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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

David Powell)
6933 N. 15th Street)
Philadelphia, PA 19126;)
Shelean Parks)
2426 N. Clarion Street)
Philadelphia, PA 19132;)
Patrice Everage)
230 W. Abbotsford Avenue)
Philadelphia, PA 19144;)
Julia A. Davis)
6314 Moylan Street)
Philadelphia, PA 19144;)
Yvette Bland)
2201 N. 13th Street)
Apt. 1A)
Philadelphia, PA 19133;)
Geraldine Newton)
8039 Mansfield Avenue)
Philadelphia, PA 19150;)
Maria M. Rivera)
5622 N. Third Street.)
Philadelphia, PA 19120;)
Mary E. Miller)
6816 Upland Street)
Philadelphia, PA 19142;)
Gregory and Catherine Luzak)
5918 Elsinore Street)
Philadelphia, PA 19120;)
Fu-Zhen Xie)
147 N. 9th Street)
Philadelphia, PA 19107;)

Civil Action No. 99-cv-1223

The Black Clergy of Philadelphia)
and Vicinity)
c/o Rev. Randall E. McCaskill, Sr.)
President)
4950 N. 10th Street)
Philadelphia, PA 19141;)
)
Philadelphia Branch NAACP)
1231 N. Broad Street)
Philadelphia, PA 19122;)
)
ASPIRA, Inc. of Pennsylvania)
2726 N. 6th Street)
Philadelphia, PA 19133;)
)
Parents Union for Public Schools)
311 S. Juniper Street)
Philadelphia, PA 19107;)
)
Citizens Committee on Public)
Education in Philadelphia)
311 S. Juniper Street)
Philadelphia, PA 19107;)
)
Parents United for Better Schools)
31 Maplewood Mall)
Philadelphia, PA 19144;)
)
David W. Hornbeck)
Superintendent)
The School District of Philadelphia)
21st and The Parkway)
Philadelphia, PA 19103;)
)
Floyd W. Alston)
President)
Board of Education of The School)
District of Philadelphia)
21st and The Parkway)
Philadelphia, PA 19103;)
)
Board of Education of The School)
District of Philadelphia)
21st and The Parkway)
Philadelphia, PA 19103;)
)

The School District of Philadelphia)
2130 Arch Street)
Philadelphia, PA 19103-1390;)

Edward G. Rendell)
Mayor)
City of Philadelphia)
215 City Hall)
Philadelphia, PA 19107;)

City of Philadelphia)
215 City Hall)
Philadelphia, PA 19107;)

Plaintiffs,)

v.)

Thomas J. Ridge)
Governor of the Commonwealth of)
Pennsylvania,)
225 Main Capitol Building)
Harrisburg, PA 17120;)

Dr. James P. Gallagher)
Chairperson)
Commonwealth of Pennsylvania State)
Board of Education)
333 Market Street)
Harrisburg, PA 17126-0333;)

Dr. Eugene W. Hickok)
Secretary of Education)
333 Market Street)
Harrisburg, PA 17126-0333;)

Barbara Hafer)
Treasurer)
129 Finance Building)
Harrisburg, PA 17120-0018;)

Defendants.)

COMPLAINT

Preliminary Statement

1. Students who attend public school in Philadelphia, their parents and guardians, and organizations that represent their interests ("Student and Organization Plaintiffs"); The School District of Philadelphia, the Board of Education of The School District of Philadelphia, and officials who lead the School District ("School District Plaintiffs"); and the Mayor of the City of Philadelphia and the City of Philadelphia ("City Plaintiffs"), bring this action against officials of the Commonwealth of Pennsylvania who are responsible for the public education of children in the Commonwealth, including those in Philadelphia. Plaintiffs allege that Defendants have discriminated in effect, and with knowledge thereof before they acted, repeatedly, against children in the School District on grounds of their race, color and national origin by denying to the School District, and therefore to the children it educates, the financial support required to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominantly white school districts receive.

2. Because the Defendants receive federal funding to support public education throughout the Commonwealth, including in Philadelphia, they are prohibited by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d through 2000d-4a, and the Title VI implementing regulations governing federal financial support for education, 34 C.F.R. part 100, from discriminating on the basis of race, color, or national origin in the educational opportunities and funding system they

provide. The Student and Organization Plaintiffs, the School District Plaintiffs, and the City Plaintiffs all are harmed by such discrimination by Defendants in the provision of such a system for funding public education in Pennsylvania, and seek declaratory, injunctive and other appropriate relief to stop further such discrimination.

I. THE PARTIES.

3. Plaintiff David Powell is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. David Powell is the father and guardian of Brandon Smith and Steven Smith, both minors, who also are African-American and who attend Ellwood Elementary School in the School District. David Powell seeks relief for himself and on behalf of Brandon Smith and Steven Smith, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

4. Plaintiff Shelean Parks is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Shelean Parks is the mother and guardian of Robin Parks, Robert Parks, MaryLean Parks and Willena Parks, all minors, who also are African-American and who attend Wanamaker Middle School (Robin) and Ferguson Elementary School (Robert, MaryLean and Willena) in the School District. Shelean Parks seeks relief for herself and on behalf of Robin Parks, Robert Parks, MaryLean Parks, and Willena Parks, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

5. Plaintiff Patrice Everage is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Patrice Everage is the mother and guardian of Christie Everage, a minor, who also is African-American and who attends John B. Kelly Elementary School in the School District. Patrice Everage seeks relief for herself and on behalf of Christie Everage, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

6. Plaintiff Julia A. Davis is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Julia A. Davis is the mother and guardian of Rafiyq Davis, a minor, who also is African-American and who attends Lingelbach Elementary School in the School District. Julia A. Davis seeks relief for herself and on behalf of Rafiyq Davis, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

7. Plaintiff Yvette Bland is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Yvette Bland is the mother and guardian of Marika Bland, Turquoise Bland, Robert Bland, Martinez Bland, and Marco Bland, all minors, who also are African-American and who attend Fitzpatrick Elementary School (Marika and Turquoise) and Ferguson Elementary School (Robert, Martinez and Marco) in the School District. Yvette Bland seeks relief for herself and on behalf of Marika Bland, Turquoise Bland, Robert Bland, Martinez Bland, and Marco Bland, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

8. Plaintiff Geraldine Newton is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Geraldine Newton is the mother and guardian of Christopher Newton, a minor, who also is African-American and who attends the Saul High School for Agricultural Science in the School District. Geraldine Newton seeks relief for herself and on behalf of Christopher Newton, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

9. Plaintiff Maria M. Rivera is an Hispanic citizen, taxpayer, and resident of the Commonwealth and the City. Maria M. Rivera is the mother and guardian of Rachelle Rivera, a minor, who also is Hispanic and who attends Lowell Elementary School in the School District. Maria M. Rivera seeks relief for herself and on behalf of Rachelle Rivera, who is an intended beneficiary of federal programs and funding for education, including the programs described in ¶¶ 34-36, below.

10. Plaintiff Mary E. Miller is a white citizen, taxpayer, and resident of the Commonwealth and the City. Mary E. Miller is the mother and guardian of Paul Miller and George Miller, both minors, who also are white and who attend the Furness High School and Pepper Middle School, respectively, in the School District. Mary E. Miller seeks relief for herself and on behalf of Paul Miller and George Miller, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

11. Plaintiffs Gregory and Catherine Luzak are white citizens, taxpayers, and residents of the Commonwealth and the City. Gregory and

Catherine Luzak are the parents and guardians of Catherine Luzak, Gregory Luzak, Jr., and Danielle Luzak. Catherine Luzak and Gregory Luzak, Jr., both minors, also are white and attend the Franklin School in the School District. Gregory and Catherine Luzak intend that Danielle Luzak, a minor, who also is white, will attend kindergarten at a school in the School District in fall of 1998. Catherine and Gregory Luzak seek relief for themselves and on behalf of Catherine Luzak, Gregory Luzak, Jr., and Danielle Luzak, who are the intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

12. Plaintiff Fu-Zhen Xie is a Chinese-American permanent resident of the United States, a taxpayer, and resident of the Commonwealth and the City. Fu-Zhen Xie is the mother and guardian of Sandy Yu and Shannon Yu, both minors, who also are Chinese-American and who attend McCall Elementary School in the School District. Fu-Zhen Xie seeks relief for herself and on behalf of Sandy Yu and Shannon Yu, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

13. Plaintiff The Black Clergy of Philadelphia and Vicinity is an association consisting of over 400 ministers representing seven denominations and serving 300,000 people, of whom 80% live in the City of Philadelphia. The vast majority of its members are parents or grandparents of Philadelphia public school students. Many of the ministries represented by the Black Clergy of Philadelphia and Vicinity conduct Head Start and Get Set pre-school programs and run after-school programs or tutoring programs for students in order to assist in their

education and overcome the inadequacies of the educational programs and services available in the School District, due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District.

14. Plaintiff Philadelphia Branch NAACP is a not-for-profit organization with over 3,000 members who are Philadelphia residents and taxpayers, more than half of whom are low-income parents of public school children. The Philadelphia Branch NAACP supports tutoring programs and workshops for Philadelphia public school students, raises funds to supplement technology and books available in the School District, supports literacy programs for adults, and takes other steps to compensate for the inadequacies in the educational programs and services available in the School District due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District. The Philadelphia Branch NAACP maintains an office at 1231 North Broad Street, Philadelphia, Pennsylvania.

15. Plaintiff ASPIRA, Inc. of Pennsylvania is a not-for-profit organization that works with more than 3,500 students in Philadelphia and more than 400 public school drop-outs in an attempt to compensate for the inadequacies in the educational programs and services available in the School District due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District. More than 600 students enrolled in the School District are members of ASPIRA clubs and more than 400 parents are members. ASPIRA maintains an office at 2726 North 6th Street, Philadelphia, Pennsylvania.

16. Plaintiff Parents Union for Public Schools is a not-for-profit organization with nearly 1,000 members, all of whom are parents of students enrolled in the School District's schools. The Parents Union for Public Schools advises parents on resources available to their children in the school system and how to participate in the educational process to further their children's education, as well as acting as an advocate for parents and students in the system. Parents Union for Public Schools maintains an office at 311 South Juniper Street, Philadelphia Pennsylvania.

17. Plaintiff Citizens Committee on Public Education in Philadelphia is a not-for-profit organization that has the purpose of maintaining and improving the quality of education available in the School District through public advocacy. It has more than 200 members, including four Home and School Associations from Philadelphia public schools. Many of its individual members are parents or grandparents of children enrolled in the School District. The Citizens Committee on Public Education in Philadelphia maintains offices at 311 South Juniper Street, Philadelphia, Pennsylvania.

18. Plaintiff Parents United for Better Schools is a not-for-profit parent advocacy organization with several thousands of members, the majority of whom are public school parents. It provides tutoring programs and other services to low income students and parents in an attempt to compensate for the inadequacies in the educational programs and services available in the School District due at least in part to the Commonwealth's wrongful failure to provide

sufficient funds to the School District. Parents United for Better Schools maintains an office at 31 Maplewood Mall, Philadelphia, Pennsylvania.

19. The Plaintiff Organizations each oppose racial discrimination and work to combat discrimination in public education. Plaintiff Organizations have had to direct their funds and other resources from other activities because of the wrongful failure of the Commonwealth to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white districts receive.

20. The School District Plaintiffs have been delegated by the Commonwealth part of the Commonwealth's responsibility to educate school-age children residing in the City. David W. Hornbeck, as Superintendent of the School District, Floyd W. Alston, as President of the Board of Education of The School District of Philadelphia, and the Board of Education of The School District of Philadelphia have been delegated those powers specified and necessarily implied by the laws of Pennsylvania concerning education of public school students in Philadelphia, and have responsibility for implementing those laws. Plaintiffs Hornbeck and Alston and the Board of Education of The School District of Philadelphia maintain offices at 21st and the Parkway, Philadelphia, Pennsylvania. The School District of Philadelphia, a corporate entity with the right to sue, operates pursuant to the Public School Code. The School District has an office at 2130 Arch Street, Philadelphia, Pennsylvania.

21. The School District has been granted certain home rule powers with respect to the provision of education in Philadelphia, pursuant to the First Class City Home Rule Education Act. The School District was created and established by the people of Philadelphia, in the School District Home Rule Charter.

22. The School District is the only public school district in the Commonwealth without the independent power of taxation.

23. The student population enrolled in the public schools in the School District has grown from 190,979 in the 1991-92 school year, to approximately 213,800 students in the 1997-98 school year. The student population enrolled in the School District between the 1991-92 and 1997-98 school years has at all times been between approximately 77% and 80% racial and ethnic minority students.

24. In the 1995-96 school year, the School District was responsible for the education of only approximately 12% of the Commonwealth's total public school students, but it has the responsibility to serve nearly 50% of all African-American, Hispanic, Asian and other minority children attending public school in Pennsylvania.

25. Plaintiff Mayor Edward G. Rendell is the Chief Executive Officer of the City. Pursuant to the Philadelphia Home Rule Charter ("PHRC"), Mayor Rendell is responsible for the conduct of all the executive and administrative work of the City, including management of the City's finances, and promoting the City as a place where the citizens of the Commonwealth can live and work productively in a racially nondiscriminatory environment.

26. Plaintiff City of Philadelphia, a home rule municipal corporation, is the only City of the First Class in Pennsylvania. The City has adopted a Home Rule Charter in accordance with the First Class City Home Rule Act, 53 P.S. §§ 13101 et seq. The City's boundaries are coterminous with those of the School District, and the City relies on the same limited local tax base as does the School District for local revenues. The City has an office at 215 City Hall, Philadelphia, Pennsylvania.

27. Defendant Governor Thomas J. Ridge is the Chief Executive Officer of the Commonwealth, pursuant to Article IV of the Pennsylvania Constitution. The Governor has all powers specified and necessarily implied by the Constitution and laws of Pennsylvania, including the power and obligation to recommend education spending to the General Assembly, approve legislative appropriations, and supervise the executive departments that administer regulations and programs governing the School District, and to see that the Thirteenth and Fourteenth Amendments to the United States Constitution and all federal statutes and regulations are followed in carrying out his duties. The Governor is responsible, with the advice and consent of the Senate, for appointing the Secretary of Education and members of the State Board of Education. Defendant Governor Ridge is sued in his official and individual capacities and has an office at 225 Main Capitol Building, Harrisburg, Pennsylvania.

28. Defendant Dr. James P. Gallagher, as Chairperson of the State Board of Education, has all powers specified and necessarily implied by the laws of Pennsylvania, including, inter alia, powers and duties pertaining to school districts

pursuant to 26 P.S. §§ 2601 B, et seq., and is barred from carrying out any of his duties in a way that violates the Thirteenth or Fourteenth Amendment to the United States Constitution or any federal statute or regulation. Defendant Dr. Gallagher is sued in his official and individual capacities. Defendant Dr. Gallagher resides in the Eastern District of Pennsylvania at The White House, Philadelphia College of Textiles and Sciences, Henry Avenue and Schoolhouse Lane, Philadelphia, Pennsylvania, and has an office at 333 Market Street, Harrisburg, Pennsylvania.

29. Defendant Secretary of Education Eugene W. Hickok is a Constitutional officer under Article IV section 8 of the Pennsylvania Constitution and has all powers specified and necessarily implied by the Constitution and laws of Pennsylvania, including responsibility for administration and supervision of the Commonwealth Department of Education ("DOE"). Secretary Hickok is barred from carrying out any of his duties in a way that violates the Thirteenth or Fourteenth Amendment to the United States Constitution or any federal statute or regulation. The DOE, inter alia, is responsible for administering laws concerning public schools. 71 P.S. § 351, § 352 and § 1037. The DOE is a state education agency that receives and distributes federal funds under various federal programs affecting education. Secretary Hickok is sued in his official and individual capacities and has an office at 333 Market Street, Harrisburg, Pennsylvania.

30. Defendant State Treasurer Barbara Hafer is a constitutional officer under Article IV section 1 of the Pennsylvania Constitution and has all powers specified and necessarily implied by the Constitution and laws of

Pennsylvania, and is responsible for the administration and supervision of the State Treasury, and is barred from carrying out any of her duties in a way that violates the Thirteenth or Fourteenth Amendment to the United States Constitution or any federal statute or regulation. The Treasury is responsible for, inter alia, the disbursement of funds, both federal and state, for purposes of education. Pa. Const. art. III, § 24, 71 P.S. §247, 72 P.S. §1501, §4451 et seq. State Treasurer Hafer is sued in her official and individual capacities and has an office at 129 Finance Building, Harrisburg, Pennsylvania. (Defendants are collectively referred to herein as the "Commonwealth Defendants.")

31. The Plaintiffs are seeking only injunctive and declaratory relief against the above-named Commonwealth Defendants in their individual capacities.

II. JURISDICTION AND VENUE.

32. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1343(a)(3) and (4) (civil rights actions), and 28 U.S.C. §§ 2201, et seq., (declaratory judgments).

33. Venue is appropriate pursuant to 28 U.S.C. § 1391(b), because the claim arose in the Eastern District of Pennsylvania and because Defendant Dr. James P. Gallagher resides in the Eastern District of Pennsylvania.

III. FEDERAL FINANCIAL ASSISTANCE.

34. The Commonwealth receives federal financial assistance for the support of public education in Pennsylvania. Public elementary and secondary

education in Pennsylvania, including Philadelphia, is a program or activity receiving federal financial assistance.

35. The Commonwealth receives federal financial assistance through a variety of federal programs designed to support the efforts of Commonwealth public school districts, including Philadelphia, to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white school districts receive. The School District receives federal financial assistance directly and also receives federal funds from the Commonwealth through federal programs that distribute funds for education to local school districts through the states, including, inter alia:

a. Funding under the Elementary and Secondary Education Act of 1965 ("ESEA"), as amended by the Improving America's Schools Act of 1994, known as Chapter I or Title 1. Chapter I/Title 1 provides federal financial assistance to state and local education agencies, for the purpose, inter alia, of meeting the special educational needs of disadvantaged children of low income families;

b. Funding under ESEA Chapter II or Title 6, titled "Innovative Education Program Strategies," for Commonwealth-administered block grants to permit local school districts to design and implement promising or innovative educational improvement programs;

c. Funding under ESEA Title 3 - Part A, Technology for Education, that provides competitive grants to support the development,

interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure;

d. Funding under the Dwight D. Eisenhower Professional Development Program, to strengthen and improve teaching and learning in core academic subject areas.

36. The City of Philadelphia receives federal funds, both directly and through the Commonwealth, for programs and services that support and assist the School District and its students, including, inter alia:

a. Funding that the City uses to establish Family Centers in schools within the School District to provide support services to families with children who are at risk of abuse and neglect;

b. Funding through the D.A.R.E. program, which the City uses to send police officers into classrooms in the School District to conduct drug awareness education;

c. Funding for an Adolescent Initiative federal grant through the Commonwealth that provides services to children in foster care to insure that they graduate from high school and learn skills for living independently;

d. Funding through a federal Community Service Block Grant for an after-school computer education program and, through the Philadelphia Police Department, a Local Law Enforcement Block Grant that is used to increase truancy enforcement in School District schools.

IV. THE COMMONWEALTH DEFENDANTS ARE AWARE OF THE INABILITY OF THE SCHOOL DISTRICT TO PROVIDE EDUCATIONAL OPPORTUNITY EQUAL TO THAT PROVIDED IN PREDOMINANTLY WHITE SCHOOL DISTRICTS AND OTHERWISE TO MEET THE EDUCATIONAL NEEDS OF ALL OF THE SCHOOL DISTRICT'S STUDENTS.

37. The Commonwealth Defendants are and have been aware of the characteristics of the students in the School District and of the effects of racial isolation, segregation and discrimination on those students through the actions of various Commonwealth agencies and courts. The Commonwealth Defendants are on notice that federal, Commonwealth, and local governmental policies -- some of which existed for centuries until May 17, 1954, some of which continued to a much later date, and some of which continue until today -- have adversely affected African-Americans and other minorities and that in many cases the adverse effects of such policies still exist today. Specifically, as to the School District and its students, the Pennsylvania Human Relations Commission ("PHRC"), a commission of the Commonwealth of Pennsylvania, determined on June 7, 1971, that the School District was unlawfully segregated by race. That determination was affirmed by the Commonwealth Court and the Supreme Court of Pennsylvania. PHRC v. School Dist. of Philadelphia, 6 Pa. Cmwlth. 281, 294 A.2d 410 (1972), aff'd, 455 Pa. 52, 313 A.2d 156 (1973).

38. In 1994, the Commonwealth Court found that the School District continues to deny students equal educational opportunity based on their race. PHRC v. School Dist. of Philadelphia, 161 Pa. Cmwlth. 281, 638 A.2d 304 (1994).

39. The PHRC and the Commonwealth Court have conducted extensive proceedings designed to formulate and modify remedial plans to combat the effects of segregated conditions in the School District. The PHRC, an agency of the Commonwealth, has argued throughout the proceedings that the purpose of the Pennsylvania Human Relations Act is to promote equal opportunity, including equal educational opportunity for all of the students attending the public schools within the Commonwealth, but that the School District has not yet succeeded in doing so.

40. On November 3, 1995, the Commonwealth of Pennsylvania and Governor Ridge were joined as parties in Pennsylvania Human Relations Commission v. School District of Philadelphia, King's Bench Jurisdiction Assumed, No. 119 E.D. Misc. Dkt. 1991 ___ Pa. ___ (Pa. July 3, 1996). As a result, inter alia, of the 27-year litigation by a Commonwealth agency and joinder of the Governor and Commonwealth, the Commonwealth Defendants are fully on notice that the School District has not succeeded in desegregating its schools or in providing equal educational opportunities for minority students. The Commonwealth Defendants also are on notice that the School District has proposed an education reform plan designed to cure the racial disparities that exist in the School District, which has been Court approved and ordered; that the School District lacks adequate funds to implement that plan; that the Commonwealth has not supplied such funds; and that the School District, with no independent power to tax and an inadequate tax base from which to raise funds, therefore cannot implement fully that plan.

41. Records kept by the Commonwealth Defendants reflect the racial and ethnic composition of students enrolled in school districts throughout the Commonwealth. At all times relevant to this Complaint, the Commonwealth Defendants were aware that the School District was responsible for educating the largest group of non-white students in any school district in the Commonwealth -- over 75% African-American, Hispanic, Asian and other minority -- while the non-white enrollment in public schools in the rest of the Commonwealth as a whole was approximately 11%.

42. Commonwealth Defendants' records also demonstrate that, in 1995-96 (Fiscal Year 1996), the percentage of children attending school in the School District from families receiving Aid to Families with Dependent Children ("AFDC"), an indicator used by the Commonwealth Defendants to measure family poverty for education purposes, reached approximately 46% of the estimated Average Daily Membership ("ADM") of the School District. For the same year, Commonwealth records show that approximately 80% of the students in the School District were from low-income families, defined as families eligible for federally subsidized free or reduced price meals, and that the School District had the highest incidence of students in poverty of all 62 school districts in the surrounding five-county region.

43. The Commonwealth Defendants are and have been on notice that the City has among the highest incidences in the Commonwealth of poverty, support cases, child abuse, juvenile delinquency, births to single mothers, welfare placements, and AFDC placements. The Commonwealth Defendants are

specifically on notice that Philadelphia has one of the Commonwealth's highest poverty ratios through, inter alia, the proceedings in PHRC v. School Dist. of Philadelphia, No. 1056 C.D. 1973, in the Commonwealth Court of Pennsylvania.

44. The Commonwealth Defendants further are and have been on notice that a school district, such as Philadelphia, faces a greater educational challenge and costs in educating children from poor families. A 1996 Report of the Governor's Advisory Commission on Public School Finance observed that "[i]n those areas in which there is a large population living in poverty, where crime is a serious problem, where dependence on public assistance is prevalent, it is more difficult to educate students and more difficult for students to achieve at competitive levels. Moreover, schools confronting such problems may often provide a number of services that schools which do not confront these problems need not provide. . . ."

45. Through the Commonwealth's own indicators of student performance, and other indicators of student performance known to the Commonwealth Defendants, the Commonwealth Defendants are and have been on notice of the inability of the School District, due primarily to insufficient resources because sufficient resources have been and are being wrongfully withheld by the Commonwealth, to provide an appropriate education and equal educational opportunity, or to meet the needs of a substantial number of its students particularly including its racial and ethnic minority students.

46. The mean test score for students in the School District is significantly lower than for students statewide on indicators such as the Pennsylvania System of School Assessment tests and the Scholastic Aptitude Test.

Indicators such as on-time high school graduation rates and Scholastic Aptitude Test scores reveal that students in the School District disproportionately perform lower than their peers elsewhere in the Commonwealth, and that racial and ethnic minority students in the School District disproportionately perform lower than their white counterparts.

V. THE COMMONWEALTH DEFENDANTS' FUNDING POLICIES AND PRACTICES HAVE DISPROPORTIONATELY AND REPEATEDLY DISADVANTAGED PHILADELPHIA, WITH FORESEEABLE HARM TO EQUAL EDUCATIONAL OPPORTUNITY AND ACHIEVEMENT FOR THE STUDENTS THAT THE SCHOOL DISTRICT SERVES.

47. The Commonwealth Defendants' statutorily established system for funding public education depends upon a combination of locally generated revenues authorized by the Commonwealth (that rely primarily upon local property taxes), state funds provided by the Commonwealth Treasury ("Commonwealth treasury revenues"), and certain federal funds. What the Commonwealth terms Basic Education Funding is the baseline instructional subsidy for school districts in the Commonwealth and is the principal source of Commonwealth treasury revenues to school districts. The Commonwealth Defendants adopted, with prior knowledge of its discriminatory consequences on students based on race and national origin in the School District and elsewhere, a different methodology each year from 1991-92 through 1996-97 to determine the Basic Education Funding entitlement that would be provided in the following year to school districts in the Commonwealth.

48. In the 1991-92 payable school year and for eight years previous, the Basic Education Funding provided by the Commonwealth was calculated under

a formula that included an "aid ratio" factor that operated to increase aid to school districts that were relatively less wealthy (based on a combination of measures of personal income and market value of property in the district) than school districts in the Commonwealth on average. That formula also included extra subsidies for low-income students and population density.

49. The Commonwealth Defendants abandoned that formula after the 1991-92 school year. No Basic Education Funding formula used since by the Commonwealth Defendants has provided the subsidy for population density. For each year from 1993-94 through 1997-98, the Basic Education Funding formula used by the Commonwealth Defendants either ignored or significantly diminished the impact of the "aid ratio" factor that operates to increase aid to school districts that are relatively less wealthy than school districts in the Commonwealth on average. Formulas used by the Commonwealth after 1991-92 also have reduced the role of the student poverty factor. These formulae had an adverse effect on school districts which had the larger minority student populations, as the Commonwealth and the Commonwealth Defendants were aware.

50. The Commonwealth Defendants' own financial data demonstrate that the result of the changes in the formula has been a shift in Commonwealth treasury revenues away from Philadelphia schools, despite their well-known needs and the relatively high cost of educating Philadelphia students, which the Commonwealth Defendants knew or should have known represents a disproportionate allocation of funds away from the largest concentration of minority students in the Commonwealth.

51. The Commonwealth Defendants have changed the Commonwealth's Basic Education Funding in ways that had the foreseeable effect of disadvantaging students in Philadelphia, who are on average more likely to be from racial and ethnic minorities and poorer than students across the Commonwealth; the School District, because it educates such students in substantial numbers; and the City because it suffers and directly bears the economic and non-economic consequences of this disproportionate underfunding. The foreseeable result is a formula and an overall system of funding education that disadvantages school districts with a high concentration of minority students in poverty, and thereby all students enrolled in the School District.

52. The racially discriminatory impact of the Commonwealth Defendants' system for funding school districts is illustrated by a comparison of the School District with the other 61 neighboring school districts in the surrounding five-county area. Based on Commonwealth estimates of revenue for 1995-96, the education of students in the 61 neighboring suburban school districts was funded at a weighted average level of \$8,476 in total revenue per pupil, while the School District received \$6,861 -- a per pupil difference of \$1,615, increasing from a gap of \$1,083 per student in 1991-92. Of the 61 neighboring school districts, as of 1995-96, 48 had more than 80% white students and only two had more than 50% non-white students. Overall enrollment of the 61 districts has a weighted average of only 15.6% non-white students.

53. The Commonwealth Defendants' funding system for education gives school districts with high proportions of white students on average more

Commonwealth treasury revenues than school districts with high proportions of non-white students, where the levels of student poverty are the same. When average Commonwealth treasury revenues per pupil in relation to the poverty character of the student body (as measured by percentage of students on AFDC) for each school district are calculated, the data for the School District in 1990-91 reveal that it received 17.2% less than the average of school districts with the same poverty rate. In a ranking of the 500 school districts, where number 1 is the school district receiving the greatest excess over what would be expected statistically on the basis of poverty using the Commonwealth's own funding data, and number 500 is the school district with the greatest shortfall, the School District ranked 421 in 1990-91. By 1995-96, Philadelphia received 33.1% less than expected statistically, and its rank had dropped to 498 out of the 500 school districts in the Commonwealth.

54. Every other or virtually every other predominantly minority school district in the Commonwealth also receives less funding than is expected statistically on the basis of its poverty. All 12 of the school districts in the Commonwealth that in 1992 were more than 50% in minority student population were funded at a lower level in 1990-91 than expected statistically on this measure. By 1995-96, 11 out of those 12 high-minority school districts still had less Commonwealth treasury revenues per student than school districts with higher white enrollments and the same level of poverty.

55. When Commonwealth treasury revenues per pupil are analyzed by the amount of poverty in school districts across the Commonwealth, whether

measured by AFDC or percentage of students eligible for free and reduced price meals, school districts with higher proportions of non-white students receive less Commonwealth treasury revenues than districts with higher proportions of white students. On average, for 1995-96, for two school districts with the same level of poverty as measured by AFDC, the school district with higher non-white enrollment received \$52.88 less per pupil for each increase of 1% in non-white enrollment.

56. Commonwealth data also show that, between fiscal years 1992 and 1996, total revenues to school districts with 50% or more white students increased by a weighted average of \$776 per pupil. For the same period, the increase in the School District was only \$84 per pupil, despite its greater needs. The school districts in Pennsylvania with African-American and other non-white enrollment of more than 75% received a weighted average increase in total revenue of only \$149 per pupil.

57. For fiscal year 1996, each student in the School District had \$458 less in support for his or her education than the average student in a school district that was majority white. For the same year, the average student in a school district that was less than 25% white had \$389 less in educational support than the average student in a majority white school district.

58. Commonwealth data estimating Commonwealth treasury revenues for 1996 among the same school districts, by race, similarly reflect revenue increases that disproportionately benefit the school districts with relatively high proportions of white students and disproportionately shift revenues away from

the school districts with relatively high proportions of non-white students. Commonwealth data show that, between fiscal years 1992 and 1996, Commonwealth treasury revenues to school districts with 50% or more white students increased by a weighted average of \$498 per pupil. For the same period, the increase in the School District was only \$361 per pupil, despite its greater needs. The school districts in Pennsylvania with African-American and other non-white enrollments of more than 75% received a weighted average increase in Commonwealth treasury revenues of only \$384 per pupil.

59. These racial distinctions in the distribution of revenues for education, under the Commonwealth Defendants' policies and practices, are legally unjustifiable and racially discriminatory and Commonwealth Defendants had knowledge of such effects each time prior to taking action which achieved these results.

60. The Commonwealth's funding policies and practices disadvantage, and thereby discriminate against, school districts such as Philadelphia with relatively high non-white enrollments, and the students in those districts, and Commonwealth Defendants had knowledge of such effects each time prior to taking action which achieved these results.

61. The impact of the Commonwealth's funding policies and practices has been to deprive the School District of hundreds of millions of dollars per year. The impact will continue unless the Commonwealth Defendants' wrongful funding policies and practices are enjoined.

62. The foreseeable result has been serious impairment of the educational opportunities of the students in the School District, including the Student Plaintiffs. Lack of sufficient resources in the School District results, inter alia, in larger class sizes and higher pupil-to-teacher ratios than in surrounding school districts; reduced curricula; cuts in and elimination of programs and electives and advanced placement courses; shortages of textbooks and use of outdated textbooks; shortages of equipment, supplies and technology; spartan physical education and extracurricular programs; lack of librarians and library services; insufficient numbers of counselors and psychologists; and many inadequate and crumbling physical facilities.

63. The School District Plaintiffs have adopted annual budgets which have included substantial budget cuts since 1991-92, responding in large measure to the Commonwealth Defendants' challenged racially discriminatory funding policies and practices. Since the 1988-89 school year, more than 1,100 school-based positions have been eliminated, including more than 800 classroom assistants and over 50 librarians. More than 80% of the School District's summer school programs have been dismantled, and extracurricular activities in high schools, including athletics, have been slashed nearly 50%. The School District Plaintiffs have undertaken other budget cuts which are outside of the classroom, but many of which also harm students' ability to learn. The School District Plaintiffs find themselves unable to make further budget cuts without additional irreparable harm to the School District's largely minority student population.

64. The City Plaintiffs are injured by the Commonwealth Defendants' challenged racially discriminatory funding policies and practices, since they contribute to declining urban population and erosion of the City's tax base. Individuals and businesses choose where to locate their residences and businesses in large part based upon the quality of public education in the area, and move out of or do not locate in the City because of the condition of the City's public school system. The fact that the resultant educational system more often turns out students in the School District not as equipped to deal with modern employment and modern life as the students who have the advantage of the educational system in the predominately white school districts of the Commonwealth further erodes the City's tax base.

65. The excessive requirements of local funding for the School District contribute to residents of the City ranking first in the Commonwealth in overall tax burden. The City made a \$15 million special appropriation for the School District in spring of 1996, and again in the spring of 1997, in order to help avert a deficit. The City enacted the controversial liquor-by-the drink tax in 1994, at substantial economic cost to the tax base and political cost to the City, in order to provide the School District with approximately \$21 million per year. The City, through its Voluntary Contributions Program beginning in 1994, persuaded owners of tax exempt real estate to contribute approximately \$3.5 million a year in voluntary contributions directly to the School District. The City continues to provide numerous forms of non-tax assistance to the School District, all at substantial cost. The expenditure of these sums for education, to compensate for the Commonwealth

Defendants' wrongful funding policies and practices, means that the City has fewer funds available to meet other pressing, unmet or underserved urban needs.

66. The Commonwealth Defendants' challenged racially discriminatory funding policies and practices impose excessive requirements on local funding, making it impossible for the City to afford the tax relief its citizens desperately need, and making it impossible for the City to provide the competitive tax rates and public education system which it needs to attract and retain residents and jobs in order to bolster and replenish its tax base and further revitalize the schools.

**Count I: Racial and National Origin Discrimination
by Differential and Disparate Treatment
Under Title VI Implementing Regulations
(All Plaintiffs Against All Defendants)**

67. The allegations set forth in ¶¶ 1-66 above are incorporated herein by reference, as if fully set forth here.

68. Title VI provides in pertinent part:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

69. Regulations implementing the requirements of Title VI for education programs or activities receiving federal financial assistance have been promulgated by the United States Department of Education, 34 C.F.R. part 100.

70. The United States Department of Education regulations prohibit federal fund recipients from the following discriminatory actions on the basis of race, color or national origin:

Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

* * *

A recipient, in determining the type of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. . . .

34 C.F.R. § 100.3(b)(1), (2).

71. Public elementary and secondary education in Pennsylvania, including Philadelphia, is a program or activity to which Title VI and its implementing regulations apply. The Commonwealth received federal financial assistance from the United States Department of Education to support public education in Philadelphia in amounts exceeding \$80 million in the 1996-97 school year, and continues to receive such assistance.

72. Offices and agencies of the Commonwealth for which the Commonwealth Defendants are responsible are federal fund recipients under applicable administrative regulations implementing Title VI and are subject to the

prohibitions of Title VI and the administrative implementing regulations promulgated thereunder by the United States Department of Education.

73. The Commonwealth Defendants' funding policies and practices wrongfully discriminate against African-American, Hispanic, Asian and other minority students in the School District by utilizing criteria and methods that have had the foreseeable effect of subjecting such students to discrimination because of their race, color, or national origin, by disproportionately denying them necessary support for their education, in violation of the Title VI implementing regulations applicable to federal education programs. The Commonwealth Defendants' funding policies and practices in turn harm the educational opportunities of all students in the School District, the School District Plaintiffs' ability to offer a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white school districts receive, and the City's economic and non-economic health by disproportionately undermining the quality of public education in Philadelphia.

74. While the Commonwealth Defendants have been accepting federal financial assistance to supplement their education efforts the Commonwealth, their policies and practices in the Commonwealth's education funding system have wrongfully and disproportionately shifted funding away from Philadelphia and its substantially minority student body, in violation of Title VI and its implementing regulations.

75. The Commonwealth Defendants' funding policies and practices have the foreseeable, racially discriminatory effect of further isolating the Student Plaintiffs, the School District, and the City by race in the Philadelphia metropolitan area, and of impairing the School District Plaintiffs' ability to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides an educational opportunity equal to that which children who live in predominately white school districts receive, all in violation of the Title VI implementing regulations.

76. The implementing regulations interpreting the requirements of Title VI further prohibit federal fund recipients from utilizing "criteria or methods of administration which . . . have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 34 C.F.R. § 100.3(b)(2).

77. The objectives of the Commonwealth's program and activity of public school education in Pennsylvania, for which the Commonwealth receives federal funds, are defeated or substantially impaired in Philadelphia by the Commonwealth Defendants' challenged racially discriminatory funding policies and practices. The objectives of specific federal programs for which the Commonwealth receives federal funds also are defeated or impaired by the Commonwealth Defendants' challenged funding policies and practices. Such federal programs include, inter alia:

a. Chapter I in its current reauthorization by Congress, which includes the objectives of enabling "schools to provide opportunities for

children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children.” 20 U.S.C. § 6301(d);

b. Title 6 in its current authorization by Congress, which includes the objectives of supporting state and local school reform efforts and “State and local efforts to accomplish the National Education Goals.” 20 U.S.C. § 7301(b);

c. The Technology for Education Act of 1994, which includes the objectives of support for “the acquisition and use by elementary and secondary schools in the United States of technology and technology-enhanced curricula, instruction, and administrative support resources and services to improve the delivery of educational services.” 20 U.S.C. § 6812;

d. The Dwight D. Eisenhower Professional Development Program, which includes the objectives of supporting “access to sustained and intensive high-quality professional development that is aligned to challenging State content standards and challenging State student performance standards and to support the development and implementation of sustained and intensive high-quality professional development activities in the core academic subjects. . . .” 20 U.S.C. § 6602.

78. While the School District uses federal funding for the purposes designated, the Commonwealth Defendants’ wrongfully discriminatory funding policies and practices result in the School District Plaintiffs’ inability to meet the objectives of the federal programs. The Commonwealth Defendants’ wrongfully

discriminatory funding policies and practices also result in the School District Plaintiffs' inability to meet the objectives of the Commonwealth's federally funded program of public education, responsibility for which has been delegated in part to the School District Plaintiffs by the Commonwealth, and the needs of the School District's predominantly minority student population. Thereby, the Commonwealth Defendants are in violation of the United States Department of Education regulations implementing Title VI.

**Count II: Under 42 U.S.C. § 1983 For Deprivation
Of Rights Secured by the Laws of the United States
(Student and Organization Plaintiffs Against All Defendants)**

79. The allegations set forth in ¶¶ 1-78 above are incorporated herein by reference, as if fully set forth here.

80. The Commonwealth Defendants' actions complained of herein have the racially discriminatory effect described herein, Commonwealth Defendants were aware of that effect before they took such actions, and such actions were repeatedly taken with such knowledge.

81. The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

82. The rights secured by Title VI, 42 U.S.C. §§ 2000d through 2000d-4a, and the regulations implementing Title VI for education programs or activities receiving federal financial assistance, 34 C.F.R. part 100, are rights, privileges or immunities secured by the laws within the meaning of 42 U.S.C. § 1983.

83. The Commonwealth Defendants' funding policies and practices, by discriminating against African-American, Hispanic, Asian and other minority students in the School District, harm the educational opportunities of the Student Plaintiffs in violation of the Title VI implementing regulations as alleged in Count I above. The Commonwealth Defendants thereby have deprived the Student Plaintiffs, and the Organization Plaintiffs that represent the interests of such students, of rights, privileges, and immunities secured by the laws of the United States, in violation of 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Declare that the Commonwealth Defendants, through their funding policies and practices, discriminate against African-American, Hispanic, Asian and other minority students in the School District and the City, and thereby harm the Student and Organization Plaintiffs, the School District Plaintiffs and the City Plaintiffs, in violation of the Title VI administrative regulations promulgated by the United States Department of Education to implement the nondiscrimination requirements of Title VI;

2. Declare that the Commonwealth Defendants, through their funding policies and practices, deprive the Student Plaintiffs, and the Organization Plaintiffs that represent the interests of such students, of their rights, privileges and immunities secured by the laws of the United States, in violation of 42 U.S.C. § 1983;

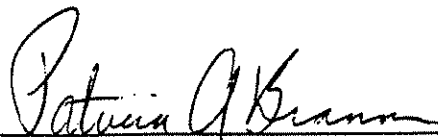
3. Enjoin the Commonwealth Defendants from continuing to implement a system of funding public schools that discriminates against the African-American, Hispanic, Asian and other minority children enrolled in The School District of Philadelphia, and that thereby harms the Student and Organization Plaintiffs, the School District Plaintiffs and the City Plaintiffs;

4. Retain jurisdiction to enforce its declaratory and injunctive relief;

5. Award Plaintiffs their costs, including reasonable attorneys' fees;

and

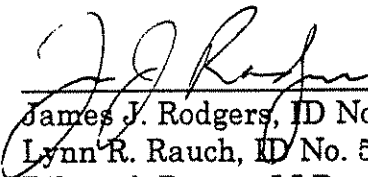
6. Award such other relief as this Court deems necessary, effective and appropriate.



Patricia A. Brannan
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, DC 20004
(202) 637-8686



William T. Coleman, Jr., ID No. 04384
Stephen J. Harburg, ID No. 44978
O'Melveny & Myers LLP
555 13th Street, N.W.
Washington, DC 20004
(202) 383-5325

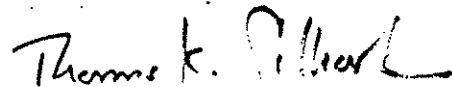


James J. Rodgers, ID No. 21635
Lynn R. Rauch, ID No. 52725
Dilworth Paxson LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
(215) 575-7000

The above are Counsel for David W. Hornbeck, Floyd W. Alston,
The Board of Education of The School District of Philadelphia,
The School District of Philadelphia, and
Gregory and Catherine Luzak, Shelean Parks,
Yvette Bland and Fu-Zhen Xie



Michael Churchill, ID No. 04661



Thomas K. Gilhool, ID No. 03930
Public Interest Law Center of Philadelphia
125 South Ninth Street
Philadelphia, PA 19107
(215) 627-7100

Counsel for Plaintiffs David Powell, Patrice Everage,
Julia A. Davis, Geraldine Newton, Maria M. Rivera,
Mary E. Miller, The Black Clergy of Philadelphia and Vicinity,
Philadelphia Branch NAACP, ASPIRA, Inc.
of Pennsylvania, Parents Union for Public Schools,
Citizens Committee on Public Education in Philadelphia,
and Parents United for Better Public Schools



Stephanie L. Franklin-Suber
City Solicitor, ID No. 37269
Richard Feder, ID No. 55343
Jane Lovitch Istvan, ID No. 66634
City of Philadelphia Law Department
1600 Arch Street, 8th Floor
Philadelphia, PA 19103
(215) 686-5245

Counsel for the Mayor of the City of Philadelphia and the City of Philadelphia