high poverty schools such as Highlands, therefore, have less of a chance of being admitted to selective schools like Conrad School of Science or Cab Calloway School of the Arts than children applying from wealthier schools who can point to participation in robust gifted and talented programs.

148. The school districts rely heavily on volunteer parents to conduct after school activities. But parents residing in high poverty areas are coping with many

stresses related to living in poverty and often lack the free time or skills necessary to provide that assistance. As a result, the children attending those schools have fewer opportunities for after school activities.

149. High poverty schools, such as Richardson Park Elementary School in Red Clay, are in need of maintenance, yet do not receive the additional funding for custodians and maintenance people needed to pay for that work. Classrooms in Highlands Elementary School have poor lighting, dirty windows, old desks and worn black boards. When lessons are projected on a screen, they are hard to read because the screens are so dim.

150. In 2016, mold was identified at Pulaski Elementary School that had the potential to affect air quality and the health of students. The District declared the problem solved a few months later, but as of the fall of 2017, mold was still present in the school, although the staff had apparently stopped using the portions of the school most affected. Kirk Middle School and Maclary Elementary School have also reported ongoing problems with mold.

### **Delaware Has Repeatedly Failed to Implement Known Solutions**

151. The well-recognized needs of Delaware's Disadvantaged Students and the ways of meeting those needs have repeatedly been brought to the attention of the state government.

152. The Neighborhood Schools Act of 2000, 14 *Del. C.* §220 *et. seq.*, provided for establishment of the Wilmington Neighborhood Schools Committee, and charged the committee with formulating a plan for the implementation of neighborhood schools in New Castle County that would be fair and equitable.

153. The Committee issued a report in 2001 that identified the challenges facing schools with high percentages of low income students. It reported that students in schools with more than 40% low income students performed worse academically, read less, had lower attendance rates, and were more likely to have serious developmental delays and untreated health problems. These schools had less funding for advanced classes, higher rates of student behavior problems, less highly qualified teachers, and presented significant barriers to family involvement.

154. The Committee's 2001 report detailed how the state's educational funding formula was failing to meet the needs of those students.

155. The Committee's 2001 report detailed how Wilmington schools, which serve a high needs population, required additional funding from the state to be able to afford the recruitment and professional development necessary to provide an adequate education. High poverty schools elsewhere in Delaware have similar needs for additional funding so they can afford the recruitment and professional development necessary to provide their students with an adequate education.

156. The Committee's 2001 report also detailed changes that, if implemented, would have helped to provide the high needs students with an adequate education, including:

- a. Implement smaller class sizes
- b. Recruit and retain highly qualified teachers for high need schools.
- c. Provide additional professional development so teachers are continually able to meet the needs of their students.
- d. Create small learning communities for high need students, staying with the same teacher for several years and focusing on literacy and math.
- e. Make early literacy a focus, helping parents to support early literacy including reading and vocabulary.
- f. Allow state and local authorities to seek partnerships with health, family welfare, and education service providers.
- g. Provide adequate resources and attention to ensure that English language learners attain academic language proficiency in a timely fashion and master state content standards at grade level.
- h. Provide funding to address the unique requirements of low income students: early childhood education, special education services, and increased instructional time.

- i. Provide incentives for teachers including a waived city wage tax for employees of high poverty schools.
- j. Focus on literacy and math skills in middle schools.
- k. Help parents prepare their children for school.
- l. Merge the Red Clay Consolidated and Brandywine School Districts and the City of Wilmington into one Metropolitan School District.

157. In 2008 the Wilmington Education Task Force, established pursuant to SJR 3 (144th General Assembly), issued a report that also recommended changes that would have helped to provide the high needs students with an adequate education, if implemented. The recommended changes included:

- a. Increasing the number of vocational technical seats available to city students.
- b. Ensuring equity and access to the latest technology in city public schools.
- c. Providing innovative training and recruitment to attract and maintain quality educators.
- d. Developing smaller learning environments where the same teachers, families, and students stay together over a period of time.

- e. Providing transportation funding for students who successfully request permission under the limited choice program to attend a public high school in a surrounding district.
- f. Moving toward combining the Wilmington students into fewer school districts.

158. In 2014, the Governor established an advisory group, the Wilmington Education Advisory Committee, to provide input to the Governor and the Delaware Department of Education on educational issues.

159. After performing its investigation and analysis, the Committee reported in 2015 on the need for:

- a. Access to high quality early childhood education.
- b. Expanded school time and attention—including enhanced in-school services, such as school psychologists and social workers.
- c. Availability of after-school programs.
- d. Expanded school-to-work partnership programs.
- e. More concerted efforts to reach and engage families in student learning and connect them to available services and supports.

160. The three reports focused on Wilmington, but many of the same changes are needed to provide high needs students in the rest of the state with an adequate education as well.

161. In 2015, the Delaware General Assembly recognized through a Joint Resolution that Delaware's education funding system does not reflect the needs of today's children, teachers, schools, and districts. SJR No. 4, 148th General Assembly.

162. At the same time the General Assembly recognized that the state employs an education funding system that lacks the flexibility, transparency, and innovation necessary to allow the state to target resources to students in poverty, students with disabilities, English language learners, and other high needs children. SJR No. 4, 148th General Assembly.

163. The state did not implement these recommended changes from the 2000, 2008 and 2015 reports.

**The State Cut Funding and Failed to Respond to its Own  
Acknowledgement of the Educational Deficiencies**

164. The state cut Division II funding by twenty-six million dollars, from \$55,518,200 to \$30,261,000 when it enacted its Fiscal Year 2018 budget.

165. This \$26 million cut came on the heels of a \$27.7 million reduction in funding between FY 2008 and FY 2017 for a variety of programs that supplement the unit funding to a small extent. A portion of the state educational budget is devoted to block grants, pass through programs and special needs programs. These programs have historically provided schools with more flexible education dollars

that can be used to meet the particular needs of districts and schools, and the loss of these programs and dollars is especially felt by Disadvantaged Students.

166. One of the programs in these categories included Extra Time for Students, which funded after-school and summer programs for students struggling in core content areas. Approximately \$10.4 million went to Delaware public schools in 2008 for this purpose, but the funding was cut entirely in the FY2009 budget and has never been restored.

167. Likewise, reading resource teachers and math specialists were funded through these categories. In 2009, \$8.4 million was budgeted for Reading Resource Teachers and \$2.8 million for Math Specialists. These funds were zeroed out for Fiscal Year 2010, and have not been restored.

168. Other programs cut after 2008 include Innovative After-School Initiatives—a pilot program for academic and enhancement activities for fifth through tenth graders, and the Program for Children with Disabilities—which provided educational services to developmentally delayed three- to five-year-old children.

169. Many of the programs and educational interventions the state fails to fund would provide economic benefits outweighing their costs. Students who receive an adequate education go on to pay more taxes and require less social

spending. Students who receive an adequate education also require fewer criminal justice interventions.

170. Most recently, in June 2017 the Delaware State Senate declined to consider a proposed resolution requesting an opinion of the Delaware Supreme Court on whether Delaware’s public school system meets the requirements of Del. Const. art. X, § 1.

171. The deficiencies in educational outcomes are well known. Schools have the power to eliminate them, but they are prevented from doing so by the public school financing and governance system.

172. Plaintiffs lack an adequate remedy at law.

### **Count I**

173. The Education Clause’s requirement of a “general and efficient system of free public schools” guarantees all children an adequate education.

174. The Education Clause’s requirement of a “general and efficient system of free public schools” makes an adequate education a fundamental right for all Delaware children.

175. Delaware fails to provide Disadvantaged Students with a meaningful opportunity to obtain an adequate education—one that will equip them for their roles as citizens in a functional democracy, full participants in our society, and competitors in the labor market, thereby violating the Education Clause.

176. Delaware provides public education to most students through local school districts, but has failed to provide school districts with the funding needed to provide Disadvantaged Students with an adequate education, thereby violating the Education Clause.

177. Delaware's system for distributing school funding denies children residing in areas with lower property values and household incomes the opportunity to obtain an adequate education, thereby violating the Education Clause.

178. This Court's function is to determine what the law is and to apply that law. This case calls upon the Court to exercise its essential function of judicial review by determining what the Education Clause requires, whether defendants are complying with the requirements and, to the extent they are not, what they must do to comply.

179. As set forth above, defendants are failing to provide the education required by the Education Clause, and there is an existing and continuing constitutional violation.

180. Plaintiffs and the children of Delaware are entitled to an order that requires defendants to cure that violation.

## **Count II**

181. A “general and efficient” system of public schools is one where children are afforded a substantially equal opportunity to receive an adequate education, wherever they live.

182. A “general and efficient” system of public schools is one where local school districts have substantially equal access to similar revenues per pupil through a similar tax effort.

183. Delaware’s system for funding schools is unconstitutional because it places an unreasonably heavy burden on taxpayers residing in school districts with low property values to provide sufficient resources to children in those districts.

184. Plaintiffs are entitled to an order that will require that Delaware cease its violation and meet its constitutional obligations.

## **Count III**

185. Delaware law, 9 *Del. C.* § 8306(a), requires that each property be assessed for tax purposes at its “true value in money.”

186. Nevertheless, taxes are being collected based on property assessments conducted in 1987 (Kent County), 1983 (New Castle County) and 1974 (Sussex County).

187. This failure to collect the appropriate amount of property taxes for schools results in less tax revenue available for schools.

188. This under-collection harms Disadvantaged Students by reducing the resources available for their education.

189. Plaintiffs are entitled to an order that will require compliance with 9 *Del. C.* § 8306(a).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter Declaratory Judgment that:

A. public education is a fundamental right guaranteed by the Delaware Constitution to all school-age children residing in the state.

B. the Education Clause of the Delaware Constitution requires Defendants to provide school financing that creates a meaningful opportunity for all students to obtain an adequate education that equips them for their roles as citizens, full participants in our society, and competitors in the labor market.

C. Delaware's existing school-financing arrangements fail to comply with the mandate of the Education Clause, in violation of Plaintiffs' rights.

D. the Education Clause imposes upon Defendants an obligation to adopt a school-financing arrangement that does not discriminate against students based on where they live.

E. the education funding disparity among public schools is not justified by any compelling government interest and is not rationally related to any legitimate government objective;

F. Defendants, through the implementation of Delaware's school-financing arrangements, have violated and are violating the constitutional rights of each and all of the Plaintiffs and the Disadvantaged Students;

2. Enter permanent injunctions compelling Defendants to establish, fund, and maintain a general and efficient system of free public schools that provides all Disadvantaged Students with a reasonable opportunity to be equipped for their roles as citizens, full participants in our society, and competitors in the labor market.

3. Retain continuing jurisdiction over this matter until such time as the Court has determined that Defendants have, in fact, fully and properly fulfilled its orders;

4. Award Plaintiffs their costs of this action, including reasonable attorneys' and expert witness fees, to the full extent permitted by law; and

5. Grant such other and further relief as the Court deems just and proper.

/s/ Ryan Tack-Hooper  
Ryan Tack-Hooper (No. 6209)  
Karen Lantz (No. 4801)  
ACLU Foundation of Delaware, Inc.  
100 West 10th Street, Suite 706  
Wilmington, Delaware 19801  
(302) 654-5326, ext. 105  
rth@aclu-de.org  
Attorneys for Plaintiffs

/s/ Richard H. Morse  
Richard H. Morse (No. 531)  
Brian S. Eng (No. 5887)  
Community Legal Aid Society, Inc.  
100 West 10th Street, Suite 801  
Wilmington, Delaware 19801  
(302) 575-0662  
rmorse@declasi.org  
Attorneys for Plaintiffs