

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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C.M., by and through his next friend, TRACY MARSHALL; A.Q., by and through her next friend, SHAWNITA QUARLES; S.G., by and through her next friend, FELICIA GANT; R.A., by and through his next friend, RUBY MARION; J.S., by and through his next friend, BRANDY SMITH; J.R., by and through his next friend, MARIAH RUSSAW; L.M., by and through his next friend, TINA GILBERT; and K.R., by and through his next friend, BETTY RICHARDSON,

Plaintiffs,

v.

ROBERT J. BENTLEY, M.D., in his official capacity as Governor of the State of Alabama; THOMAS R. BICE, Ed.D., in his official capacity as Alabama State Superintendent of Education; JULIE P. MAGEE, in her official capacity as Commissioner of Revenue of the State of Alabama; THOMAS L. WHITE, JR., in his official capacity as Comptroller of the State of Alabama,

Defendants.

Civil Action No. 2:13-cv-591-WKW

COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. This is a civil rights action on behalf of economically disadvantaged students who reside in Alabama's Black Belt and are trapped in failing schools. It seeks to enjoin the implementation of the Alabama Accountability Act of 2013 ("AAA" or

“Act”) on the grounds that it violates the Plaintiffs’ rights under the Constitution of the United States.

2. The Alabama Accountability Act is designed to “benefit students and families across Alabama regardless of their income and regardless of where they live.” (Statement of Alabama Governor Robert Bentley.) In commending the Alabama legislature for passing the Act, Governor Bentley stated that, “I’m so proud we have done this for the children of this state who are in failing school systems and have no way out. Now, they have a way out.”

3. In reality, the Act creates two classes of students assigned to failing schools – those who can escape them because of their parents’ income or where they live and those, like the Plaintiffs here, who cannot. The schools in which Plaintiffs are trapped are likely to deteriorate further as their funding is continually diminished over time as a result of the Act. All public schools, whether labeled failing or not, will suffer a reduction in resources, making it more difficult for them to continue to perform at the same level.

4. Because the Act’s benefits are not equally available to all students and because an education is necessary to prepare students to participate effectively in our democracy, the Plaintiff-students are being denied the equal protection of the law as guaranteed by the Fourteenth Amendment. Accordingly, the Plaintiff-students ask the Court to enjoin the implementation of the Alabama Accountability Act until the Defendants ensure that the Plaintiff-students, like other students in the state, have an equal opportunity to attend schools that are not failing.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343(a)(4), because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to secure equitable or other relief for the violation of those rights.

6. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 57.

7. Venue is proper in this District and Division pursuant to 28 U.S.C. §§ 81 and 1391(b) in that a substantial part of the events or omissions giving rise to the claim occurred and is ongoing within this District and Division, including the enactment and enforcement of the unlawful statute that is the subject of this lawsuit.

PARTIES

PLAINTIFFS

8. Plaintiff C.M. is a thirteen year-old child residing in Camden, Wilcox County, Alabama. Plaintiff C.M. brings this action by and through his parent and next friend, Tracy Marshall, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff C.M. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

9. Plaintiff A.Q. is a thirteen year-old child residing in Camden, Wilcox County, Alabama. Plaintiff A.Q. brings this action by and through her parent and next friend, Shawnita Quarles, in accordance with Federal Rule of Civil Procedure 17(c).

Plaintiff A.Q. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

10. Plaintiff S.G. is a thirteen year-old child residing in Camden, Wilcox County, Alabama. Plaintiff S.G. brings this action by and through her parent and next friend, Felicia Gant, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff S.G. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

11. Plaintiff R.A. is a twelve year-old child residing in Hurtsboro, Russell County, Alabama. Plaintiff R.A. brings this action by and through his legal guardian and next friend, Ruby Marion, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff R.A. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

12. Plaintiff J.S. is a fourteen year-old child residing in Fort Mitchell, Russell County, Alabama. Plaintiff J.S. brings this action by and through his parent and next friend, Brandy Smith, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff J.S. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

13. Plaintiff J.R. is a twelve year-old child residing in Louisville, Barbour County, Alabama. Plaintiff J.R. brings this action by and through his legal guardian and next friend, Mariah Russaw, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff J.R. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

14. Plaintiff L.M. is a fourteen year-old child residing in Clayton, Barbour County, Alabama. Plaintiff L.M. brings this action by and through his parent and next

friend, Tina Gilbert, in accordance with Federal Rule of Civil Procedure 17(c). Plaintiff L.M. is subject to the Alabama compulsory school attendance law. Ala. Code § 16-28-3.

15. Plaintiff **K.R.** is a five year-old child residing in Linden, Marengo County, Alabama. Plaintiff K.R. brings this action by and through his legal guardian and next friend, Betty Richardson, pursuant to Federal Rule of Civil Procedure 17(c). Plaintiff K.R. will be subject to the Alabama compulsory school attendance law beginning September 7, 2013. Ala. Code § 16-28-3.

DEFENDANTS

16. Defendant **ROBERT J. BENTLEY, M.D.** is the Governor of the State of Alabama. Defendant Bentley exercises “[t]he supreme executive power of” the State of Alabama, Ala. Const. art. V., § 113, and is constitutionally required to “take care that the laws be faithfully executed.” Ala. Const. art. V, § 120. As such, Defendant Bentley acts under the color of state law when implementing the AAA and must enforce the Act in its entirety. Defendant Bentley is sued in his official capacity.

17. Defendant **THOMAS R. BICE, Ed.D.** is the State Superintendent of Education for the State of Alabama. Defendant Bice is charged with explaining “[t]he true intent and meaning of the school laws” and deciding “all controversies and disputes involving the proper administration of the public school system.” Ala. Code § 16-4-4. Defendant Bice also is responsible for designating “failing schools” pursuant to Section 4(3) of the AAA and implementing the Alabama State Department of Education’s obligations under the AAA, which are at issue herein. Act No. 2013-265, Sections 4(3),

8(a). Defendant Bice is acting under color of state law and is sued in his official capacity.

18. Defendant **JULIE P. MAGEE** is the Revenue Commissioner for the State of Alabama. As Revenue Commissioner, Defendant Magee is the chief executive officer of the Alabama Department of Revenue (“Department of Revenue”), and “all the powers, authority, and duties vested in the Department of Revenue shall be exercised” by her. Ala. Code § 40-2-40. The Department of Revenue is charged with the “general and complete supervision and control . . . of the collection of all . . . taxes for the state and counties, and of the enforcement of the tax laws of the state” Ala. Code § 40-2-11(1). Defendant Magee is responsible for implementing the Department of Revenue’s obligations under the AAA and distributing money from the Education Trust Fund to parents eligible for the tax credits authorized by the AAA, which are at issue herein. Act No. 2013-265, Sections 8, 9. Defendant Magee is acting under color of state law and is sued in her official capacity.

19. Defendant **THOMAS L. WHITE, JR.** is the Comptroller of the State of Alabama. The Comptroller directs, supervises and controls the Alabama Department of Finance’s Division of Control and Accounts. Ala. Code § 41-4-51. Defendant White must audit and draw every warrant authorized to be drawn upon the State Treasury and any fund therein, Ala. Code §§ 41-4-50(4) and (5)(a), including those created pursuant to Section 8 of the AAA. Act No. 2013-265, Sections 8(a)(2)-(4). As Comptroller, Defendant White is responsible for diverting funds in the Education Trust Fund to a new Failing Schools Income Tax Credit Account to fund the tax credit provided in Section 8

of the AAA. *Id.* Defendant White is acting under color of state law and is sued in his official capacity.

FACTUAL ALLEGATIONS

Enactment of the Alabama Accountability Act of 2013

20. The Alabama House of Representatives initially passed H.B. 84, which would later become the AAA, on February 14, 2013. Originally known as the “Local Control School Flexibility Act,” the bill permitted local school systems to seek waivers from certain Alabama State Department of Education regulations to implement creative educational programs. The original legislation did not provide for school choice or tax credits of any sort.

21. On February 28, 2013, the Alabama State Senate passed a slightly amended version of H.B. 84, and a conference committee was convened to reconcile the House and Senate versions of the Local Control School Flexibility Act.

22. Upon information and belief, the conference committee convened at approximately 3:15 p.m. on February 28, 2013, and almost immediately went into recess leaving the two minority members behind while the majority continued to confer. When the conference committee reconvened roughly one hour later, the legislation had been renamed the “Alabama Accountability Act of 2013” and contained nineteen pages of additional text.

23. The precise origin of the AAA’s new provisions remains unclear. The late additions to H.B. 84 were lengthy, complex and technical. The replacement bill contained provisions defining “failing schools” and authorizing parents of children

assigned to “failing schools” to transfer to “nonfailing” public and nonpublic (i.e. “private”) schools. The newly added provisions created a fully refundable state income tax credit of approximately \$3,500 for parents transferring children from failing schools, directed officials of the Alabama Department of Revenue to divert funds from the Education Trust Fund (“ETF”) to pay such tax credits (with no cap on the amount of funds diverted from the ETF), and authorized individual and corporate income tax credits – up to twenty-five million dollars (\$25,000,000) – for participants in a newly added scholarship program. Act No. 2013-64, Sections 8(a)(1),(2); 9(a)(3).

24. The conference committee version of H.B. 84, including its novel school transfer and tax credit provisions, was passed in both houses of the Alabama legislature the same day the conference committee added these sweeping provisions, February 28, 2013. Defendant Bentley signed the AAA into law on March 14, 2013.

25. Following the passage of H.B. 84, the original version of the AAA, state legislators amended its definition of "failing schools" and added provisions authorizing schools and school systems to refuse students seeking to transfer from failing schools. Debate on the amendments to the original version of the AAA was as attenuated as the legislature's deliberation on the original version. Governor Bentley returned the amended version of the AAA to the Legislature with executive amendments which would have delayed implementation of the AAA's school choice and tax credit provisions, but the legislature rejected the executive amendments and the amended version of the AAA was signed into law on May 20, 2013.

The AAA's "School Choice" Provisions

26. The AAA purports to enable the parents and legal guardians of children assigned to designated "failing schools" to transfer their children to nonfailing public and nonpublic schools (*i.e.*, private schools), by providing a refundable state income tax credit to defray the costs associated with that transfer. *See* Act No. 2013-265, Section 8(a). In many instances, the student need never have actually attended the failing school.

27. The AAA defines "failing schools" as follows: 1) schools labeled as persistently low-performing by the ALSDE in its most recent federal School Improvement Grant application; 2) schools scoring in the lowest six percent of K-12 schools as measured by their performance on the Alabama Reading and Math Test ("ARMT") in three or more of the last six years; or 3) those schools designated as "failing" by the State Superintendent of Education. *See* Act No. 2013-265, Section 4(3). The Act operates such that six percent of Alabama schools will always be labeled "failing" regardless of their actual performance.

28. The value of the tax credit provided by the AAA is approximately \$3,500. *See* Act No. 2013-265, Section 8(a). The tax credit is available for tuition and mandatory fees charged by public and nonpublic schools accepting children transferring from "failing schools," but not for transportation costs incurred by parents in the course of transferring a child from a failing school to a nonfailing public or nonpublic school. *See* Act No. 2013-265, Sections 8(a)(1), 8(b)(8).

29. Where a child assigned to a "failing school" cannot transfer to a nonfailing public school within his or her local school system and, instead, transfers to a nonfailing

public school in another school system or to a nonpublic school, the child's parent must bear the entire cost of transporting the child to the receiving school.

30. The AAA also purports to enable children assigned to failing schools to transfer to nonpublic schools by creating a scholarship program through which low-income children can obtain scholarships to nonpublic schools in some circumstances. *See* Act No. 2013-265, Section 9. If a nonpublic school elects to accept students awarded scholarships by scholarship granting organizations registered with the Department of Revenue pursuant to the AAA, parents of children assigned to failing schools who transfer their children to that private school are eligible for a tax credit in an amount equal to the tuition and mandatory fees paid by the parent transferring his or her child to that school.

31. A parent may not claim a tax credit for tuition and mandatory fees paid to a nonpublic school that does not participate in the AAA's scholarship program. If the parent of a child assigned to a failing school cannot secure his or her admission to a participating nonpublic school, but nevertheless transfers the child from a failing school to a private school, the parent cannot recover any of the costs incurred as a result of the child's transfer.

32. Although the AAA authorizes the parents and legal guardians of children assigned to "failing schools" to transfer them to nonfailing schools, it also authorizes public and nonpublic school systems to refuse admission to any student, for any reason, provided that the school's refusal to admit the student is not based on the race, gender, religion, color, disability status, or ethnicity of the student or of the student's parent. *See*

Act No. 2013-265, Section 8(d)(1). Schools, school systems, and nonpublic schools also may impose any terms and conditions they deem fit on their acceptance of any transfer student. *See* Act No. 2013-265, Section 8(d)(2).

33. Because a public school qualifies as a “failing school” for purposes of the AAA, in large part, based on the Alabama Reading and Math Test scores of its students, students assigned to designated failing schools have – by definition – performed poorly as a group on the ARMT. Nonfailing schools have an incentive under the AAA to be selective in their admission of students seeking to transfer from “failing schools” in order to minimize the risk that the receiving school’s test scores would fall to a degree that the receiving school itself becomes a “failing school.”

34. Very few nonpublic schools have elected to participate in the AAA’s scholarship program, leaving poor students in isolated areas with fewer nonfailing schools to which they might transfer.

35. Shortly after the release of the official list of Alabama’s “failing schools,” a number of school systems announced that they would not accept out-of-district transfer students. Because many of the schools and school systems refusing students seeking to transfer are adjacent to school systems in which all the public schools (or, in smaller systems, the only public school) serving a particular grade or grades are failing, students seeking to transfer from failing schools often must travel an unreasonably long distance to reach a nonfailing school that will admit them. For parents who wish to transfer children trapped in failing schools, that distance increases the cost associated with the child’s transfer.

36. The AAA creates significant negative financial implications for all of Alabama's public schools as the multi-million dollar cost of funding the Act will be diverted from the Education Trust Fund, resulting in fewer dollars to distribute statewide. All public schools stand to lose funding under this scheme, whether failing or not. The schools labeled as failing schools will struggle to improve with fewer available resources.

Without the Ability to Transfer, Defendants Force the Plaintiffs to Remain in "Failing Schools"

37. On June 18, 2013, 78 Alabama public schools were officially designated "failing schools" pursuant to the AAA.

38. Alabama's designated failing schools serve economically vulnerable student populations; on average, 91.2 percent of students enrolled in such schools receive free or reduced lunch.

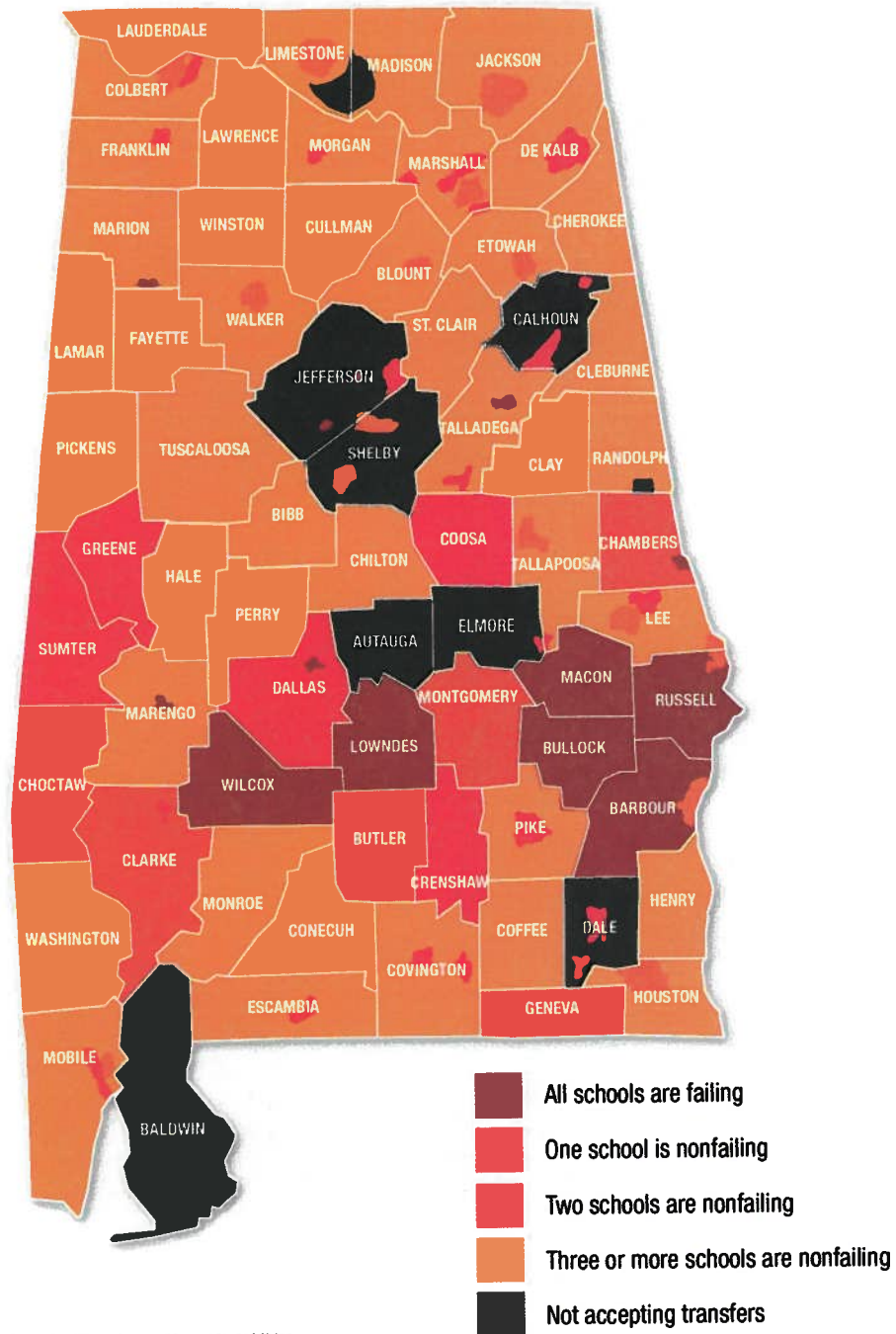
39. Nearly 40 percent of the designated failing schools – 30 of 78 – are located in the ten counties comprising Alabama's Black Belt. Black Belt counties are among the poorest in the state, with high unemployment and low per capita income. According to the 2000 census report, the median household income for families living in the Black Belt was \$27,130.

40. This high concentration of failing schools in close proximity in the Black Belt leaves students assigned to those schools with fewer nonfailing public options than their counterparts have in other areas of the state, as depicted in Figure 1.

FIGURE 1

Grades 6-8

Public Middle Schools in Alabama



Adapted from "Alabama Public School Systems" prepared by the University of Alabama, The Cartographic Research Lab for the Alabama Superintendent's Academy, October 2012

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41. Many students, including Plaintiffs, assigned to failing schools in the Black Belt have few or no nonfailing school options nearby and few financial resources with which to access those nonfailing options.

Plaintiffs C.M., A.Q. and S.G. Are Trapped in Wilcox County's Failing Public Middle School

42. Plaintiffs C.M., A.Q., and S.G. are middle school students assigned to attend the only public school serving grades six through eight in the Wilcox County school system, the Camden School of Arts & Technology ("Camden School"). It is a "failing school."

Plaintiff C.M.

43. Thirteen year-old Plaintiff C.M. resides in publicly-assisted housing in Camden and is assigned to attend the seventh grade at the Camden School for the 2013-2014 school year.

44. Plaintiff C.M. struggles in his reading and science classes, but aspires to become a police officer.

45. Education is very important to Plaintiff C.M.'s mother, Tracy Marshall, who would like for her son to read at grade level but does not believe the Camden School has the resources or personnel to help him to attain this goal.

Plaintiff A.Q.

46. Thirteen year-old Plaintiff A.Q. resides in publicly-assisted housing in Camden and is assigned to attend the eighth grade at the Camden School for the 2013-2014 school year.

47. Plaintiff A.Q. struggles in reading and math, and attempts – to little avail – to teach herself much of the material in each subject.

48. During the 2012-2013 school year, one of Plaintiff A.Q.'s teachers did not understand the class material and watched a teacher tutorial video during class in an attempt to answer questions posed by students.

49. Plaintiff A.Q. cannot take her textbooks home to study because there are not enough textbooks for all students to have individual copies.

50. Plaintiff A.Q., who would like to become a nurse, aspires to be able to read well and become a good student.

51. Plaintiff A.Q.'s mother, Shawnita Quarles, believes that education is very important to becoming a productive citizen. Ms. Quarles would like for Plaintiff A.Q. to receive an education and develop the basic skills she needs to meaningfully participate in community life, but does not believe that the Camden School has the resources or qualified teachers to give her daughter an education that will help her attain passing grades.

Plaintiff S.G.

52. Thirteen year-old Plaintiff S.G. likewise resides in publicly-assisted housing in Camden and will repeat the eighth grade at the Camden School in the 2013-2014 school year.

53. Plaintiff S.G. does not understand much of the material presented by her teachers and believes that her teachers do not explain the material well.

54. During the 2012-2013 school year, Plaintiff S.G.'s grades were critically low. She was placed on an emergency academic plan, but was not provided any direct instruction or remedial support.

55. Plaintiff S.G.'s mother, Felicia Gant, is trying to do everything within her power to ensure that her children receive an education, which she believes is vital to their ability to support themselves and become active members of the community and political process as adults.

Camden School of Arts & Technology

56. During the 2012-2013 school year, the Camden School had a total enrollment of 306 students in the seventh and eighth grades.

57. The Camden School lacks sufficient resources to provide all regular education students with individual copies of their textbooks. As a result, students spend valuable class time attempting to copy material rather than focusing on teachers' lessons.

58. Reading classes do not have enough copies of the novels used; as a result, books are presented on transparencies placed on overhead projectors.

59. Classes are frequently taught by substitute teachers, at times, for periods lasting several months.

60. Camden School students have performed within the bottom six percent of Alabama school children on the Alabama Reading and Math Test in each of the last six years.

61. The Camden School did not make Adequate Yearly Progress pursuant to federal law for the 2012-2013 school year.

Plaintiffs C.M., A.Q., and S.G. Cannot Afford to Transfer to a Nonfailing School Outside of the Wilcox County School System

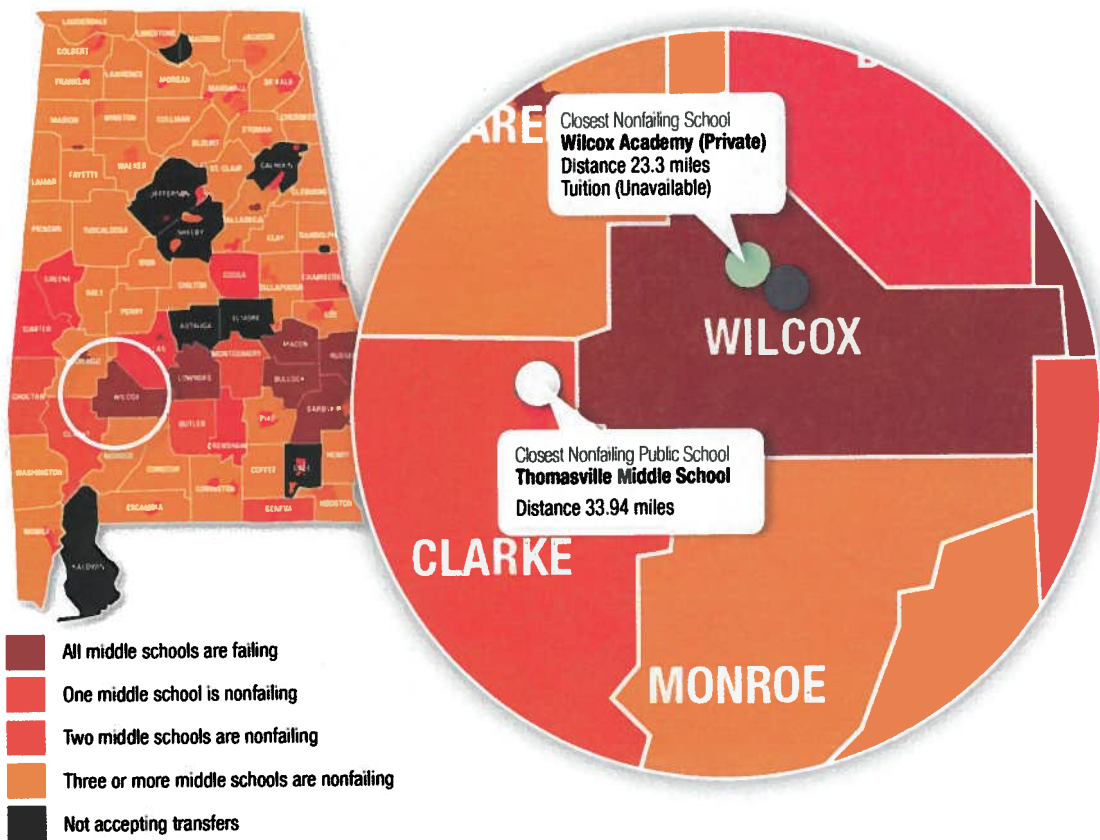
62. Plaintiffs C.M., A.Q., and S.G. must transfer outside of the Wilcox County school system to attend a nonfailing public school because their assigned school is the only public middle school in the system and is a “failing school.”

63. The nonfailing public and nonpublic schools to which Plaintiffs C.M., A.Q., and S.G. could seek to transfer are set forth in Figure 2.

FIGURE 2

Failing School – Wilcox County, Alabama

Camden School of Arts and Technology



| Nonfailing School | Location | Miles from Failing School | Tuition |
|---------------------------------------|------------------|---------------------------|-------------|
| Wilcox Academy | Private | 0.91 | Unavailable |
| Faith Academy Christian | Private | 31.72 | Unavailable |
| Orrville Mennonite School | Private | 31.93 | Unavailable |
| Thomasville Middle School | Thomasville City | 33.94 | |
| Dallas County Career Technical Center | Dallas County | 36.37 | |
| Project Success Learning Center | Lowndes County | 48.69 | |

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64. The closest nonfailing public school to which Plaintiffs C.M., A.Q., and S.G. might transfer is Thomasville Middle School, a public school operated by the Thomasville City Board of Education in Clarke County, Alabama.

65. Thomasville Middle School is approximately 34 miles from the failing school to which Plaintiffs C.M., A.Q., and S.G. are currently assigned and 33 miles from their homes. To transfer Plaintiffs C.M., A.Q., and S.G. to Thomasville Middle School, their parents will have to travel 120 miles each day (30 miles each way, twice daily), and advance any tuition and mandatory fees charged by Thomasville Middle School.

66. The next closest public schools to Plaintiffs C.M.'s, A.Q.'s, and S.G.'s assigned failing school are the Dallas County Career Technical Center and the Project Success Learning Center in Hayneville, Lowndes County, Alabama, which are 36 and 49 miles from the Camden School, respectively, and do not offer a full curriculum. The Dallas County Career Technical Center and the Project Success Learning Center do not, as such, represent meaningful transfer options where Plaintiffs C.M., A.Q., and S.G. may obtain a minimally adequate education in all core subjects.

67. Plaintiff C.M.'s parent, Tracy Marshall, who is an hourly employee at a local grocery store, lacks the financial resources to transfer Plaintiff C.M. to a nonfailing school outside of the Wilcox County school system. Ms. Marshall would suffer a significant economic loss in wages as a result of the time required to travel 120 miles each day to transfer Plaintiff C.M. to a nonfailing public school. Ms. Marshall's work schedule also precludes regular travel of that distance.

68. Plaintiff A.Q.'s parent, Shawnita Quarles, and her husband would likewise suffer a significant economic loss in any effort to transfer Plaintiff A.Q. 120 miles each day outside of the Wilcox County school system. Ms. Quarles and her husband share one vehicle, which he uses much of the time to travel to work, where he is an hourly employee at a paper company. Ms. Quarles's use of the car to travel the distance required to transfer Plaintiff A.Q. to a nonfailing public school would substantially interfere with her husband's ability to travel to and from work as well as the number of hours he could work each day. Because Ms. Quarles's husband's employment is the family's primary source of income, the travel required would jeopardize the family's ability to sustain itself.

69. Plaintiff S.G.'s parent, Felicia Gant, lacks the financial resources required to transfer Plaintiff S.G. to a nonfailing public school outside of the Wilcox County school system. Ms. Gant is currently unemployed and does not own or have regular access to a vehicle.

70. The least expensive private school within thirty miles of Plaintiffs C.M.'s, A.Q.'s, and S.G.'s failing school is the Wilcox Academy, which, upon information and belief, charges monthly tuition of at least \$180, exclusive of mandatory fees and incidental costs. Because Wilcox Academy is not participating in the AAA's scholarship program, even if Plaintiffs C.M.'s, A.Q.'s, and S.G.'s parents could pay the tuition and mandatory fees charged by Wilcox Academy, they would not be eligible for a tax credit to defray those costs.

71. As set forth above, Ms. Marshall, Ms. Quarles, and Ms. Gant, respectively, lack the financial resources to pay the tuition and fees charged by Wilcox Academy.

72. Due to Plaintiffs C.M.'s, A.Q.'s, and S.G.'s inability to transfer to a nonfailing school, they are effectively trapped in their failing school without meaningful access to a minimally adequate education.

Plaintiffs R.A. and J.S. Are Trapped in Russell County's Failing Public Middle School

73. Plaintiffs R.A. and J.S. are middle school students assigned to attend the only public school serving grades six through eight in the Russell County school system, Russell County Middle School. It is a failing school.

Plaintiff R.A.

74. Thirteen year-old Plaintiff R.A. resides in Hurtsboro and is assigned to repeat the seventh grade at Russell County Middle School for the 2013-2014 school year.

75. Plaintiff R.A. struggles academically due to a lack of actual instruction and has difficulty reading and writing. Often, when Plaintiff R.A. requests assistance with his classwork and homework, his teachers do not provide it.

76. Weeks before the end of the spring semester, Plaintiff R.A.'s grandmother and legal guardian, Ruby Marion, learned that he was failing several classes. Ms. Marion sent Plaintiff R.A. to "credit recovery," an afterschool program that offers computer-based classes to make up credits, but believes that Plaintiff R.A. was given no additional instruction on the subjects that he was failing. As a result, Plaintiff R.A. was retained and must repeat the seventh grade during the 2013-2014 school year.

77. Plaintiff R.A. aspires to learn but believes that Russell County Middle School lacks the resources and personnel to help him do so.

78. Ms. Marion cares deeply about her grandson's education and wants to make sure that Plaintiff R.A. acquires the basic skills he needs to become a productive citizen capable of meaningful participation in the political process and community life.

Plaintiff J.S.

79. Fourteen year-old Plaintiff J.S. resides in Fort Mitchell and is assigned to repeat the eighth grade at Russell County Middle School for the 2013-2014 school year.

80. Plaintiff J.S. struggles to participate in his classes. When Plaintiff J.S. told one of his teachers that he could not see the board, she stood beside his assigned seat and said, "I can see just fine," and refused to allow him to move closer to the board.

81. When Plaintiff J.S. attempts to ask questions concerning class material and tells teachers that he does not understand, he is "written up" for "back talking."

82. Plaintiff J.S.'s textbooks are covered in handwriting, including gang-related markings, some of which obscure the text.

83. Over the course of the entire 2012-2013 school year, J.S. read only one novel in his English class. The students were not provided individual copies of the novel for use in their classroom. Instead, the teacher displayed transparencies of the material on the overhead projector and had students take turns reading from the projector.

84. Plaintiff J.S.'s class does not participate in science labs; instead, his teacher held up a single microscope to show students the instrument. Students were not allowed to use the microscope.

85. Plaintiff J.S. struggles to read. His mother, Brandy Smith, asked Russell County Middle School personnel to assist him, but received no response at any time.

86. At the end of the 2012-2013 school year, Russell County Middle School tried to promote Plaintiff J.S. to high school despite his poor understanding of the material covered, but Ms. Smith believed that he had not been provided the instruction he needed and requested that he not be socially promoted.

87. Plaintiff J.S. aspires to learn and read at grade level, but believes that Russell County Middle School lacks the resources and personnel to help him do so.

88. Ms. Smith cares about her son's education and wants to make sure that he acquires the basic skills he needs to be a productive, self-supporting citizen.

Russell County Middle School

89. During the 2012-2013 school year, Russell County Middle School had a total enrollment of 618 seventh and eighth grade students.

90. In five of the last six years, Russell County Middle School students have performed within the bottom six percent of all Alabama school children on the Alabama Reading and Math Test.

91. Russell County Middle School did not make Adequate Yearly Progress pursuant to federal law for the 2012-2013 school year.

Plaintiffs R.A. and J.S. Cannot Afford to Transfer to a Nonfailing School Outside of Russell County

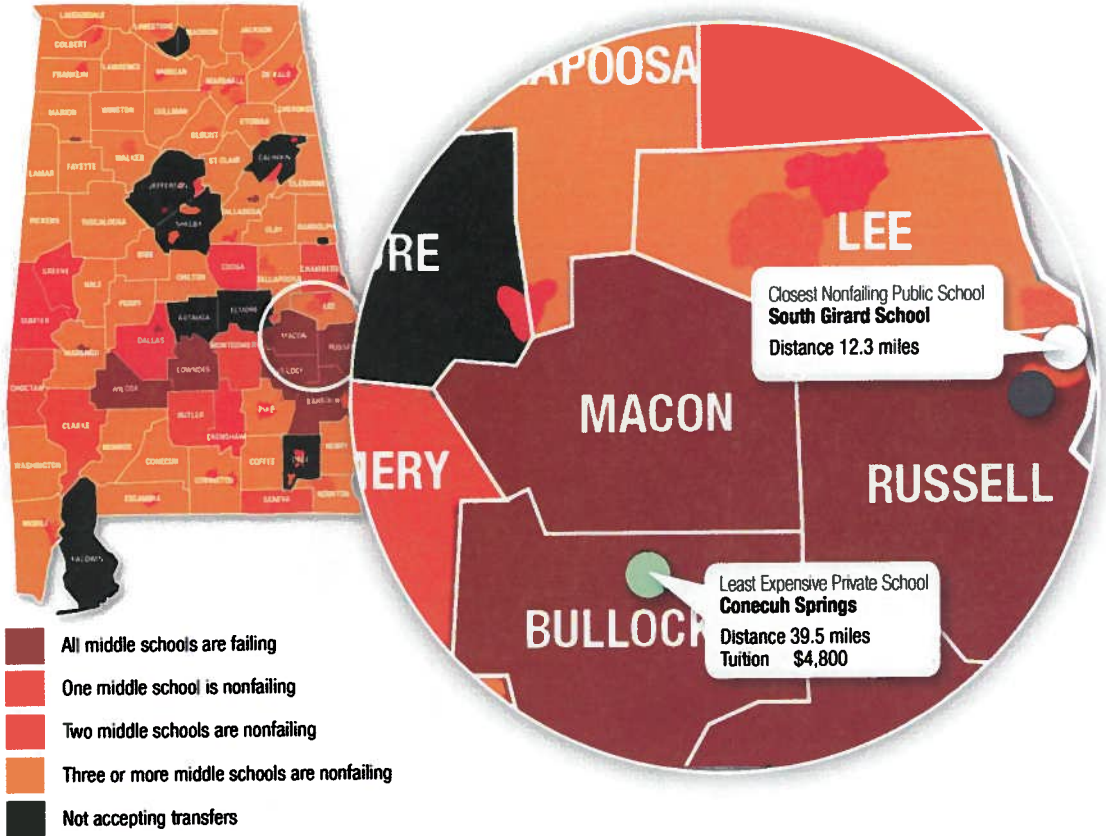
92. Plaintiffs R.A. and J.S. must transfer outside of the Russell County school system to attend a nonfailing public school because their assigned school is the only public middle school in the district and is a “failing school.”

93. The nonfailing public and nonpublic schools to which Plaintiffs R.A. and J.S. could seek to transfer are set forth in Figure 3.

FIGURE 3

Failing School – Russell County, Alabama

Russell County Middle School



| Nonfailing School | Location | Miles from Failing School | Tuition |
|----------------------------------|-------------|---------------------------|---|
| South Girard School | Phenix City | 12.3 | |
| Phenix City Intermediate | Phenix City | 15.3 | |
| New Testament Baptist School | Private | 16.5 | Unavailable |
| Glenwood School Inc. | Private | 19.5 | \$5,420 (5-6); \$5,960 (7-8); \$6,075 (9) |
| Smith Station Freshman Center | Lee County | 21.1 | |
| Smith Station Junior High School | Lee County | 21.1 | |
| Sanford Middle School | Lee County | 28.8 | |
| Holy Trinity Day School | Private | 33 | Unavailable |
| Conecuh Springs | Private | 39.5 | \$4,800 |
| St. Joseph Catholic | Private | 44.2 | Unavailable |

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94. The closest nonfailing public school to which Plaintiff R.A., a rising seventh grader, might seek to transfer is Phenix City Intermediate School, a public school operated by the Phenix City Board of Education serving students in grades six and seven.

95. The Phenix City Intermediate School (“PCIS”) is 15 miles from the failing school to which Plaintiff R.A. is assigned and 34 miles from his home.

96. The closest nonfailing public school to which Plaintiff J.S., an eighth grader, might seek to transfer is South Girard School (“SGS”), a public school operated by the Phenix City School System serving students in the eighth grade. SGS is 12 miles from Plaintiff J.S.’s assigned failing school and his home. Upon information and belief, SGS officials have elected not to accept eighth grade students residing outside of the Phenix City school system as transfer students under the AAA.

97. Plaintiffs R.A. and J.S. might also seek to transfer from their assigned failing school to Sanford Middle School or Smiths Station Junior High School, schools operated by the Lee County Board of Education which are 29 miles and 21 miles away, respectively. Upon information and belief, however, the Lee County School System has elected, as a matter of system-wide policy, not to accept students residing outside of the school system as transfer students under the AAA.

98. As a result, to transfer Plaintiffs R.A. and J.S. to a nonfailing public school, their families would be forced to travel well over 120 miles (30 miles one way, twice daily) from their assigned failing school and advance any tuition and mandatory fees charged by the receiving school.

99. Plaintiff R.A.'s grandmother, Ruby Marion, would like to transfer him to a nonfailing school, but cannot afford to transfer him to PCIS given her reliance on social security as her sole source of income to support herself and Plaintiff R.A.

100. Ms. Marion's fixed income renders her unable to travel 136 miles each day (34 miles each way, twice daily) to transfer Plaintiff R.A. to PCIS and pay any tuition or mandatory fees charged by PCIS.

101. Plaintiff J.S.'s mother, Brandy Smith, also lacks the financial resources to transfer him to a nonfailing public school outside of the Russell County school system. Ms. Smith has two other sons, one of whom has muscular dystrophy and requires a great deal of care. Ms. Smith is unemployed and relies on social security disability as the primary source of financial support for her family. Due to Ms. Smith's obligations as primary caregiver to a child with special needs and reliance on social security, she can neither travel 120 miles daily to take Plaintiff J.S. to a nonfailing school outside of Russell County and back home, nor pay any tuition or mandatory fees charged by a receiving public school.

102. The least expensive private school within 30 miles of Plaintiffs R.A.'s and J.C.'s failing school is Glenwood School, Inc. ("Glenwood") in Lee County, which charges annual tuition in the amount of \$5,960, exclusive of mandatory fees and incidental charges, and is 20 miles from Russell County Middle School.

103. As set forth above, neither Ms. Marion nor Ms. Smith can afford to pay the tuition and fees charged by Glenwood. Furthermore, because Glenwood is not participating in the AAA's scholarship program, even if Ms. Marion or Ms. Smith could

pay the tuition and mandatory fees charged by Glenwood, neither would be eligible for a tax credit under the AAA to defray the cost of transferring Plaintiffs R.A. and J.S. to a nonfailing school.

104. Due to Plaintiffs R.A.'s and J.S.'s inability to transfer to a nonfailing school, Plaintiffs R.A. and J.S. are effectively trapped in their assigned failing school without meaningful access to a minimally adequate education.

Plaintiffs J.R. and L.M. Are Trapped in Barbour County's Failing Junior High School

105. Plaintiffs J.R. and L.M. are junior high school students assigned to attend the only public school serving students in grades seven through nine in the Barbour County school system, Barbour County Junior High School ("Barbour Junior High"). It is a failing school.

Plaintiff J.R.

106. Twelve year-old Plaintiff J.R. resides in Clayton and is assigned to attend the seventh grade at Barbour Junior High for the 2013-2014 school year.

107. Plaintiff J.R. struggles to read and do basic schoolwork.

108. Education is very important to Plaintiff J.R.'s grandmother and legal guardian, Mariah Russaw, who worked in Alabama's cotton fields for nearly forty years. She desperately wants for Plaintiff J.R. and her other grandchildren to receive an education so that they may become productive citizens and have a better life than she has had.

109. Ms. Russaw does not believe, however, that Plaintiff J.R. will learn to read at grade level or build his competencies in other subjects at Barbour Junior High.

Plaintiff L.M.

110. Fourteen year-old Plaintiff L.M. also resides in Clayton and is assigned to attend the ninth grade at Barbour Junior High for the 2013-2014 school year.

111. Plaintiff L.M. struggles with both reading and writing.

112. Plaintiff L.M.'s mother, Tina Gilbert, does not believe that Barbour County Junior High School has the resources or personnel to help Plaintiff L.M. attain his goal to become a proficient reader.

113. Ms. Gilbert did not complete her education, and as a result, is doing everything within her power to ensure that her son, Plaintiff L.M., receives the education he needs to have a "future" in the world as a self-sustaining adult engaged in the political process and community life.

Barbour Junior High

114. Barbour Junior High had a total enrollment of 223 students in the seventh through the ninth grades during the 2012-2013 school year.

115. Barbour Junior High students have performed within the bottom six percent of Alabama school children on the Alabama Reading and Math Test for each of the last six years.

116. Barbour Junior High did not make Adequate Yearly Progress pursuant to federal law for the 2012-2013 school year.

Plaintiffs J.R. and L.M. Cannot Afford to Transfer to a Nonfailing School Outside of Barbour County

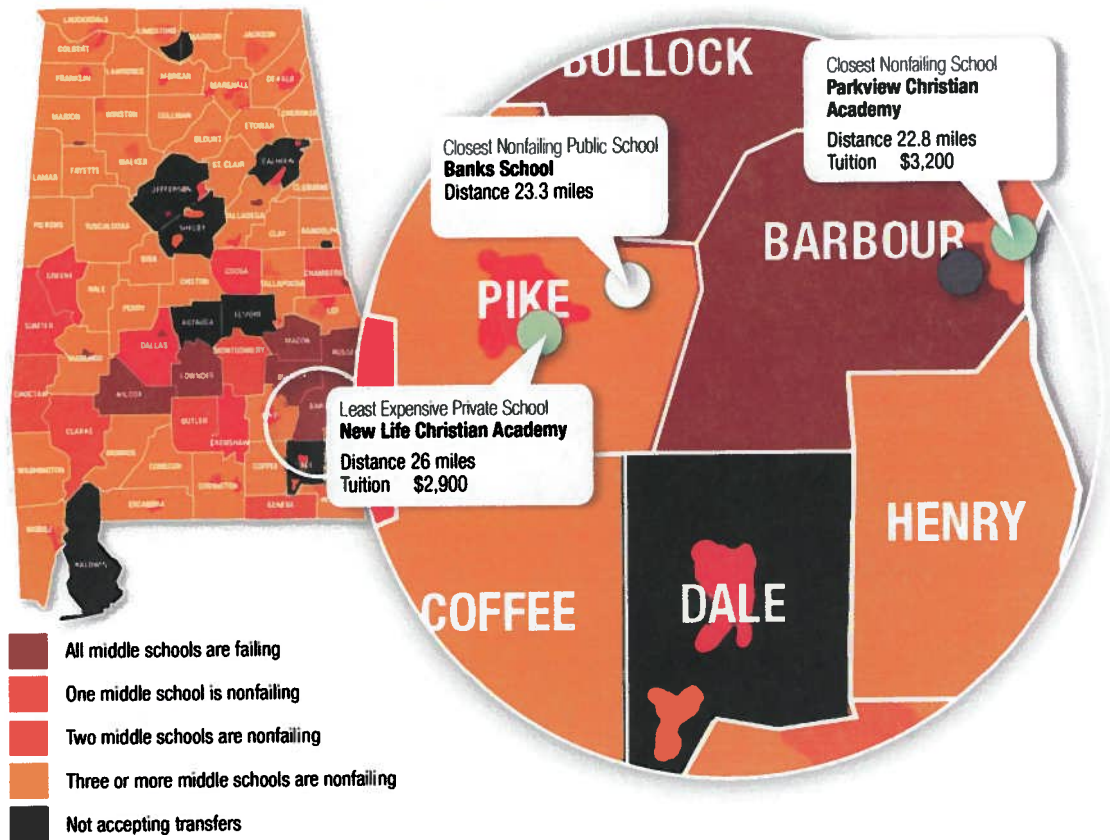
117. Plaintiffs J.R. and L.M. must transfer outside of the Barbour County school system to attend a nonfailing public school because their assigned school is the only public junior high school in the system and is a “failing school.”

118. The nonfailing public and nonpublic schools to which Plaintiffs J.R. and L.M. could seek to transfer are set forth in Figure 4.

FIGURE 4

Failing School – Barbour County, Alabama

Barbour County Middle School



| Nonfailing School | Location | Miles from Failing School | Tuition |
|---------------------------------|--------------|---------------------------|---------|
| Parkview Christian Academy | Private | 22.8 | \$3,200 |
| Banks School | Pike County | 23.3 | |
| Ariton School | Dale County | 26.7 | |
| Pike County High School | Pike County | 28.9 | |
| Abbeville High School | Henry County | 29 | |
| George W. Long High School | Dale County | 35.7 | |
| New Life Christian Academy | Private | 26 | \$2,900 |
| Troy-Pike Center for Technology | Pike County | 37.6 | |

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119. The closest nonfailing public school to which Plaintiff J.R., a rising seventh grader, might seek to transfer is the Banks School in Pike County, a public school operated by the Pike County Board of Education serving students in kindergarten through eighth grade.

120. The Banks School is 23 miles from the failing school to which Plaintiff J.R. is currently assigned and 19 miles from his home.

121. The closest nonfailing public school to which Plaintiff L.M., a rising ninth grader, might seek to transfer is the Ariton School, a public school operated by the Dale County Board of Education serving students in kindergarten through twelfth grade.

122. The Ariton School is 27 miles from the failing school to which Plaintiff L.M. is currently assigned and 28 miles from his home.

123. Upon information and belief, the Dale County Board of Education has elected, as a matter of system-wide policy, not to accept students residing outside of the school system as transfer students under the AAA.

124. Plaintiff L.M. also might seek to transfer from his assigned failing school to Pike County High School, which is located 29 miles from Barbour Junior High and 30 miles from his home.

125. Despite her desire to transfer Plaintiff J.R. to a nonfailing public school, Mariah Russaw, his grandmother and legal guardian, has neither the ability nor the financial resources to travel 76 miles each day (19 miles one way, twice daily) to take Plaintiff J.R. to the Banks School and back, or to pay any tuition and mandatory fees charged as a condition of his enrollment.

126. Plaintiff J.R.'s mother has multiple sclerosis; Mariah Russaw is therefore his custodial guardian during the school year. Ms. Russaw, who is 62 years old, has Bell's Palsy and often has sharp pains. She has sustained herself by means of disability payments which were recently discontinued. As of this date of this filing, Ms. Russaw has no reliable source of income.

127. Although Plaintiff L.M.'s mother, Tina Gilbert, strongly desires to transfer him to a nonfailing public school, she cannot travel 120 miles daily (30 miles each way, twice daily) to Pike County High School nor pay any tuition and mandatory fees charged as a condition of Plaintiff L.M.'s enrollment.

128. Ms. Gilbert neither owns nor has reliable access to a vehicle with which she could transfer Plaintiff L.M. to a nonfailing school outside of the Barbour County. Ms. Gilbert is also unable to pay any tuition and mandatory fees charged by Pike County High School as a condition of Plaintiff L.M.'s enrollment.

129. The closest private school within 30 miles of Plaintiffs J.R.'s and L.M.'s failing school, Parkview Christian Academy ("Parkview"), charges annual tuition in the amount of \$3,200, exclusive of mandatory fees and incidental charges, and is 30 miles from Barbour Junior High. Because Parkview is not participating in the AAA scholarship program, even if Ms. Russaw or Ms. Gilbert could pay the tuition and mandatory fees charged by Parkview, neither would be eligible for a tax credit under the AAA.

130. As set forth above, Ms. Russaw and Ms. Gilbert, respectively, lack the financial resources to pay the tuition and fees charged by Parkview.

131. Due to Plaintiffs J.R.'s and L.M.'s inability to transfer to a nonfailing public or nonpublic school, Plaintiffs J.R. and L.M. are effectively trapped in their assigned failing school without meaningful access to a minimally adequate education.

Plaintiff K.R. is Trapped in Linden's Failing Elementary School

Plaintiff K.R.

132. Five year-old Plaintiff K.R. resides in Linden and is assigned to attend the only public school serving kindergarten students in the Linden City school system, Linden Elementary School, for the 2013-2014 school year. It is a failing school located in Marengo County, which lies within Alabama's Black Belt.

133. Plaintiff K.R. is thus required to begin his formal education at a failing school.

134. Because of Linden Elementary School's chronically poor performance, Plaintiff K.R.'s grandmother and legal guardian, Betty Richardson, is deeply concerned that Plaintiff K.R. will not receive the basic instruction vital to skills built during students' foundation years. Ms. Richardson believes that these skills are important for Plaintiff K.R. to develop so that he may meaningfully engage in the political process and community life as an adult.

Linden Elementary School

135. Linden Elementary School had a total enrollment of 216 students in the kindergarten through fifth grades during the 2012-2013 school year.

136. Linden Elementary School students have performed within the bottom six percent of Alabama school children on the Alabama Reading and Math Test for three of the preceding six years.

137. Linden Elementary School did not make Adequate Yearly Progress pursuant to federal law for the 2012-2013 school year.

Plaintiff K.R. Cannot Afford to Transfer to a Nonfailing School Outside of the Linden City School System

138. Plaintiff K.R. must transfer outside of the Linden City school system to attend a nonfailing public school because his assigned school is the only public elementary school in the system and is a “failing school.”

139. There are only three nonfailing public schools within 30 miles of Plaintiff K.R.’s assigned school to which he might seek to transfer.

140. The two closest nonfailing public schools to which Plaintiff K.R. might transfer are U.S. Jones Elementary School and Westside Elementary School, both of which are operated by the Demopolis City School System in Marengo County. U.S. Jones Elementary School and Westside Elementary School are 16 and 18 miles, respectively, from Plaintiff K.R.’s assigned failing school and his home.

141. Upon information and belief, the Demopolis City Schools Board of Education has elected, as a matter of system-wide policy, not to accept students residing outside of the school system as transfer students under the AAA.

142. The only other nonfailing public school within 30 miles of Plaintiff K.R.’s assigned failing school is Uniontown Elementary School, a public school operated by the

Perry County Board of Education in Marion, Alabama. Uniontown Elementary School is 27 miles from Linden Elementary School and 27 miles from Plaintiff K.R.'s home.

143. Despite Ms. Richardson's desire that Plaintiff K.R. receive a good education during his critical foundation years, she lacks the financial resources required to transfer him to a nonfailing school outside of the Linden City school system.

144. Ms. Richardson is disabled and her sole source of income is the \$710 disability assistance she receives monthly. She does not own a vehicle. Ms. Richardson cannot travel 108 miles each day (27 miles one way, twice daily) to take Plaintiff K.D. to Uniontown Elementary School and back, nor is she able to pay any tuition or mandatory fees charged as a condition of his enrollment.

145. The least expensive private school within 30 miles of Plaintiff K.R.'s failing school is Marengo Academy in Marengo County, which charges annual tuition in the amount of \$4,260, exclusive of mandatory fees and incidental charges, and is 28 miles from Linden City Elementary School. Because Marengo Academy is not participating in the AAA's scholarship program, even if Ms. Richardson could pay the tuition and mandatory fees charged by Marengo Academy, she would not be eligible for a tax credit under the AAA.

146. As set forth above, Ms. Richardson lacks the financial resources necessary to pay the tuition and fees charged by Marengo Academy to enroll Plaintiff K.R.

147. Due to Plaintiff K.R.'s inability to transfer to a nonfailing school, he is effectively trapped in his assigned failing school without access to a minimally adequate education.

Because They Are Trapped in Failing Schools, Plaintiffs' Access to an Adequate Education is Being Compromised

148. While the AAA purports to open the doors to a nonfailing education to all Alabama school children, it leaves Plaintiffs and as many as four thousand of their peers whose families cannot overcome the financial and geographical obstacles to transfer with no option but to remain in “failing schools.”

149. Trapped in failing schools, the Plaintiffs' access to adequate educational opportunities is being compromised.

150. The AAA abandons Plaintiffs in failing schools that deny them access to a minimally adequate education, which, in turn, deprives Plaintiffs of meaningful opportunities for self-expression, communication with others, and ultimately the tools for effective participation in the American political process.

151. Education has long been recognized as a necessary tool to participate effectively in the political process and freely express oneself in the nation's courts and beyond. Literacy is a vital skill to be developed through a minimally adequate education in order to foster an individual's ability to effectively participate in the political process and express oneself. The United States Supreme Court long ago recognized that “some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence.” *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972).

152. Distinguishing among Alabama school children with respect to their access to adequate educational opportunities on the basis of their parents' wealth and location is

not rationally related to advancing any interest that the State of Alabama may have in the education received by children within the state.

DECLARATORY AND INJUNCTIVE RELIEF

153. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend that they face an imminent threat of harm if the AAA is enforced and that this law violates the United States Constitution and federal law. Defendants are obligated to enforce the AAA unless it is found to be illegal.

154. If Defendants are not enjoined from implementing and enforcing the AAA, the Act will cause irreparable injury to Plaintiffs.

155. Plaintiffs have no adequate remedy at law.

CAUSE OF ACTION

For Violation of the Equal Protection Clause of the Fourteenth Amendment; 42 U.S.C. §1983

156. The foregoing allegations are repeated and incorporated as though fully set forth herein.

157. The Fourteenth Amendment to the United States Constitution provides that “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

158. The actions of Defendants under the color of state law to implement the AAA deny Plaintiffs the equal protection of the Constitution of the United States.

159. Plaintiffs seek relief pursuant to 42 U.S. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Assume jurisdiction over this matter;
- b. Declare that the provisions of the Alabama Accountability Act of 2013 that operate to exclude Plaintiffs from the opportunity to obtain a nonfailing education as defined by the Act are unconstitutional;
- c. Permanently enjoin Defendants from the provisions of the Alabama Accountability Act of 2013 that operate to exclude Plaintiffs from the opportunity to obtain a nonfailing education as defined by the Act;
- d. Award Plaintiffs' costs of suit, reasonable attorneys' fees, and other expenses; and
- e. Grant such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 19th day of August, 2013.

SOUTHERN POVERTY LAW CENTER

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