

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**DAVID CABALLERO, JUDITH CABALLERO, )  
REVITIA CALDWELL, DORSEY CARSON, )  
SUSAN CARSON, LASHRON COOLEY, )  
KEYONDA CRAFT, ANITA DEROUEN, )  
AMELIE HAHN, ANNA INGBRETSSEN )  
HALL, WES HARP, TARASA BRIERLY- )  
HARP, CONSTANCE LLOYD, ROBBY )  
LUCKETT, RUKIA LUMUMBA, CHAKA )  
BENJAMIN, AMANDA MCGUFFEY, MITCH )  
MCGUFFEY, JOY PARIKH, KERI PEREZ, )  
TREY PEREZ, EARLINE RAWLS, KIM )  
ROBINSON, LARRY STAMPS, ALBERT )  
SYKES, LAKENDRA TRAVIS, STEVE )  
TUTTLE, JULIE WEEMS, AMARYLIS WEST, )  
KRISTIAN WOODRUFF, and their minor )  
SCHOOL CHILDREN, all students of the )  
Jackson Public School District. )**

**CAUSE NO.: \_\_\_\_\_**

**Plaintiffs,**

**v.**

**CAREY WRIGHT, MISSISSIPPI )  
STATE SUPERINTENDENT )  
OF EDUCATION; ROSEMARY AULTMAN, )  
CHAIR OF THE STATE BOARD OF )  
EDUCATION; AND )  
HEATHER WESTERFIELD, CHAIR OF THE )  
STATE COMMISSION ON SCHOOL )  
ACCREDITATION. )**

**Defendants.**

**EMERGENCY PETITION FOR TEMPORARY AND PERMANENT INJUNCTION,  
AND COMPLAINT FOR RELIEF UNDER 42 U.S.C. § 1983**

**(INJUNCTIVE RELIEF REQUESTED)**

COME NOW Plaintiffs David Caballero, Judith Caballero, Revitia Caldwell, Dorsey Carson, Susan Carson, Lashron Cooley, Keyonda Craft, Anita DeRouen, Amelie Hahn, Anna

Ingebretsen Hall, Wes Harp, Tarasa Briefly-Harp, Constance Lloyd, Robby Lockett, Rukia Lumumba, Chaka Benjamin, Amanda McGuffey, Mitch McGuffey, Joy Parikh, Keri Perez, Trey Perez, Earline Rawls, Kim Robinson, Larry Stamps, Albert Sykes, Lakendra Travis, Steve Tuttle, Amarylis West, and Kristian Woodruff (collectively, “JPS Parents”), and their minor school children, all students of the Jackson Public School District (“JPS Schoolchildren”), and file this, their Complaint against Carey Wright, Mississippi State Superintendent of Education; Rosemary Aultman, Chair of the State Board of Education; and Heather Westerfield, Chair of the State Commission on School Accreditation.

1. This is an action for injunctive, declaratory and equitable relief for Defendants’ violations of the procedural due process, substantive due process, and equal protection clauses of Fourteenth Amendment to the U.S. Constitution, for deprivation of civil rights, and for actionable violations under 42 U.S.C. § 1983 and § 1988, and 28 U.S.C.S. § 1343, wherein Plaintiffs seek to enjoin the Defendants from determining whether an “extreme emergency situation” exists, and enjoin a state takeover of the Jackson Public School District and their public schools, without first affording Plaintiffs’ notice and a hearing as required by the Due Process Clause.

2. The Defendants engaged in unconstitutional actions that have harmed Plaintiffs, the JPS Schoolchildren and JPS Parents; and deprived Plaintiffs of their constitutional rights.

### **I. JURISDICTION AND VENUE**

3. This Court has original jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

4. This Court is the proper venue for the instant dispute pursuant to 28 U.S.C. § 1391, as the actions alleged herein occurred in the Southern District of Mississippi.

5. Defendants do not have sovereign immunity and are amenable to suit in this Court.

6. Furthermore, suits for injunctive and declaratory relief, and under 42 U.S.C. § 1983 and § 1988, do not implicate the Mississippi Tort Claims Act.

## **II. PARTIES**

7. Plaintiffs are minor and adult residents of Jackson, Hinds County, Mississippi. Plaintiffs are schoolchildren enrolled and attending public schools within the Jackson Public School District (“JPS” or “the JPS District”), and their parents.

8. Defendant Carey Wright is the Mississippi State Superintendent of Education (the “State Superintendent”).

9. Defendant Rosemary Aultman is the Chair of the State Board of Education (the “State Board”).

10. Defendant Heather Westerfield is the Chair of the State Commission on School Accreditation (the “Commission”).

## **III. FACTUAL ALLEGATIONS**

11. Over the course of over twenty years, beginning in 1996, the Mississippi Department of Education (“MDE”) has taken over public school districts on nineteen (19) different occasions.

12. Defendants are all officers of MDE with authority to set policies and procedures, either formally or informally, including policies and procedures for hearings on whether an “extreme emergency situation” exists justifying a state takeover.

13. Many of those public school districts were taken over under these Defendants’ policies and procedures.

14. Defendants' policies and procedures were used last week when the Commission and State Board held separate hearings on whether an "extreme emergency situation" exists justifying a state takeover of Plaintiffs' public schools and their school district.

**DEFENDANTS' AND MDE'S TAKEOVERS HAVE MORE THAN A *DE MINIMUS* EFFECT ON PARENTS' AND SCHOOLCHILDREN'S CONSTITUTIONAL RIGHTS TO EDUCATION**

15. Plaintiffs are in immediate and imminent threat of a state takeover of their public schools and school district.

16. Upon each of Defendants' and MDE's takeovers, the public school district's school board is immediately dissolved, and with it all semblance of local control.

17. That is exactly what Defendants have sought to do in this instance. The Jackson School Board will be removed and replaced with state authority and control, without any due process being afforded to Plaintiffs.

18. If the Defendants and MDE are allowed to take over the JPS District, the JPS District's Superintendent is automatically terminated, without any due process hearing for Plaintiffs, JPS Schoolchildren and JPS Parents, or any meaningful opportunity to be heard.

19. Under each of Defendants' and MDE's conservatorship, Defendants, directly and/or indirectly, have the power to terminate and/or refuse to rehire all public school district employees, including district teachers and principals, and Defendants directly or indirectly use that power to do so.

20. That is exactly what Defendants have sought to do in this instance, without any due process being afforded to Plaintiffs.

21. Upon each MDE takeover, Defendants, directly and/or indirectly, have the power to terminate and/or refuse to rehire the district's administrators, and Defendants directly or indirectly use that power to do so.

22. That is exactly what Defendants have sought to do in this instance, without any due process being afforded to Plaintiffs.

23. Upon each MDE takeover, Defendants, directly and/or indirectly, take over total control of the district's finances.

24. That is exactly what Defendants have sought to do in this instance, without any due process being afforded to Plaintiffs.

25. Under each of the Defendants' and MDE's conservatorships, Defendants, directly and indirectly, have the power to raise school district taxes 4% per year, each year, without any local representative, voice, or vote in the matter—true local “taxation without representation.”

26. For example, in Leflore County, that district's conservator has raised taxes every year for many years, without evidence of any academic improvement.

27. Parents' and schoolchildren's Constitutionally-recognized property and liberty interests in public education are directly and meaningfully impacted by Defendants' and MDE's accreditation and conservatorship proceedings.

**DEFENDANTS' AND MDE'S TAKEOVERS ARE FAILURES, AND DIRECTLY AFFECT PARENTS' AND SCHOOLCHILDREN'S CONSTITUTIONAL RIGHTS TO THEIR PUBLIC SCHOOL EDUCATION**

28. Defendants wrongly assume that a takeover by them and MDE of any unsatisfactory public school district will actually improve those unsatisfactory school districts.

29. Some of Defendants' and MDE's takeovers have occurred after Defendants and other Commissioners and State Board members have found, as they have here, the existence of an “extreme emergency situation...that jeopardizes *the safety, security or educational interests of the children* enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law.” Miss. Code. Ann. § 37-17-6(12)(b) (emphasis added).

30. Clearly, the applicable statute deals with “the safety, security or educational interests of the children enrolled in the schools in that district” which are directly affected, as expressly stated in Miss. Code. Ann. § 37-17-6(12)(b).

31. Equally as clear is that the Plaintiffs, which include “the children enrolled in the schools in that district,” have a Constitutional right to notice and to be heard on Defendants’ actions affecting Plaintiffs’ “safety, security or educational interests.”

32. To state the obvious, an impending state conservatorship, and Defendants’ and MDE’s attempts to take over Plaintiffs’ public school district, directly impacts these Plaintiffs’ “safety, security [and] educational interests.”

33. A state takeover would have more than a *de minimus* effect on these Plaintiffs’ “safety, security [and] educational interests,” particularly considering MDE’s failures to improve students’ academic achievements in takeover districts.

34. Of the nineteen (19) state takeovers by MDE since 1996, three (3) were second takeover attempts by MDE to improve the very same districts that MDE had failed at improving before.

35. For these much smaller public school districts that have been taken over by Defendants and/or MDE (none larger than 3,500 students), Defendants and MDE have an abysmal record.

36. Out of the nineteen (19) state school district takeovers by the Defendants and MDE, the vast majority of these districts have been and continue to be failing “D” and “F” grade districts, even by MDE’s subjective and spurious rankings and grades.

37. Public school districts are often in worse condition after a takeover than when Defendants and MDE took them over; few public school districts, if any, show any appreciable, sustainable improvements.

38. Of the nineteen (19) takeovers of sixteen (16) separate districts, fourteen (14) public school districts exist today in one form or another.

39. Of these fourteen (14) currently-existing districts that have been taken over by Defendants and MDE, most are currently unsatisfactory “D” graded districts in the bottom 20% of all Mississippi schools.

40. Three (3) takeover districts are currently failing “F” grade districts that among the very worst in the entire state; four (4) districts are in the rock bottom 10% of the MDE rankings.

41. For 2016, the statuses for public school takeover districts are as follows:

a. **North Panola School District** (1996-1997; 2008-2013) (~2,200 students at takeover):

- North Panola was one of MDE’s first takeovers, and was taken over by MDE again a second time.
- Even after a combined six (6) years of unsuccessful MDE takeovers, North Panola has no appreciable academic improvement.
- According to MDE rankings and gradings, North Panola is currently ranked **97<sup>th</sup>** of the 127 ranked school districts, and has an **unsatisfactory “D” grade**.

b. **Tunica County School District** (1996-2002; 2015-present) (~1,600 students at takeover):

- Tunica is a small district, and was one of MDE’s first takeovers.

- After five (5) years of an unsuccessful MDE takeover, Tunica was also taken over again a second time.
  - Even after a combined eight (8) years of unsuccessful MDE takeovers, Tunica County only last year moved from a “D” to a “C” grade.
  - Tunica County is currently ranked **95<sup>th</sup>** of the 127 ranked school districts.
- c. **Oktibbeha County School District** (1997-2002; 2012-2015) (~1,449 students at takeover):
- Oktibbeha County **no longer exists** in its prior form.
  - After a combined eight (8) years of unsuccessful MDE takeovers, Oktibbeha County had not improved academically, and was combined with the successful Starkville School District by the Mississippi Legislature.
  - The newly combined Starkville/Oktibbeha County School District is curiously unranked, and has a “C” grade.
- d. **North Bolivar County School District** (2005-2006) (~890 students at takeover):
- North Bolivar County **no longer exists** in its prior form.
  - After a year of an unsuccessful MDE takeover, North Bolivar County had not improved by 2014, so the district was combined with the Mound Bayou School District.
  - North Bolivar Consolidated is currently ranked **112<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**.



- e. **Holmes County School District** (2006-2007) (~3,557 students at takeover):
- Even after a year of an unsuccessful MDE takeover, Holmes County has no appreciable academic improvement.
  - Holmes County is currently ranked **123<sup>rd</sup>** of the 127 ranked school districts (ranked below the JPS District), and has a **failing “F” grade**.
- f. **Jefferson Davis County School District** (~1,500 students at takeover):
- Even after two (2) years of an unsuccessful MDE takeover between 2007-2009, Jefferson Davis County has no appreciable academic improvement.
  - Jefferson Davis is currently ranked **92<sup>nd</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**.
- g. **Hazelhurst School District** (~1,660 students at takeover):
- Even after four (4) years of an unsuccessful MDE takeover between 2008-2012, Hazelhurst has no appreciable academic improvement.
  - Hazelhurst is currently ranked **117<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**.
- h. **Indianola City School District** (~2,600 students at takeover):
- The Indianola City School District **no longer exists** in its prior form.
  - Even after four (4) years of an unsuccessful MDE takeover between 2008-2012, Indianola had not improved academically, and the district was combined with Sunflower County and Drew to create the Sunflower County Consolidated School District.

- Sunflower County Consolidated is currently ranked **113<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**.
- i. **Tate County School District** (~3,100 students at takeover):
- Even after three (3) years of MDE takeovers between 2009-2012, Tate County has a “C” MDE accountability grade, making Tate County one of the only state takeover districts to even have a “satisfactory” rating.
  - Tate County is currently ranked **74<sup>th</sup>** of the 127 ranked school districts.
- j. **Sunflower County School District** (~1,670 students at takeover):
- Sunflower County **no longer exists** in its prior form.
  - After two (2) years of an unsuccessful MDE takeover between 2010-2012, Sunflower County had not improved academically, and the district was combined with Indianola and Drew to create the Sunflower County Consolidated School District.
  - Sunflower County Consolidated is currently ranked **113<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**.
- k. **Okolona School District** (~ 657 students at takeover):
- Even after two (2) years of an unsuccessful MDE takeover between 2010-2012, Okolona has no appreciable academic improvement.
  - Okolona is currently ranked **94<sup>th</sup>** of the 127 ranked school districts, and has a **failing “F” grade**.

l. **Drew School District** (~675 students at takeover):

- The Drew School District **no longer exists** in its prior form.
- Even after an unsuccessful MDE takeover between 2011-2012, Drew had not improved academically, and the district was combined with Sunflower County and Indianola to create the Sunflower County Consolidated School District.
- Sunflower County Consolidated is currently ranked **113<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**;

m. **Aberdeen School District** (~1,451 students at takeover):

- Aberdeen is currently ranked **106<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District).
- After five (5) years of an unsuccessful MDE takeover between 2012-2017, Aberdeen has a “C” grade, making Aberdeen one of the only state takeover districts to even have a “satisfactory” grade, which is in itself suspect considering Aberdeen’s low 106<sup>th</sup> ranking.

n. **Leflore County School District** (~2,850 students at takeover):

- Even after four (4) years of an unsuccessful MDE takeover between 2013-present, Leflore County has no appreciable academic improvement.
- Leflore County is currently ranked **124<sup>th</sup>** of the 127 ranked school districts (ranked below the JPS District), and has an **unsatisfactory “D” grade**;

o. **Claiborne County School District** (~1,709 students at takeover):

- Even after three (3) years of an unsuccessful MDE takeover between 2013-2016, Claiborne County has no appreciable academic improvement.

- Claiborne County is currently ranked **121<sup>st</sup>** of the 127 ranked school districts (ranked below the JPS District), and has a **failing “F” grade**.

p. **Scott County School District** (~4,013 students at takeover):

- Scott County was a successful “B” grade public school district at the time of the MDE takeover.
- After a yearlong MDE takeover between 2014-2015, Scott County did not improve academically.
- Scott County is currently ranked 58<sup>th</sup> of the 127 ranked school districts, and has a “B” grade, which is the same grade and ranking as when it was taken over.

42. By any stretch of the imagination, this takeover history by Defendants and MDE cannot be considered a successful record.

43. Nevertheless, despite this long list of student academic failures in Defendants’ and MDE’s takeovers (including two smaller districts that are still failing “F” grades under current MDE conservatorship), Defendants and MDE now have their sights on taking over the JPS District, the only urban school district located in Mississippi.

44. The JPS District has roughly 27,000 students, making it the second-largest public school district in the entire state.

45. Defendants and MDE have never taken over a public school district anywhere near as large as the JPS District.

46. Specifically, the largest public school district previously taken over by Defendants and MDE was Holmes County, with ~3,557 students, which is a failing “F” grade district, even after the Defendants and MDE took it over under a conservatorship.

47. The Holmes County School District is 13.2% the size of the JPS District. Stated differently, the JPS District is roughly seven and a half times (7.5 x) larger than the largest district ever taken over by Defendants and MDE.

48. The Defendants and MDE lack any track record of taking over any district this size, much less taking over one successfully. Defendants and MDE do, however, have a record of failure in much, much smaller districts.

49. Moreover, Defendants and MDE have never taken over a school district with as many top-ranked schools as are within the JPS District, with thousands of high-performing students.

50. Specifically, the JPS District has many “A”, “B”, and “C” grade schools, including three of the top public elementary schools in the entire state—Casey Elementary, Davis Elementary, and McWillie Elementary<sup>1</sup>.

51. These quality, high-performing schools have nowhere to go but down with a takeover by Defendants and MDE.

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<sup>1</sup> Because of MDE’s annual grading changes over the last three years, it is next-to-impossible to do an apples-to-apples comparison of any grades at any public schools between the 2014-2015, 2015-2016, and yet-to-be-issued 2016-2017 school years. As just one example, McWillie Elementary was an “A” graded Montessori school by MDE each and every year until 2016, when, despite continued superior academic testing, the school was suddenly dropped to a “C” because of an arbitrary change in MDE grading, including penalizing the school for having only nine 5<sup>th</sup> graders instead of ten, even though all 5<sup>th</sup> graders passed the MDE testing. This significant two-grade drop in the grade at McWillie Elementary, which was not based upon academic performance and was clearly arbitrary, was nevertheless one of the reasons that the JPD District was declared by MDE to have dropped from a “D” to “F” in 2016, which was in turn used by Defendants, the Commission, and the Board to find an “extreme emergency situation” at JPS. Apparently realizing that its 2016 changes resulted in arbitrary school grades, MDE has once again changed its grading for a new grading system in 2017.

**DEFENDANTS AND MDE’S PLANNED TAKEOVER OF THE JPS DISTRICT WILL DIRECTLY AFFECT PLAINTIFFS’ CONSTITUTIONAL RIGHTS TO THEIR “SAFETY, SECURITY [AND] EDUCATION”**

52. JPS Schoolchildren and JPS Parents have a property and liberty interest in public education.

53. Plaintiffs have been locked out of the process for the Defendants’ and MDE’s accreditation and “extreme emergency situation”<sup>2</sup> conservatorship hearings.

54. These Plaintiffs can and will be will be harmed by the impending takeover by Defendants and MDE.

55. In any MDE conservatorship hearing, the best interests of JPS schoolchildren, including Plaintiffs, should be the most important factor considered, evidenced, discussed, and decided upon.

56. Yet, to the extent such discussions of the best interests of JPS schoolchildren occurred at all regarding the JPS District, there was minimal evidence, discussion or consideration in these MDE hearings affecting these Plaintiffs’ significant property and liberty rights.

57. To the contrary, rather than having any MDE accreditation and takeover hearings focused on the best interests of JPS schoolchildren and JPS parents, including student academic performance and/or curricular and extracurricular accomplishments, these MDE accreditation and conservatorship hearings on the JPS District have been more akin to a criminal prosecution.

58. The MDE “extreme emergency situation” accreditation and conservatorship hearings had little to no discussion of the best interests of JPS students, like Plaintiffs.

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<sup>2</sup> An “extreme emergency situation...that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law.” Miss. Code. Ann. § 37-17-6(12)(b).

59. The MDE accreditation and conservatorship hearings were unnecessarily defamatory and adversarial in nature against Plaintiffs' public school district, and its students, parents, teachers, principals, and administrators.

60. Defendants and MDE have not asked to hear from the Plaintiffs, nor have they given the Plaintiffs any real opportunity to be heard on the Plaintiffs' public education interests and other Constitutionally-protected rights.

61. To state the obvious, Plaintiffs have an important interest in whether any "extreme emergency situation" is found to exist as to the "safety, security or education" of these JPS Schoolchildren, or any of them.

62. Defendants did not provide Plaintiffs with an opportunity to be heard as to whether any "extreme emergency situation" exists in the District, which is a precondition to takeover by Defendants/MDE.

63. JPS schoolchildren and JPS parents such as Plaintiffs have a right to be concerned about any conservatorship proceedings, and to be heard.

64. Plaintiffs have a constitutional right to voice those concerns to Defendants and MDE, including concerns regarding Defendants' and MDE's consistent track record of failed state school district takeovers.

65. Plaintiffs have a right to present evidence and express their beliefs that long-term improvements to JPS can only be accomplished through local control—local parents, local teachers, local representation, and local leadership.

66. Plaintiffs have valid, reasonable concerns that, if Defendants and MDE are allowed to take over the JPS District, Defendants and MDE will not improve student academic performance and/or student accomplishments at the JPS District, which should be the ultimate goal of public

school education, but rather will harm them. Plaintiffs have a Constitutionally-recognized right to be heard before their education rights are affected.

67. Plaintiffs also have a vested interest in recruiting and retaining quality teachers and administrators for their public education.

68. Indeed, Plaintiffs have valid, reasonable concerns that, if Defendants and MDE are allowed to take over the JPS District, good teachers and administrators will involuntarily leave through terminations, and others will leave voluntarily for less-defamed public schools districts with better job security, pay, parental involvement, and local rather than state control. The inevitable departure of good teachers and administrators from the JPS District will adversely affect Plaintiffs. Plaintiffs have a Constitutionally-recognized right to be heard before their education rights are affected.

69. Plaintiffs have valid, reasonable concerns that, if Defendants and MDE are allowed to take over JPS, a number of parents who have the financial ability to homeschool or attend private schools will remove their children from the JPS District, as they have said they would.

70. Plaintiffs have valid concerns that, decades after trying to recruit and retain white students back to JPS District schools, those schools will now become less diverse and less integrated—racially, demographically, and economically, thereby harming the JPS District. Indeed, Plaintiffs reasonably believe that will happen under a conservatorship, which would be antithetical to Plaintiffs' belief that more diversity is important to their schoolchildren's broader growth.

71. Many of the JPS Schoolchildren attend successful "A" and "B" grade schools within the JPS District. Many JPS students test and perform well above state averages, and above national averages. Although these factors would certainly weigh against a finding of an "extreme emergency



situation,” none of those JPS students’ superior academic achievements, or successful “A” and “B” grade schools are mentioned in the MDE audits.

72. Plaintiffs have no confidence that Defendants or MDE know what Plaintiffs believe to be the best interests of their JPS Schoolchildren. Plaintiffs have no confidence that Defendants or MDE are acting in the JPS Schoolchildren’s best interest, or in the best interests of other JPS students and parents.

73. The morale of JPS students and parents, including Plaintiffs, has been harmed by the “extreme emergency situation” accreditation and conservatorship hearings, and will be further harmed if Defendants and MDE are allowed to take over the JPS District.

74. Likewise, the morale of JPS teachers, principals, and other administrators and employees, has been harmed by the hearings, and will be further harmed if Defendants and MDE are allowed to take over the JPS District. This declining morale directly affects the Plaintiffs and their Constitutionally-protected education rights.

75. Additionally, if Defendants and MDE are successful in their efforts to take over the JPS District, recruiting and retaining good teachers, principals, and administrators will be adversely affected.

76. It is difficult for JPS to recruit and retain good teachers and principals, including Plaintiffs’ teachers and principals. Stability and job security is an important consideration.

77. Under such a conservatorship, Plaintiffs’ teachers, principals, and other administrators will have job insecurity. The teachers, principals, and other administrators will be terminable at-will by Defendants, directly and/or indirectly.

78. This declining ability to recruit and retain good teachers, principals, and administrators directly affects the Plaintiffs and their Constitutionally-protected education rights.

79. Further, if Defendants and MDE are successful in taking over JPS, JPS's District Superintendent will be unable to implement the JPS Corrective Action Plan.

80. This lack of implementation of the JPS Corrective Action Plan, and inability to implement same, directly affects the Plaintiffs and their Constitutionally-protected education rights.

81. Through the JPS School Board, Plaintiffs have a direct voice in the JPS District. The dissolution of the JPS School Board directly affects the Plaintiffs and their Constitutionally-protected education rights.

82. **At the very least, a MDE takeover of JPS would have more than a *de minimus* impact on Plaintiffs' recognized interest in public education.**

83. The impending takeover by Defendants and MDE has been done without *any* hearings for the JPS Schoolchildren and JPS Parents, each of which have a Constitutionally-recognized interest in the JPS Schoolchildren's education.

84. Moreover, JPS Schoolchildren and JPS Parents have had no meaningful opportunity to be heard regarding the Defendants' decision to move toward an MDE takeover of JPS.

85. MDE has not included, sought, or seemingly even desired any participation of JPS Parents or JPS Schoolchildren in its proceedings, investigations, audits, findings, corrective actions, or hearings which have resulted in an imminent state takeover, including but not limited to the recent accreditation and takeover hearings.

86. MDE has not adopted or otherwise provided any policies or procedures whereby JPS Parents or JPS Schoolchildren can adequately protect the Plaintiffs' interests in their children's public education.

87. Moreover, in conducting its hearings on an MDE takeover of the JPS District, MDE has violated its own procedures, as well as state law, including but not limited to the Mississippi Open Meetings Act.

**JPS SCHOOLCHILDREN OR JPS PARENTS HAD NO HEARING OR MEANINGFUL OPPORTUNITY TO BE HEARD ON THEIR PROPERTY AND LIBERTY RIGHTS**

88. As it relates specifically to JPS, and by way of background, in April 2016, MDE conducted a limited on-site audit of the District.

89. None of the JPS Parents or JPS Schoolchildren were interviewed for the on-site audit. Upon information and belief, few if any of other JPS parents and JPS's roughly 27,000 students were either; nor do MDE policies or procedures provide for such.

90. MDE audit procedures do not provide any requirement or opportunity for the JPS Parents or JPS Schoolchildren to be interviewed, or otherwise be heard.

91. The JPS Schoolchildren and JPS Parents were not asked to participate in any on-site audit. Upon information and belief, few if any other JPS parents and JPS students were either; nor do MDE policies or procedures provide for such.

92. Thereafter, in August 2016, MDE issued a report identifying a number of issues related to student safety, among others.

93. MDE procedures did not and not provide for or require notice or delivery of copies of any audit to JPS Schoolchildren and JPS Parents.

94. None of the JPS Schoolchildren and JPS Parents were requested to respond to the on-site audit. Upon information and belief, few if any other JPS parents and JPS students were either; nor do MDE policies or procedures provide for such.

95. In response to the audit, JPS Parents or JPS Schoolchildren were not interviewed, or otherwise given an opportunity to be heard. Upon information and belief, few if any other JPS parents and JPS students were either; nor do MDE policies or procedures provide for such.

96. The JPS Schoolchildren and JPS Parents were not asked to participate in any response to the on-site audit. Upon information and belief, no other JPS parents or JPS's roughly 27,000 students were either; nor do MDE policies or procedures provide for such.

97. In response to the audit, JPS created a detailed Corrective Action Plan ("the Plan"). The Plan was implemented on December 15, 2016, after being approved by MDE. The District aggressively addressed the issues identified by MDE and set a timeline for completion of its stated goals. Most of those timelines required completion of each corrective action within one calendar year, or less.

98. Defendants' policies and procedures do not provide for any involvement by JPS Schoolchildren or JPS Parents in creating, implementing, or approving any corrective action plan.

99. While the JPS District was working to take the actions described in the Corrective Action Plan, MDE conducted a second audit which began in September of 2016 and was completed on July 31, 2017. The audit report was provided to the District on August 31, 2017. It is more than 600 pages long.

100. JPS Schoolchildren and JPS Parents were not notified of the second audit, were not provided copies of the second audit, and were not contacted to be informed of how they could obtain a copy.

101. The Accreditation Audit Procedures established, approved and utilized by the Defendants, the Commission on School Accreditation, and MDE did not and do not provide any

procedures, any hearing, or any other opportunity for the JPS Schoolchildren or JPS Parents to have any meaningful input in responding to the second audit.

102. Moreover, even if the Accreditation Audit Procedures had provided any procedures, any hearing, or any other opportunity for the JPS Schoolchildren or JPS Parents to have any meaningful input in responding to the second audit, which they clearly do not, even then, eight (8) school days is an insufficient and unreasonable amount of time for the Plaintiffs to respond, even if they had been given the opportunity to do so.

103. According to Accreditation Audit Procedures, the District Superintendent was to be given 30 school days from receipt of the report to respond to any deficiency cited. The JPS District was given only 8 school days, despite its request for additional time to respond. Likewise, the same procedures require that an exit conference be scheduled between the auditor and the JPS District to explain the auditor's basis for finding non-compliance. *Id.* This conference also was not provided.

104. Instead, in its haste to institute MDE conservatorship proceedings against the District, which has much more than just a *de minimus* impact to the JPS Schoolchildren and JPS Parents, the Commission went forward with a hearing on September 13, 2017 (the "Commission Hearing"), purportedly to address the deficiencies purportedly revealed by the 2017 audit report.

105. The Commission Hearing was held at the MDE Building on West Street in downtown Jackson, at the site of the former Central High School Building.

106. The MDE Building has a large auditorium on the 2<sup>nd</sup> floor that seats an estimated 250 people, plus has additional standing room capacity.

107. Plaintiffs and many other JPS parents and supporters desired to personally attend the Commission Hearing, and have an opportunity to be heard. Despite the Defendants'

knowledge of this, instead of holding the Commission hearing in the auditorium, which was crowded with many of the Plaintiffs, as well as other JPS parents, the Commission Hearing was held in a much smaller 70-person conference room on the 4<sup>th</sup> floor.

108. No seats were reserved for JPS parents, including Plaintiffs.

109. None of the Plaintiffs were allowed inside the Commission Hearing.

110. Upon information and belief, other than JPS parents who were acting in their official capacities, few if any JPS parents or schoolchildren were even allowed in the room for the Commission Hearing.

111. Plaintiffs had no opportunity to be heard at the Commission Hearing.

112. Plaintiffs and other JPS parents and supporters were provided only the opportunity to watch the Commission Hearing by video—two floors down from where the Commission Hearing was being conducted.

113. After the Commission heard two separate 40-minute presentations—first from the MDE auditor, and then from the JPS District Superintendent, followed by a brief question and answer session (none of which involved Plaintiffs or other JPS parents or schoolchildren), the Commission announced that it would return after a lunch break.

114. In the eight (8) school days it was provided, the JPS District responded—to the best of its ability—to the 600+ page report.

115. Among the JPS District’s primary arguments was that the audit does not accurately reflect the condition of the JPS District today. *The Defendants did not provide Plaintiffs with any opportunity to be heard on this issue.*

116. Because the audit was contemporaneous with the Corrective Action Plan already prepared and executed by the District, a number of the audit’s “findings” describe conditions

existing before corrective action was undertaken. The JPS District has made exceptional strides in the areas of safety, security, transportation, instruction, recordkeeping, facilities, and teacher recruitment since the Corrective Action Plan was implemented. *Though these issues all affect Plaintiffs' Constitutionally-recognized rights, Defendants did not provide Plaintiffs with any opportunity to be heard on these issues.*

- The District was reorganized into four Pre-K-12 district areas and hired 14 new principals for the 2017-18 school year. The District also consolidated Poindexter Elementary with Barr Elementary, repurposed Rowan Middle School into a full-time location for Re- engaging in Education for All to Progress (R.E.A.P.), and created a compliance department to monitor the execution of corrective actions.
- The District made significant progress correcting the citations that were cited by the limited audit from April 2016. The District received 1,541 citations and to date 1,487 have been corrected, and 1,402 have been certified by MDE as late of June 26, 2017. Corrective Action installations and replacements include: 833 Fire Extinguishers, 28 Water Coolers, 6 Lavatories, 5 Water Closets, 7 Urinals, 250 Ground Fault Circuit Interrupters, 400 Exit Lights, and 400 Battery Operated Emergency Light Fixtures.
- The District reviewed 100% of its school board policies.
- The District reviewed and verified all 2015-2017 graduate records and is presently following the instructions and procedures for record maintenance as prescribed by MDE's Manual of Directions for records.
- From the 2016 audit, the District has completed 1,402 MDE-certified corrections to the 1,541 citations in the report.
- From the 2017 audit, the District has *already completed* 412 corrections to the 706 citations in the report.
- The District purchased 44 new buses with GPS to monitor on-time arrival for the 2017-18 school year. Bus arrival time is over 95 percent, according to data collected from GPS technology.
- The District completed its quarterly inspection in July 2017 and all noted vehicles are ready for inspection from MDE.
- The District has secured 12 schools' boiler and pressure vessel certifications and now awaiting MDE's approval and verifications.

- The District has secured a professional architectural firm to assess 22 school facilities in addition to MDE’s findings. The District is also proceeding with assessments of an additional 15 school facilities.
- The District has a Board approved Instructional Management System.
- Teacher mentors have been hired to support new teachers.
- The District has repaired all metal detectors and placed metal detectors in all middle and high schools in the District.

117. Examples of the inaccurate information upon which the MDE based its 2017 audit report are:

- Students identified in the report as “failing to meet graduation requirements” did not participate in graduation exercises as reported by MDE.
- Callaway High School graduated 200 eligible students instead of the 224 that was reported by MDE in the school year 2016-17.
- MDE incorrectly reported the graduation of ineligible students at all seven (7) high schools.

118. The audit does not accurately reflect the current state of the JPS District. *The Defendants did not provide Plaintiffs with any opportunity to be heard on these issues.*

119. Upon information and belief, Defendant Commissioner Heather Westerfield and the other Commissioners took the MDE audit with them for their deliberations in a separate room, but left behind the binders containing the JPS audit response.

120. Upon their return, the Commission went directly into executive session, and then segregated themselves to another room that was even smaller than the 70-person capacity Commission Hearing room.

121. Upon information and belief, before going into executive session, the Commission failed to vote upon or state the specific exception to the Mississippi Open Meetings Act that it



found applicable, as required by Mississippi law. No known applicable exception exists. Such action was illegal and unconstitutional.

122. Plaintiffs were then not allowed to watch the nearly two hours of Commission deliberations.

123. Plaintiffs have no way of knowing whether *any* of their concerns affecting their property and liberty interests were even discussed, or otherwise considered.

124. Once the Commission went into executive session, the video feed of the Commission Hearing was blocked.

125. The Commission's deliberations for the next hour and forty-five (45) minutes were all conducted in secrecy.

126. Within minutes of coming out of executive session at the September 13, 2017, Commission Hearing, Defendant Heather Westerfield and the Commission voted to declare an "extreme emergency situation" in the JPS District and recommend a state takeover to the Board of Education.

127. The State Board met on September 14, 2017, to consider and vote on the Commission's recommendation.

128. The State Board is permitted to seek a state of emergency in a local school district only under limited circumstances, including an "extreme emergency situation...that jeopardizes the safety, security or educational interests of the children enrolled in the schools in that district and that emergency situation is believed to be related to a serious violation or violations of accreditation standards or state or federal law." Miss. Code. Ann. § 37-17-6(12)(b).

129. The existence of an "extreme emergency" suggests that conditions at this moment are so dire that the state must intervene.

130. But many of the conditions on which the Defendants based their conclusions do not exist today.

131. Under federal law and Mississippi law, it was arbitrary and capricious for the State Board, including Defendant Aultman, to accept the recommendation of the Commission when that recommendation is based on outdated data and an incomplete response to the 2017 audit report. *Mississippi State Dep't of Health v. Natchez Community Hosp.*, 743 So. 2d 973, 977 (Miss. 1999) (“An administrative agency’s decision is arbitrary when it is not done according to reason and judgment, but depending on the will alone. An action is capricious if done without reason, in a whimsical manner, implying either a lack of understanding of or disregard for the surrounding facts and settled controlling principles.”)

132. Nor do Defendants’ and MDE’s own actions support their contention that an extreme emergency exists. More than 17 months have elapsed since MDE issued its first audit report on student safety issues. MDE then took nearly a year to complete its on-site audit, and required an additional thirty days to complete its report. Never during that period has MDE suggested that students in the District were in such grave danger that emergency action was required.

### **CAUSES OF ACTION**

#### **COUNT I: INJUNCTIVE RELIEF**

**DEFENDANTS HAVE NOT PROVIDED PLAINTIFFS WITH MINIMUM DUE PROCESS, PLAINTIFFS WILL BE IMMEDIATELY AND IRREPARABLY INJURED IF A STATE TAKEOVER OCCURS, AND PLAINTIFFS HAVE NO RECOURSE WITHOUT INJUNCTIVE RELIEF**

133. Federal Rule of Civil Procedure 65(b) governs Temporary Restraining Orders. Such orders may issue without notice to the adverse party if:

(1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(2) the movant's attorney certifies to the court in writing any efforts made to give the notice and the reasons why it should not be required.<sup>1</sup>

Fed. R. Civ. P. 65(b). This Court has substantial discretion to grant or deny a motion for TRO.

134. Immediate and irreparable injury, loss, or damage to the Plaintiff JPS Parents and JPS Schoolchildren will occur if this Court does not act to prevent the Defendants' and MDE's proposed takeover without affording them a hearing.

135. If a state of emergency is declared and the Defendants and State Board assert a conservatorship over the JPS District, the following will occur:

- Some or all state funds may be escrowed until the State Board determines corrective actions are taken or that the needs of students [including Plaintiff JPS Schoolchildren] warrant release of funds. Miss. Code. Ann. § 37-17-6(12)(b)(i).
- The State Board may override any decision of the local school board or superintendent of education, or both, concerning the management and operation of the school district, or initiate and make decisions concerning the management and operation of the school district. Miss. Code. Ann. § 37-17-6(12)(b)(ii).
- The State Board may assign an interim superintendent, or in its discretion, contract with a private entity with experience in the academic, finance and other operational functions of schools. Miss. Code. Ann. § 37-17-6(12)(b)(iii).
- The State Board may grant transfers to students who attend this school district so that they may attend other accredited schools or districts in a manner that is not in violation of state or federal law. Miss. Code. Ann. § 37-17-6(12)(b)(iv).
- The State Board may reduce local supplements paid to school district employees, including, but not limited to, instructional personnel, assistant teachers and extracurricular activities personnel, if the district's impairment is related to a lack of financial resources, but only to an extent that will result in the salaries being comparable to districts similarly situated, as determined by the State Board of Education. Miss. Code. Ann. § 37-17-6(12)(b)(vi).

136. Although these statutory provisions are written in permissive terms, it is evident that after the Defendants and State Board are allowed to takeover, the Plaintiff JPS Schoolchildren and JPS Parents have *no recourse* to prevent Defendants from implementing any or all of the procedures listed above.

137. In particular, the inevitable transfer of students out of the JPS District, loss of students to private schools and homeschooling, termination of the Superintendent and JPS School Board, reduction in pay for teachers, principals, faculty and staff, involuntary or voluntary loss of teachers, principals, faculty and staff, and the loss of local control over the JPS District constitute harm which is both immediate and which cannot be remedied by any subsequent action of the Court.

138. Further, the Plaintiff JPS Schoolchildren and JPS Parents, and the JPS District, will not be able to recruit qualified teachers and administrators because the state's Educational Employment Procedures Law will be suspended during the conservatorship.

139. Finally, as the State is not susceptible to suits for damages, the Plaintiff JPS Schoolchildren and JPS Parents will have no remedy for any monetary losses resulting from the actions of the Defendants and the State Board.

140. All of these constitute irreparable harm and justify the imposition of a TRO.

141. Inadequacy of the remedy at law is the basis upon which the power of injunction is exercised.

142. In other words, an injunction will not issue when the party seeking it has a complete and adequate remedy by appeal.

143. The Mississippi Supreme Court has determined that, under Mississippi law, there is no right to appeal an emergency declaration from the Governor, and no right to judicial review

of a non-binding request by MDE. *Miss. State Bd. Educ. v. Leflore County Bd. of Educ.*, 2013 Miss. LEXIS 552 (Miss. 2013).

144. Therefore, Plaintiffs lack a complete and adequate remedy.

145. Here, after a state of emergency has been declared, *there is no procedural vehicle by which the Plaintiff JPS Schoolchildren and JPS Parents can take any appeal.*

146. Accordingly, it is not merely that an appeal is inadequate, it is that no appeal right exists. This too constitutes irreparable harm.

147. The Plaintiff JPS Schoolchildren and JPS Parents are entitled to procedural and substantive due process under the United States Constitution.

148. On the bases identified herein, this Court should issue a Temporary Restraining Order prohibiting the Defendants from any further proceedings concerning the Jackson Public School District until such time as the Plaintiff JPS Schoolchildren and JPS Parents have been given all procedural and substantive due process to which they are entitled under the Due Process Clause.

#### **COUNT II: 42 U.S.C. § 1983**

149. Plaintiffs incorporate and reallege each of the foregoing paragraphs as if fully set forth herein.

150. Defendants violated 42 U.S.C. § 1983.

151. These Defendants' conduct, made under color of state law, operated to deprive Plaintiffs of their clearly-established rights guaranteed by the United States Constitution and federal statutes, specifically including:

- (a) The right of due process protected by the Fourteenth Amendment of the United States Constitution;

- (b) The right to free speech protected by the First Amendment of the United States Constitution; and
- (c) The right to freedom of association protected by the First Amendment of the United States Constitution.

152. The above-described actions were taken by the Defendants while acting under the color of state law for purposes of 42 U.S.C. § 1983, and caused Plaintiffs, the JPS Schoolchildren and JPS Parents, to be deprived of their clearly-established rights secured by the United States Constitution under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments.

153. The Defendants were aware of the deprivations complained of herein, and condoned or were deliberately indifferent to such conduct.

154. As a direct and proximate result of the foregoing, the Defendants deprived Plaintiffs, the JPS Schoolchildren and JPS Parents, of their rights and privileges as citizens of the United States, and Defendants caused, and will continue to cause, Plaintiffs to be hurt and injured in their property rights to public education, and to suffer significant indignities.

155. The schoolchildren of the Jackson Public School District clearly have a property interest in receiving a public education.

156. Under due process protections, that interest cannot be taken away without proper procedural safeguards.

157. However, under Mississippi law, the Plaintiffs, the JPS Schoolchildren and their JPS Parents, have no right to a hearing before the Mississippi Department of Education can take over their school district, and their schools.

158. The Defendants' policies and procedures for an MDE takeover are fundamentally unfair.

159. The Mississippi Department of Education procedure fails to satisfy procedural due process requirements.

160. Even if the Court were to find that the takeover procedure of the Mississippi Department of Education satisfies procedural due process requirements, those procedures were not followed in the case of the takeover of these the JPS Schoolchildren and JPS Parents' school district and schools.

161. The Mississippi Constitution provides rights to an equal, free, and public education beyond those in the federal constitution.

162. The Mississippi Department of Education has an abysmal record when taking power and control away from local school boards and administration.

#### **RECOGNIZING STUDENTS' AND PARENTS' PROPERTY AND LIBERTY RIGHTS IN EDUCATION**

##### **A. UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, PUBLIC SCHOOL STUDENTS AND THEIR PARENTS HAVE A *RECOGNIZED PROTECTABLE PROPERTY AND LIBERTY INTEREST* REQUIRING DUE PROCESS OF LAW**

163. Primary and secondary students have a recognized property and liberty interest in their right to a public education under the Due Process Clause of the Fourteenth Amendment. *See Goss v. Lopez*, 419 U.S. 565, 576 (1975); *see also Swindle v. Livingston Parish Sch. Bd.*, 2008 U.S. Dist. LEXIS 100039 (“Although there is no constitutional right to a public education, once a state creates a public school system and requires attendance at those schools, a protectable property interest arises”).<sup>3</sup>

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<sup>3</sup> Mississippi has created a public school system, which requires that children attend school. Therefore, plaintiffs and their children have a protectable property interest in these schoolchildren receiving an education. *See Scott v. Livingston Parish School Board, et al.*, 548 F.Supp. 2d 265, 267 (M.D. La. 2008).

164. Thus, “the State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.” *Id.*

165. Students’ right to due process is triggered whenever the deprivation is not *de minimis*. *Id.* at 576.

166. In determining the appropriate degree of due process, the Supreme Court has stated three distinct factors must be considered:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e.g., Goldberg v. Kelly, supra*, at 263-271.

*Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18, 33, 1976 U.S. LEXIS 141, \*31-32, 41 Cal. Comp. Cases 920 (U.S. 1976).

**B. UNDER THE DUE PROCESS CLAUSE OF THE MISSISSIPPI CONSTITUTION, PUBLIC SCHOOL STUDENTS AND THEIR PARENTS HAVE A FUNDAMENTAL RIGHT TO EDUCATION REQUIRING DUE PROCESS OF LAW**

167. Moreover, the JPS Schoolchildren and JPS Parents Plaintiffs note that while this action has been brought under the federal due process clause, this clause provides Plaintiffs the heightened protections afforded by the Mississippi due process clause set out at Article 3, Section 14 of the Mississippi Constitution, and is construed similarly.

168. In this connection, the Mississippi Supreme Court has stated:

While state courts may construe their constitutions in such a way as to offer broader protections than those found in the federal constitution, we must “begin with the presumption that similar sections of the United States Constitution and Mississippi Constitution ought to be construed similarly.” *McCrary v. State*, 342 So. 2d 897, 900 (Miss. 1977). Article 3, Section 14, of the Mississippi



Constitution, which provides that “[n]o person shall be deprived of life, liberty, or property except by due process of law,” is essentially identical to the Due Process Clause of the Fourteenth Amendment to the United States Constitution.”

*Blakeney v. McRee*, 2016 Miss. LEXIS 87, \*17 (Miss. Feb. 25, 2016)

169. The right to a minimally adequate, free public education has been declared to be a *fundamental* right of all students by the Mississippi Supreme Court. *Clinton Mun. Separate Sch. Dist. v. Byrd*, 477 So.2d 237, 240 (Miss. 1985). See also *Hill ex rel. Hill v. Rankin County, Miss. Sch. Dist.*, 834 F. Supp. 1112, 1117 (S.D. Miss. 1993) (stating that Mississippi Code Section 37-1-2 provides the children of Mississippi the right to a free public education).

170. The Mississippi Supreme Court’s decision is worth quoting at length given its stress upon the fundamental nature of the right and its entitlement to procedural protection.

171. **“A student’s interest in obtaining an education has been given substantive and procedural due process protection.”** See, e.g., *Plyler v. Doe*, 457 U.S. 202, 217, 102 S. Ct. 2382, 2395, 72 L. Ed. 2d 786 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 500, 74 S. Ct. 693, 98 L. Ed.884 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 69 L. Ed.1070 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S. Ct. 625, 67 L. Ed.1042 (1923); 46 Miss.L.J., at 1043.

172. This protected interest, however, is largely a state created interest, for the provision of free public education has been accepted as a responsibility of this state (as well as the other 49 states).

173. The Mississippi legislature has declared a part of the public policy of this state the provision of “quality education for all school age children in the state,” Miss. Code Ann. § 37-1-2(f) (Supp.1984), this out of recognition of the effect of education “upon the social, cultural and economic enhancement of the people of Mississippi.” Miss. Code Ann. § 37-1-2 (Supp. 1984).

174. “Thus, while the federally-recognized due process rights under the United States Constitution arise out of a property interest in education, **the right to a minimally adequate public education created and entailed by the laws of Mississippi is one we can only label fundamental.**”

175. As such, this right, to the extent our law vests it in the young citizens of this state, enjoys **the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi**, whatever construction may be given the Constitution of the United States. *Clinton Municipal Separate School Dist. v. Byrd*, 477 So. 2d 237, 240 (Miss. 1985) (Emphasis supplied).

**C. AT A MINIMUM, PROCEDURAL DUE PROCESS REQUIRES THE PLAINTIFFS BE PROVIDED PRIOR NOTICE, AND A HEARING OR OPPORTUNITY TO BE HEARD**

**DEFENDANTS NEVER PROVIDED PLAINTIFFS WITH NOTICE, OR A HEARING, AT ALL, MUCH LESS ONE THAT MEETS MINIMUM DUE PROCESS REQUIREMENTS**

176. Since Plaintiffs have a Constitutionally-recognized right in their education, Plaintiffs are due some procedural due process prior to a state takeover of their schools and their school district.

177. At a minimum, due process requires that Plaintiffs receive notice and an opportunity to be heard on matters that have more than a *de minimus* effect on their rights.

178. The Defendants did not act objectively reasonable in denying Plaintiffs notice and a hearing.

**D. DUE PROCESS REQUIRES DEFENDANTS TO ESTABLISH THE REQUIRED STANDARD OF PROOF**

**DEFENDANTS NEVER PROMULGATED A STANDARD OF PROOF, AT ALL, MUCH LESS THE “CLEAR AND CONVINCING STANDARD” REQUIRED FOR HEARINGS AFFECTING THE JPS SCHOOLCHILDREN’S AND JPS PARENTS’ PROPERTY AND FUNDAMENTAL EDUCATION RIGHTS**

179. Even to the extent that the Defendants are determined by this Court (1) to have provided Plaintiffs with sufficient hearing(s) that satisfied Plaintiff’s Constitutionally-recognized rights under the Due Process Clause (as distinguished from the JPS District’s rights, which do not implicate such Constitutional protections), and (2) provided proper notice of same, all of which is vehemently disputed by Plaintiffs, the Defendants nevertheless never defined the standard of proof at the hearings, which is necessary under the Due Process Clause.

180. “The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to “instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.” *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.”

181. The standard of proof is critical to providing the protection required by the Due Process Clause. As stated by the Supreme Court:

"The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."

*Addington v. Texas*, 441 U.S. 418, 423, 99 S. Ct. 1804, 1808, 60 L. Ed. 2d 323, 329, 1979 U.S. LEXIS 93, \*10-11 (U.S. 1979). (civil commitment requires clear and convincing evidence).

182. Consequently, the Supreme Court has held that the standard of proof to be applied in a given proceeding must be established in advance:

“Standards of proof, like other “procedural due process rules[,] are shaped by the risk of error inherent in the truth-finding process as applied to the *generality of cases*, not the rare exceptions.” *Mathews v. Eldridge*, 424 U.S., at 344 (emphasis added). Since the litigants and the factfinder **must know at the outset** of a given proceeding how the risk of error will be allocated, **the standard of proof necessarily must be calibrated in advance**. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard.”

*Santosky v. Kramer*, 455 U.S. 745, at 757 (1982) (emphasis added) (holding termination of parental rights requires clear and convincing evidence standard); *See also Natural Father v. United Methodist Children’s Home*, 418 So.2d 807, 810 (Miss. 1982) (following *Santosky*, *supra* and holding preponderance of the evidence standard inadequate to terminate parental rights even where authorized by statute.).

183. Thus, Defendants were required to establish the standard of proof “at the outset” of the accreditation and takeover proceedings. Absent a standard of proof promulgated in advance of the accreditation and takeover proceedings, neither Plaintiffs nor the JPS District could know how the risk of error was to be allocated, and Plaintiffs were necessarily denied due process and unduly prejudiced thereby. Indeed, absent such a standard, even “retrospective case by case review cannot preserve fundamental fairness.” *Santosky*, *supra*.

184. To reach the conclusion that Plaintiffs were denied due process, and that they will be denied due process going forward, we do not need to decide the appropriate standard of proof. It is sufficient to determine that Defendants have not promulgated one.

185. Accordingly, this Court should declare that the failure to have established a standard of proof in advance of the MDE state accreditation and conservatorship hearings deprived Plaintiffs of due process. The takeover by Defendants and MDE should be enjoined, reversed and rendered.

186. Further, even should this Court decline to enjoin, reverse and/or render, it should declare that Defendants' ongoing failure to adopt a standard of proof for takeover hearings denies due process going forward to Plaintiffs, and to every student in each and every Mississippi public school district.

### DECLARATORY JUDGMENT

187. Plaintiffs incorporate and reallege each of the foregoing paragraphs as if fully set forth herein.

188. Pursuant to the Mississippi Open Meetings Act, Miss. Code Ann. § 25-41-1, *et seq.*, official meetings of public bodies are required to be public and open.

189. The Legislative intent of the Mississippi Open Meetings Act is set forth in Miss. Code Ann. § 25-41-1:

“It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.”

190. Miss. Code Ann. § 25-41-7 states the limited circumstances in which Defendants, the Commission and/or the State Board may go into executive session closed to the public:

(1) Any public body may enter into executive session for the transaction of public business; provided, however, all meetings of any such public body shall commence as an open meeting, and **an affirmative vote of three-fifths (3/5) of all members present shall be required to declare an executive session.**

- (2) The procedure to be followed by any public body in declaring an executive session shall be as follows: Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session. Such motion, by majority vote, shall require the meeting to be closed for a **preliminary determination of the necessity for executive session**. No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and **a vote, as required in subsection (1) hereof, has been taken on the issue**.
- (3) **An executive session shall be limited to matters allowed to be exempted from open meetings by subsection (4) of this section. The reason for holding such an executive session shall be stated in an open meeting, and the reason so stated shall be recorded in the minutes of the meeting.** Nothing in this section shall be construed to require that any meeting be closed to the public, nor shall any executive session be used to circumvent or to defeat the purposes of this chapter.
- (4) A public body may hold an executive session pursuant to this section for one or more of the following reasons:
- (a) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.
  - (b) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.
  - (c) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans or devices.
  - (d) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.
  - (e) Any body of the Legislature which is meeting on matters within the jurisdiction of such body.
  - (f) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of such public body.
  - (g) Transaction of business and discussion regarding the prospective purchase, sale or leasing of lands.
  - (h) Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
  - (i) Transaction of business and discussion concerning the preparation of tests for admission to practice in recognized professions.
  - (j) Transaction of business and discussions or negotiations regarding the location, relocation or expansion of a business or an industry.

(k) Transaction of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position. The exemption provided by this paragraph includes the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session.

(l) Discussions regarding material or data exempt from the Mississippi Public Records Act of 1983 pursuant to Section 25-11-121.

**(5) The total vote on the question of entering into an executive session shall be recorded and spread upon the minutes of such public body.**

(6) Any such vote whereby an executive session is declared shall be applicable only to that particular meeting on that particular day.

Miss. Code Ann. § 25-41-7 (emphasis added).

191. Defendants have violated the Mississippi Open Meeting Act, and failed to follow the procedures outlined under Mississippi law for going into an executive session closed to the public.

192. Moreover, none of the exceptions to the Defendants failed to follow the procedures outlined under the Mississippi Open Meeting Act for going into closed executive session.

193. Though it was without any legal authority to do so, Defendants illegally closed the Commission Hearing and the conservatorship hearing to Plaintiffs and the public, without articulating or having any exception under the Mississippi Open Meetings Act, as statutorily required, much less a valid one.

194. Under Rule 57 of the Federal Rules of Civil Procedure, Plaintiff JPS Schoolchildren and JPS Parents are entitled to a declaratory judgment that Defendants have violated the Mississippi Public Meetings Act, and that the deliberations and votes taken by Defendants in secrecy and others Commissioners and Board Members are invalid, and violate due process.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray:

a. That process issue to the Defendants and that they be required to answer;

- b. For temporary and permanent restraining orders, and other injunctive relief prohibiting the Defendants from any takeover or further proceedings concerning the Jackson Public School District until such time as the Plaintiff JPS Schoolchildren and JPS Parents have been given all procedural and substantive due process to which they are entitled under the Due Process Clause of the United States Constitution, and the Mississippi Constitution;
- c. That Plaintiffs be awarded damages;
- d. That Plaintiffs be awarded reasonable expenses incurred in this litigation, including reasonable attorney and expert fees, pursuant to 42 U.S.C. §1988 (b) and (c);
- e. A declaration under F.R.C.P. 57 that Defendants have violated the Mississippi Public Meetings Act, and that the deliberations and votes taken by Defendants in secrecy and others Commissioners and Board Members are invalid, and violate due process;
- f. That the Plaintiffs receive any other further and general relief to which it may appear they are entitled.

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