

**Nos. 18-1855, 18-1871**

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**GARY B.; JESSIE K.**, a minor by Yvette K., guardian ad litem;  
**CRISTOPHER R. and ISAIAS R.**, minors, by Escarle R., guardian ad litem;  
**ESMERALDA V.**, a minor, by Laura V., guardian ad litem; **PAUL M.;**  
**JAIME R.**, a minor, by Karen R., guardian ad litem, on behalf of themselves and  
all others similarly situated,  
*Plaintiffs-Appellants,*

**v.**

**RICHARD D. SNYDER**, in his official capacity as Governor of the State of  
Michigan; **JOHN C. AUSTIN, MICHELLE FECTEAU,**  
**LUPE RAMOS-MONTIGNY, PAMELA PUGH, KATHLEEN N. STRAUS,**  
**CASANDRA E. ULBRICH, EILEEN WEISER,** and **RICHARD ZEILE**, in  
their official capacities as members of the Michigan Board of Education;  
**BRIAN J. WHITSON**, in his official capacity as Superintendent of Public  
Instruction for the State of Michigan; **DAVID B. BEHEN**, in his official capacity  
as Director of the Michigan Department of Technology, Management, and Budget;  
and **NATASHA BAKER**, in her official capacity as the State School  
Reform/Redesign Officer,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Eastern District of Michigan  
The Honorable Steven J. Murphy III, District Judge  
Case No. 16-CV-13292

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**BRIEF OF *AMICUS CURIAE* DETROIT PUBLIC SCHOOLS COMMUNITY DISTRICT  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Rules of this Court, *Amicus Curiae* states as follows:

1. *Amicus* is not a subsidiary or affiliate of any publicly owned corporation.
2. No publicly owned corporation or its affiliate, not a party to the appeal, has a substantial financial interest in the outcome of this litigation.

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**INTEREST OF THE *AMICUS CURIAE***

If an *amicus curiae* is indeed a friend of the court who is a non-party who has a strong interest in the subject matter before a court, than Detroit Public Schools Community District (“District or “DPSCD”)<sup>1</sup> is uniquely an *amicus curiae* in this matter. No other entity can confirm the disastrous impact that 14+ years of state management has had on the State of Michigan’s largest school district.<sup>2</sup> Once lauded as an exemplar that was emulated by school districts around the country – the District has become a shell of its former self. Although not beaten by torrential winds of a storm like the schools in New Orleans, DPSCD schools have too been decimated by a storm. Not a natural storm, but a storm of neglect. A storm of constitutional

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<sup>1</sup> In 2017, all buildings and staff were transferred from the School District for the City of Detroit (“DPS”) to the newly created DPSCD. As such, DPSCD is a successor in interest to DPS except for DPS’ debt. In sum, all of DPS’s literacy, building and teacher vacancy deficiencies became DPSCD’s literacy, building and teacher vacancy deficiencies when DPSCD was created.

<sup>2</sup> From 1999 to 2016 the State of Michigan controlled the District for all except three years. In 1999, the Michigan Legislature removed the locally elected board of education replaced it with an appointed 7-member reform board. The elected board of education returned following a city referendum in 2005. The elected board was seated in January 2006. The final full year that the elected board was in full control was the 2007–2008 fiscal year. From January 2009 to December 31, 2016 the District has been managed by some form of state appointed manager. To this day, the District is overseen by a State of Michigan Financial Review Commission.

violations. A storm of legislation appointing emergency and transition managers with no experience in education to operate the District. And yes, a storm of racism.

As a survivor of the 14+ year storm, the District is now governed by an elected board and managed by an appointed superintendent who is an experienced educator and superintendent. The aftermath of the storm is that: (i) 93% of DPSCD students read beneath grade level; (ii) 50% of the school buildings are in need of significant repairs; and (iii) the District continues to suffer from teacher vacancies because many highly qualified teachers choose not to teach in a district whose students cannot read (or read very poorly) and where buildings are crumbling, leaking, too hot in the spring/summer and too cold in the fall/winter. All of these conditions block a student's access to literacy – an access to which DPSCD students have a constitutional right. And importantly, all of these conditions were created, proliferated or all together ignored during the storm of state management.

The students of Detroit have been wronged. Their access to literacy has been obstructed and this court is positioned to make clear the path. It is the District's sincere prayer that this honorable court will reverse the lower court's erroneous ruling. Accordingly, the District files this brief supporting Plaintiffs-Appellants' argument that literacy is a constitutionally protected fundamental right. The District further contends that the district court's equal protection analysis was flawed and

must be reversed because the proper comparison of Detroit students is to other students in the state of Michigan – not just to other Detroit students.

**STATEMENT PURSUANT TO FED. R. APP. P 29(E)**

*Amicus Curiae* Detroit Public Schools Community District affirms that:

1. No party's counsel authored this *amicus curiae* brief in whole or in part.
2. No party or party's counsel contributed money that was intended to fund preparing or submitting this *amicus curiae* brief.
3. No person – other than the *amicus curiae*, its members or its counsel – contributed money that was intended to fund preparing or submitting this *amicus curiae* brief.

**STATEMENT IN SUPPORT OF ORAL ARGUMENT**

This case concerns the literacy of school children in the city of Detroit. DPSCD educates the majority of Detroit's school children and is the largest school district in the State of Michigan. As such, DPSCD is uniquely positioned to elucidate the issues at play in this lawsuit and answer any questions the court may have.

For these reasons, DPSCD requests leave to participate in any oral argument of this matter.

## ARGUMENT

### **I. Introduction**

Much like walking into your home post-storm after being forced to evacuate by authorities, when Dr. Nikolai P. Vitti arrived in the District as its first appointed Superintendent in eight years he found a school system in shambles and with much debris blocking the path forward. He described his findings to the 2018 Mackinac Policy Conference and said:

[P]eople often ask me, “What were you most surprised about when you took the job and started to work in the system?” And I often say I was shocked, horrified at the lack of systems and processes for traditional public education . . . . And walking into the system and seeing a lack of systems and processes is a testament of the lack of belief in what children can do.

And there is a racist element to what has happened. Children in Detroit have been treated like second-class citizens . . . and year after year of low performance, a lack of growth, drop in enrollment, facilities that are not kept up, that would never ever happen in any white suburban district in this country.<sup>3</sup>

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<sup>3</sup> Valerie Strauss, *Detroit Superintendent: “This would never ever happen in any white suburban district in this country”*, Washington Post (June 4, 2018), <https://goo.gl/C1sNTr>.

The above impression that state officials (under current leadership) do not believe Detroit school children can learn has sadly been confirmed by Defendants-Appellees.

In opposition to the Plaintiffs-Appellants' claims in this case, Defendants-Appellees attempt to shirk their obligation to provide minimally adequate schools by blaming Plaintiffs' inability to read and write on 'other factors.' None of those factors diminish Defendants' obligation to provide an education. But one factor in particular bears emphasis. Defendants argue that a contributing factor to Detroit students' (in)access to literacy is their "intellectual limitations." Motion to Dismiss, *RE. 60, PageID#513*. This is puzzling, as none of the Plaintiffs are special education/exceptional students who receive(d) services pursuant to an Individualized Education Plan under the Individuals with Educational Disability Act. And Defendants offered no clues as to why they believed Plaintiffs have "intellectual limitations." But in a school district where over 90% of the population are minorities, the racial overtones are clear. As such, the only logical conclusion to be reached from reading the State's motion to dismiss is that they are using the fake "intellectual limitations" factor as code for race.

The 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments to the U.S. Constitution stand for the proposition that a person of color is as much a person as any other citizen and should be treated equally. U.S. Const. amend. xiii, xiv and xv. The U.S. Supreme Court



has long ago decided that it is illegal to discriminate against a person on the basis of race. *See Jones v. Mayer Co.* 392 U.S. 409 (1968) (bars all racial discrimination in sale or rental of property). *See also Shelley v. Kraemer*, 334 U.S. 1 (1948) (racially restrictive covenants in property deeds are unenforceable); *and Loving v. Virginia*, 388 U.S. 1 (1967) (state laws prohibiting inter-racial marriage are unconstitutional). Further, the U.S. Supreme Court has already decided that it is unconstitutional to have separate but unequal state sponsored education. *Brown v. Board of Education*, 347 U.S. 483 (1954). Despite the fact that all of these matters having been decided by the U.S. Supreme Court, 64 years after *Brown v. Board of Education*, Plaintiffs-Appellants and the District are forced to argue that black and brown Detroit children deserve the same access to literacy and school resources that support such access (*i.e.*, building conditions, curriculum, certified teachers, reading coaches, *etc.*) that white children enjoy in other parts of the state of Michigan.

As explained above, the U.S. Constitution requires the government to treat all of its citizens equally and fairly. And, this is a good thing for Detroit school children. However, enforcement of the U.S. Constitution is required here because the state of Michigan (“State”) has indeed mistreated Detroit students. Accordingly, and as more fully explained below, precedent requires that the district court’s ruling be reversed because it upholds the State’s unequal and unfair treatment of Detroit

school children in violation of the due process and equal protection clauses of the 14<sup>th</sup> Amendment.

**II. Adoption of Law and Arguments in Plaintiffs-Appellants Brief and City of Detroit's *Amicus Curiae* Brief**

The District has read the Brief of Plaintiffs-Appellants filed in this appeal on November 16, 2018 as Document 49. The District hereby adopts, and incorporates herein, the law and arguments raised therein. The experience of the Superintendent and staff confirms fully the factual allegations in Plaintiffs-Appellants' complaint and as described in their brief about traceability to the State for the devastating conditions of District schools.

Further, the District has read a draft of the *amicus curiae* brief which will be filed by the City of Detroit in this matter. And, the District hereby adopts, and incorporates the law and arguments raised therein.

**III. Education Should Be Equally Provided to All Michigan Students**

Michigan law compels children to attend school. M.C.L. §380.1561. In fact, a parent may be found guilty of a misdemeanor in a court of law if his/her child does not attend school. M.C.L. §380.1599. And, the implicit understanding between Michigan citizens and their state government (who is charged with educating its citizens) is that a child will be presented with an education that will enable him/her to be a productive citizen. Although there is no guarantee as to the outcome of the

education presented – it is required that at a minimum the same level of education be presented to each child compelled to attend school. *Brown v. Board of Education*, 347 U.S. 483, 493.

The Michigan Revised School Code applies to all schools within the State. As such, the State is tasked with governing the education of all of its students. In this regard, the State is a single educational jurisdiction. And, the correct comparable group is the entire state – not just the city of Detroit. Simply stated, a student in Detroit should have access to the same educational opportunities as a student in Birmingham, Grosse Pointe or Bloomfield Hills. One such opportunity is literacy.

All Michigan students should have access to literacy.

#### **IV. Literacy Is the Foundational Step to A Productive Life**

##### **A. DPSCD School Doors are Open for the Sole Purpose of Equipping Students with Skills Needed to Be Productive Citizens**

The District’s mission is to “educate and empower every student, in every community, every day to build a stronger Detroit.”<sup>4</sup> DPSCD’s vision is that “all students will have the knowledge, skills and confidence necessary to thrive in our city, our nation, our world.”<sup>5</sup> The District’s mission and vision statements are not

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<sup>4</sup> DPSCD Blueprint 2020, <https://goo.gl/XcW6pe>.

<sup>5</sup> *Id.*

mere platitudes. The District's achievement of the mission and vision is critical to the sustainability of our city, state, country and world. One of the keys necessary to thrive in society – is literacy. *See Pylar v. Doe*, 457 U.S. 202, 222-23 (1982) (children denied a basic education will be marked for the rest of their lives by the stigma of illiteracy). *See also San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 (1973) (a voter cannot cast his ballot intelligently unless his reading skills and thought processes have been adequately developed).

Defendants-Appellees argue that literacy is an educational outcome that cannot be guaranteed. This argument ignores the fact that this case is about *access* to literacy – not the result of literacy after being offered the opportunity/access to become literate. Further, Defendants-Appellees' argument seems to posit the belief that providing a school building (no matter how dilapidated or inadequately staffed/resourced) is enough for the State to fulfill its duty to educate its citizens. This is simply not true.

If schools aren't tasked with educating students and providing them with skills to live a productive and independent life – what is the point of requiring school attendance? The streets of Detroit once overflowed with Southerners who traversed North for a better life and found work in automotive factories. However, prior to arriving in Detroit many of those persons attended school just long enough to learn

how to read, write and add – all skills needed to obtain a job and start a career. The 3 Rs - Reading, Writing and Arithmetic - is what they called it. With only a 5<sup>th</sup> or 6<sup>th</sup> grade education prior generations of Detroiters could lead a productive life **because they could read**. Defendants-Appellees want this court to believe that some 60 years later – it is now acceptable to require less for our children. Defendants-Appellees want this court to agree that it is acceptable (and even constitutional) that students no longer have access to literacy – a right that is “objectively, ‘deeply rooted in this Nation’s history and tradition.’” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

Without the ability to read, our student’s futures are severely handicapped.

**B. District Students’ Reading Rates Lag Far Behind Other Michigan Students**

93% of DPSCD 8<sup>th</sup> graders (compared to 66% state wide) read below grade level.<sup>6</sup> Put another way, only 7% of DPSCD 8<sup>th</sup> grade students have a real chance of doing well enough in high school to then go onto college and graduate on time. Also, 95% of DPSCD 4<sup>th</sup> graders (compared to 68% state wide) read below grade

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<sup>6</sup> Lori Higgins, *Detroit’s Schools Score Worst in the Nation Again, but Vitti Vows That Will Change*, Detroit Free Press (April 10, 2018), <https://goo.gl/vpR3Kt>.

level.<sup>7</sup> This means that students will go into 5<sup>th</sup> grade and then into middle school already behind.

The aforementioned are the test results of last year's District 4<sup>th</sup> and 8<sup>th</sup> grade students' on the National Assessment of Educational Progress ("NAEP"). The students' performance was:

[t]he poorest in the nation. Again . . . . In Detroit, students had the worst performance not only among large, urban districts but also compared with all states in fourth- and eighth-grade math, as well as fourth-grade reading. Detroit shared the bottom spot with Cleveland for eighth-grade reading.<sup>8</sup>

The 2017 NAEP scores tell the same story as the District's Michigan Student Test of Educational Progress ("M-STEP") scores. And what story is that? It is a story whose headline would read '*District students are not reading as well as their counterparts in the State.*'

On the 2018 M-STEP, District students scored significantly lower than their counterparts across the State in all areas – including those that especially highlight a lack of literacy. For example, for four years in a row fewer than 5% of District 5<sup>th</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

graders were proficient in social studies.<sup>9</sup> Also, as seen below, DPSCD students' performance showed a deficiency in reading.

SUBJECT	STATE AVERAGE	DPSCD	NOTES
English Language Arts	44%	11.5%	DPSCD's score is down from the 2016 score of 12% <sup>10</sup> and the 2015 score of 13.1%
SAT	1001.1 out of 1600	866	

As seen above, the 2018 M-STEP performance is a continuation of declined performance from every single previous M-STEP score. Literacy rates continue to decline in the District - and the decline was steady during state management. One has to ask – why didn't the State attack the problem of literacy years ago?

**C. During State Management There Was No Curriculum in Place That Supported Access to Literacy**

If a problem exists and no measures are put in place to stop the problem – the problem will persist. This has certainly been the case as it relates to the District's literacy issue – despite year after year of decline.

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<sup>9</sup> Lori Higgins, *More than half of Michigan students failed M-STEP literacy exam*, Detroit Free Press (August 29, 2018), <https://goo.gl/jeFDRc>.

<sup>10</sup> Erin Einhorn, Sarah Darville, *Sinking test scores won't help Detroit Public Schools as closure threat looms*, Chalkbeat (August 30, 2016), <https://goo.gl/SGwjmg>.

Under Dr. Vitti’s leadership, the District has undergone a curriculum audit which found that “the district’s curriculum was inferior and not aligned with state standards.”<sup>11</sup> In fact, the audit findings have been described as “**unsettling**.”<sup>12</sup> The audit revealed that:

\* \* \*

[M]iddle schoolers in Detroit’s main school district have been taking pre-algebra classes that have “virtually no relationship” to the state’s mathematics standards.

Students in kindergarten through third grade have been taught with an English curriculum so packed with unnecessary lessons that they don’t have time to get a firm grasp of foundational reading skills.

That “sets students up for a school career of frustration with anything that requires reading,” auditors found.

And an entire district of more than 50,000 students has been using textbooks that are so old and out of date that it’s likely that most students, for years, have been taking the state’s annual high-stakes exam without having seen much of the material they’re being tested on.

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<sup>11</sup> Lori Higgins, *Detroit’s Schools Score Worst in the Nation Again, but Vitti Vows That Will Change*, Detroit Free Press (April 10, 2018), <https://goo.gl/vpR3Kt>. **(emphasis added)**.

<sup>12</sup> Erin Einhorn, *The Detroit school district has been using a curriculum that’s ‘an injustice to the children of Detroit’ – but it’s not alone*, Chalkbeat (March 8, 2018), <https://goo.gl/Rud4KN>.



In short, the auditors who came to Detroit last fall to review the district's curriculum found that **students here have been set up to fail**.<sup>13</sup>

#### **D. The Fate of the District Will Dictate the Fate of Detroiters**

Although it may be easy to get lost in the minutia of all the precedent, statistics, academic theory and test results presented for this court's review, the District urges this court to remain focused on the fact that behind the data – stands children. Children who will one day grow up and be tasked with supporting not only themselves – but their own children. We must not forget that all of the State's failures regarding access to literacy impact living and breathing human beings.

One such person is Elijah Craft. In 2016, Elijah Craft was a senior at Central High School. Central is the oldest high school in Michigan and has been a District school (except between 2013-2016 when it was operated by the Education Achievement Authority of Michigan). Standing at 6 feet, 6 inches as a senior – Elijah “could run football plays but could only read at 1<sup>st</sup> grade level and was at the bottom of his class.”<sup>14</sup>

[B]efore he learned how to read, he was afraid to go any farther than a few blocks from home. After completing . . . a one-on-one tutoring program, he graduated 25th in his class and is now volunteering . . . and working at the Boys and Girls Club. Elijah attended Waldorf

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<sup>13</sup> *Id.* (**emphasis added**).

<sup>14</sup> Pam Good, *Not learning to read is life threatening*, Detroit News (March 7, 2018), <https://goo.gl/AqkTtr>

University in the fall and plans to transfer to Oakland Community College . . . . Learning to read transformed his life.

To learn more about how illiteracy handicapped Elijah’s life, watch the short film titled “A Day in the Life of Elijah.”<sup>15</sup>

Good thing for Elijah that he received assistance from a third-party, non-profit organization – even if just months before his graduation. However, Elijah should have been able to receive those supports from the school system. Schools should not be forced to rely on third-party, non-profits to provide access to basic literacy instruction – that duty should be fulfilled by the State.

Unfortunately, there are too many Elijahs in the District to name within the page or word limitations of this *amicus curiae* brief. However, this sad reality that can be changed if the State is required to provide the supports needed to combat the illiteracy epidemic in Detroit. That is the exact relief sought by Plaintiffs-Appellants.

## **V. Impact of State Management on The District’s Ability to Provide Children Access to Literacy**

As explained above in Section IV, *supra*, during state management the District used a curriculum that set Detroit children “up to fail.”<sup>16</sup> This was one road block

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<sup>15</sup> “A Day in the Life of Elijah,” <https://vimeo.com/204363624>.

<sup>16</sup> Erin Einhorn, *The Detroit school district has been using a curriculum that’s ‘an injustice to the children of Detroit’ – but it’s not alone*, Chalkbeat (March 8, 2018), <https://goo.gl/Rud4KN>.

to District children's access to literacy. That one road block has led to the reading deficiencies noted in Section IV, *supra*. However, faulty and unaligned curriculum is not the only debris that must be hauled away after the storm of state (mis) management. Other debris includes but is not limited to: (i) abysmal facilities conditions; (ii) teacher vacancies and lack of professional development for teachers; and (iii) insufficient additional reading resources.

## **A. Building Conditions**

### **1. Leaking Roofs and Mildew/Mold**

The conditions of District school buildings have been the subject of local, national and international news stories. On January 20, 2016, so many teachers called in sick due to building conditions that the entire district had to close.<sup>17</sup> One school counselor described the conditions as follows:

[T]he odorous smell of mold and mildew hits you like a brick wall when you step through the front doors at Spain Elementary-Middle School in Detroit.

\* \* \*

When I first started, it was a school any city would be proud to have in its district. Today, it's the poster child for neglect and indifference to a quality teaching and learning environment for our 500 students. The gym is closed because half of the floor is buckled, and the other half suffered so much rainwater damage from the dripping ceiling that it became covered with toxic black mold. Instead of

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<sup>17</sup> Valerie Strauss, *How bad are conditions in Detroit public schools? This appalling*, Washington Post (January 20, 2018), <https://goo.gl/Hb6xUh>.

professionally addressing the problem, a black tarp simply was placed over the entire area like a Band-Aid. That area of the school has been condemned.

The once beautiful pool sits empty because no one has come to fix it. The playground is off-limits because a geyser of searing hot steam explodes out of the ground. What do our kids do for exercise with no gym, playground or pool? They walk or run in the halls. Seriously. Our pre-K through eighth graders move like mall walkers.

Exposed wires hang from missing ceiling tiles. Watermarks from leaks abound. Kids either sit in freezing classrooms with their coats on or strip off layers because of stifling heat.

How can you teach or learn in conditions like these?<sup>18</sup>

The 2016 conditions at Spain Elementary are eerily similar to the 2018 conditions of too many District school buildings.

For example, staff at DPSCD Palmer Park Academy (“PPA”) complained about leaking and mold/mildew during the second semester of the 2017-2018 school year.<sup>19</sup> As a result, the District closed the K-8 building (in the middle of the school year no less) and relocated students to classrooms in Detroit International Academy High School (“DIA”) which is several miles away from PPA.<sup>20</sup> This required: (i) the bussing of 500+ students including kindergarten students; (ii) the disruption of parental schedules; and (iii) the adjustment of DIA staff to accommodate K-8

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<sup>18</sup> *Id.*

<sup>19</sup> Lori Higgins, *Leaky Palmer Park Prep Detroit is closed as teachers worry about mold*, Detroit Free Press (March 12, 2018), <https://goo.gl/RwsWer>.

<sup>20</sup> Sarah Rabal, *Palmer Park Prep Academy students moved due to health concerns*, The Detroit News (March 14, 2018), <https://goo.gl/E4kmxl>.

students and staff. Although the unplanned relocation was inconvenient for parents and administration – it was the right thing to do for children and staff. Why? Because PPA students (and every other DPSCD student) deserve to attend a school that is conducive to learning.

## **2. Lead and Cooper Laden Water**

Flint, Michigan is a prime example of what can happen when state appointed managers make decisions about acceptable water quality for citizens of a town where the manager is not a resident. Although Flint is the most publicized example – it is by no means the only city struggling with water quality issues. In fact, Detroit is not spared from the struggle.

Upon arrival at the District, Dr. Vitti reviewed testing which showed that lead or copper levels were high at certain water outlets in 18 schools. Dr. Vitti immediately ordered: (i) all water at those 18 schools be turned off; and (ii) the use of water coolers at those 18 schools. Then, the District began testing all 106 school buildings.<sup>21</sup> The initial sets of results showed that 57 of the 86 schools where test results had been provided showed elevated levels of lead and/or copper.<sup>22</sup>

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<sup>21</sup> Olivia Rosane, *Detroit School District Shuts Off Drinking Water After 16 Schools Test Positive for Copper, Lead*, EcoWatch (August 30, 2018), <https://goo.gl/ZKg6pQ>.

<sup>22</sup> *High levels of lead, copper found in water at 57 Detroit schools*, Detroit (WJBK), (September 18, 2018), <https://goo.gl/WdB4CX>.

The testing evaluated all water sources from sinks to drinking fountains. Those results confirm that District infrastructure is to blame for the schools' poor water quality.<sup>23</sup> It is worth noting that during state management – the State failed to properly maintain or invest in the District's infrastructure. Lead and Cooper infiltrated water is just one example of the problems with District buildings.

In an unprecedented move, the District shut off water at all 106 school buildings just one week before school started and used water coolers. Why? Because it was the right thing to do.

### **3. 2018 Facilities Assessment Shows That District Buildings Have NOT Been Properly Maintained or Serviced**

After Dr. Vitti's appointment, the DPSCD Board of Education ("Board") engaged OHM Advisors to perform an in-depth facilities assessment. After reviewing each of the District's 106 school buildings currently in use, OHM issued their report in June 2018, which confirmed what teachers, students and families had known for years: many schools are simply unfit for their purpose of educating students.

The report classified seven elementary and elementary/middle schools and fifteen middle schools as well as a number of high schools as in "unsatisfactory

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<sup>23</sup> Jennifer Chambers, *High metal levels cause water to be shut off at DPSCD schools*, The Detroit News (August 29, 2018), <https://goo.gl/3YswFq>.

condition.” Needed repairs that were identified as “High Priority” included “elevators and lifts, energy supply, heating and cooling systems, sprinklers, standpipes, electrical service and distribution, lighting, wiring, communications, security system, local area networking, public address and intercoms, emergency lights and plumbing fixtures.” Even repairs classified as “medium priority” included such important items as “windows and doors, roof coverings and openings and sanitary waste.”<sup>24</sup> The State hardly needed this report to know of the serious problems. The State’s own “transition manager” had unsuccessfully sought \$75M in 2016 to address deferred maintenance costs.<sup>25</sup>

As should be obvious, these conditions – which clearly are impediments to learning as well as in many instances health hazards – would not exist today **if** they had been addressed during the years of state management. The question was posed earlier – how can a student learn in conditions like these? The M-Step and NAEP scores provide the answer. Students cannot learn in building conditions like these. As such, these conditions are a barrier to a student’s access to literacy.

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<sup>24</sup> Jennifer Chambers, *Price tag to fix DPSCD buildings: . . . .*, *The Detroit News* (June 22, 2018), <https://goo.gl/tALQC3>

<sup>25</sup> *Id.*

#### **4. The District's Facilities Conditions Are Connected to The City of Detroit's Future**

It is true that a literate Detroit, is a financially viable Detroit. It is also true that - so goes the state of District facilities, so goes the City of Detroit ("City").

The District is the largest real estate holder in the City. As such, if the District's buildings are in ill-repair, the City will negatively be impacted. This sentiment was buttressed by Moody's.<sup>26</sup> It is opined that "[w]ithout state support to address it's growing capital needs, Detroit's public school system poses a potential threat to Detroit's economic revitalization . . . ."<sup>27</sup>

#### **B. Teacher Vacancies**

It has been said that when the nation catches a cold, Detroit catches the Flu. This saying has rung true as it relates to the nation's teacher shortage. The District has been especially hit by the effects of the nationwide shortage. Because experienced and qualified teachers are in high demand – they can choose which district they want to work in. For such experienced and qualified teachers, Detroit is not their first, second or third choice. As such, the District has experienced such a severe teacher shortage that it impedes a students' access to literacy.

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<sup>26</sup> *Detroit's downtown development fueling growth, but city demographics remain weak*, Moody's Investor Services, (November 8, 2018), <https://goo.gl/kSALHg>.

<sup>27</sup> Jennifer Chambers, *Moody's: Detroit school district needs another state bailout*, The Detroit News (November 20, 2018), <https://goo.gl/FDU5RW>.



In September 2017, at the start of the 2017-2018 school year, the District had 250 teacher vacancies.<sup>28</sup> Teacher vacancies impact a student's ability to learn because such vacancies cause: (i) little to no teacher continuity; and (ii) overcrowded classrooms. Having the same teacher in a classroom for the entire school year allows the students to bond to the teacher, become accustomed to that teacher's style and develop skills from mastery of lessons that build off of prior lessons. None of these things can effectively occur when there is not one continuous, experienced and qualified educator in a classroom.

Other factors that have contributed to the District's teacher shortage is that many teachers left during state management complaining of low pay and lack of professional development. During state management, teachers were not provided raises but in fact loaned money to the District. And, professional development was not offered with any fidelity.

### **C. Lack of Additional Reading Resources**

The State managed the District from 2009-2016 and then before that 1999-2005. During that time, MEAP and then M-STEP scores showed a steady decline in reading. But, no action was taken to aggressively attack the problem. Additional

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<sup>28</sup> Jennifer Chambers, *Teacher recruitment takes many forms in Detroit*, The Detroit News (August 6, 2018), <https://goo.gl/k9upw1>.

reading resource teachers, one-on-one tutoring and other supports are needed to attack the sad fact that 93% of District students do not read at grade level.

Elijah Craft is an example of what additional reading resources can do. But we shouldn't have to wait until a student is a graduating senior reading at a 1<sup>st</sup> grade level – to do something. The District is in a state of emergency and it became that way at the hand of state management. Indeed, the lack of access to literacy is traceable to the State's management of the District.

### **CONCLUSION**

The district court's ruling is flawed because it only compares Detroit students to other Detroit students – but the State is responsible for the education of all students in Michigan. As such, Detroit students should be compared to students across the state. When that proper comparison is made – the numbers tell the truth. The truth is that 93% of Detroit students read below grade level as compared to 66% of students state wide. When the proper comparison is made, it is easily seen that students in Birmingham, Grosse Pointe and Grosse Ile enjoy school buildings that are free from leaky roofs and oppressive heat/cold conditions. When the proper comparison is made, it is easily seen that the major difference between Detroit students and other students – is race.

Based on U.S. Supreme Court precedent, this court is well positioned to require the state to cease its unconstitutional practice of treating Detroit students

differently than it does other Michigan students. *Brown v. Board of Education*, 347 U.S. at 493 (the opportunity of an education . . . where the state has undertaken to provide it, is a right that must be available to *all* on equal terms) (*emphasis added*). The District cannot properly attack the literacy problem – with buildings unfit for teaching and learning, with a lack of teachers or properly trained or without additional reading resources.

Literacy is a constitutionally protected right. District students have not had access to literacy whereas other state students have enjoyed such access. For these reasons, the district court’s dismissal of Plaintiff’s due process and equal protection claim cannot stand and should be reversed.

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitations of Fed. R. App. 29(a)(5) and Fed. R. App. 32(a)(7)(B) because according to the word-count feature of Microsoft Word, this brief contains 4,984 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. R. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in Time New Roman 14 point font.

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 26, 2018, I electronically filed the foregoing Brief of *Amicus Curiae* Detroit Public Schools Community District with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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