

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA

BARBARA AHO, by and for her minor son, EDWARD AHO;
ERIKA AHO; TEQUESTA HILL, by and for her minor sons,
RAYNARD CONEY and RUBIN CONEY; JAYNE KING, by
and for her minor son, WILL MILNER; STUDENT T;
DARYL BROOKS, by and for his minor nephews,
KEANDRE BROOKS and ERNEST BROOKS, and on behalf
of all others similarly situated,

Plaintiffs,

v.

STATE OF FLORIDA, CHARLIE CRIST, in his official
capacity as Governor of the State of Florida, JEFF
ATWATER, in his official capacity as President of the Florida
Senate, LARRY CRETUL, in his official capacity as Speaker
of the House of Representatives of the State of Florida, ERIC
J. SMITH, in his official capacity as Commissioner of
Education of the State of Florida; the FLORIDA
DEPARTMENT OF EDUCATION; and the STATE BOARD
OF EDUCATION,

Defendants.

CLASS
REPRESENTATION

Case No.:

CLASS ACTION COMPLAINT

Plaintiffs BARBARA AHO, by and for her minor son, EDWARD AHO; ERIKA
AHO; TEQUESTA HILL, by and for her minor sons, RAYNARD CONEY and RUBIN
CONEY; JAYNE KING, by and for her minor son, WILL MILNER; STUDENT T;
DARYL BROOKS, by and for his minor nephews, KEANDRE BROOKS and ERNEST

BROOKS, on behalf of themselves and all others similarly situated, allege, upon personal knowledge as to themselves and information and belief as to other matters, as follows:

I. INTRODUCTION

1. This class action lawsuit challenges the failure of Charlie Crist, Governor of the State of Florida; Jeff Atwater, President of the Florida Senate; Larry Cretul, Speaker of the House of Representatives of the State of Florida; Eric J. Smith, Commissioner of Education of the State of Florida; the Florida Department of Education; and the State Board of Education (“the Board”) to provide a uniform, efficient, safe, secure, and high quality education to the children of Palm Beach County as mandated by the Florida Constitution. The Defendants’ failure is evidenced by the low graduation rates of Palm Beach County School District.

2. This action further challenges the failure of Charlie Crist, Governor of the State of Florida; Jeff Atwater, President of the Florida Senate; Larry Cretul, Speaker of the House of Representatives of the State of Florida; Eric J. Smith, Commissioner of Education of the State of Florida; the Florida Department of Education; and the State Board of Education to provide a uniform, efficient, safe, secure, and high quality education to African-American and Hispanic children in Palm Beach County as mandated by the Florida Constitution. The significant disparity between the graduation rates of African-American and Hispanic students and those of white students in the Palm Beach County School District establishes this failure.

3. By any measure, the graduation rates in Palm Beach County are evidence of an inadequate school system. Using the most generous method of calculating graduation rates, almost 1/3 of the students do not graduate. But, there is reason to

believe a truly accurate method would reveal that close to 1/2 of the students fail to graduate. And, the consequences for the students and the county are devastating, as those who leave school without a high school diploma are significantly less able or likely to share in the American dream.

II. JURISDICTION AND VENUE

4. This action involves matters related to education in Palm Beach County and this Court has jurisdiction over this case and over the parties.

5. Venue is proper in this Court pursuant to § 47.011 FLA. STAT. as this cause of action accrued in Palm Beach County, Florida.

III. PARTIES

A. Plaintiffs

6. Barbara Aho is the mother of plaintiff Edward Aho. Edward is a 17-year-old white student who had been attending Atlantic Community High School in Palm Beach County during the 2007-2008 school year. He has subsequently dropped out of high school. If Palm Beach County would provide her son with an adequate education, she would compel him to re-enroll and complete high school in a Palm Beach County School.

7. Erika Aho is a 19-year-old woman who had been home schooled during the 2006-2007 school year. If Palm Beach County would provide her with an adequate education, she would re-enroll in public high school in Palm Beach County.

8. Tequesta Hill is the mother of plaintiff Raynard Coney. Raynard is a 16-year-old African-American student who has been attending Glade Central High during the 2009-2010 school year.

9. Tequesta Hill is also the mother of plaintiff Rubin Coney. Rubin is a 15-year-old African-American student who has been attending Glade Central High School in Palm Beach County during the 2009-2010 school year.

10. Jayne King is the mother of plaintiff Will Milner. Will is a 16-year-old bi-racial student who has been attending Suncoast High School in Palm Beach County during the 2009-2010 school year, to and from which Will must travel several hours by public bus and train daily.

11. Student T is an 18-year-old African-American student who has been attending Park Vista High School in Palm Beach County during the 2009-2010 school year.

12. Daryl Brooks is the uncle and legal guardian of plaintiff Keandre Brooks. Keandre is a 15-year-old African-American student who has been attending William T. Dwyer High School in Palm Beach County during the 2009-2010 school year.

13. Daryl Brooks is the uncle and legal guardian of plaintiff Ernest Brooks. Ernest is a 15-year-old African-American student who has been attending Independence Middle School in Palm Beach County during the 2009-2010 school year.

B. Defendants

14. Defendant State of Florida is the state in which Palm Beach County is located. Officials of the State of Florida are responsible for the education of students residing in the State of Florida.

15. Defendant Charlie Crist is the Governor of the State of Florida. The position of Governor was created under the authority of Article IV, Section 1 of the Florida Constitution. Pursuant to Article IV, Section 1 of the Florida Constitution, the

Governor is the chief executive of the State of Florida and shall take care that all laws are faithfully executed. Defendant Crist is sued in his official capacity.

16. Defendant Jeff Atwater is the President of the Florida Senate. The position of President of the Florida Senate was created under the authority of Article III, Section 2 of the Florida Constitution. Pursuant to Article III, Section 2 of the Florida Constitution, the President of the Senate is the permanent presiding officer of the Senate. Defendant Atwater is sued in his official capacity.

17. Defendant Larry Cretul is the Speaker of the Florida House of Representatives. The position of Speaker of the Florida House of Representatives was created under the authority of Article III, Section 2 of the Florida Constitution. Pursuant to Article III, Section 2 of the Florida Constitution, the Speaker of the Florida House of Representatives is the permanent presiding officer of the House of Representatives. Defendant Cretul is sued in his official capacity.

18. Defendant Eric J. Smith is the Commissioner of Education of the State of Florida “the Commisioner”. The position of Commissioner was created under the authority of Article IX, Section 2 of the Florida Constitution. Pursuant to FLA. STAT. § 1001.10 the Commissioner of Education is the chief educational officer of the State of Florida and is responsible for providing full assistance to the State Board of Education “the Board” in enforcing compliance with the mission and goals of the K-20 education system. The Commissioner also serves as the primary source of information to the President of the Senate and the Speaker of the House of Representatives concerning the Board and the K-20 education system pursuant to FLA. STAT. § 1001.11(b). Defendant Smith is sued in his official capacity.

19. Defendant Department of Education (“the Department”) was created under the authority of FLA. STAT. § 20.15. Pursuant to FLA. STAT. § 1001.20 (1) the Department is responsible for acting as an administrative and supervisory agency under the implementation and direction of the Board. The Department’s Division of Public Schools, which was established pursuant to FLA. STAT. § 20.15 (3), is responsible for carrying out the duties, responsibilities, and functions necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education under the jurisdiction of the Board, as assigned by the Board and the Commissioner.

20. Defendant State Board of Education was created under the authority of Article IX, Section 2 of the Florida Constitution, and, pursuant to FLA. STAT. § 1001.02(2) (r), the Board is responsible for enforcing system wide education goals and policies except as otherwise provided by law. Pursuant to FLA. STAT. § 1008. 32 the Board is also charged with the responsibility of overseeing the performance of district school boards in enforcement of all laws and rules.

IV. CONSTITUTIONAL PROVISIONS AT ISSUE

21. Article IX, Section 1 of the Florida Constitution states that the education of children is a “fundamental value” in the State of Florida.

22. Article IX, Section 1 of the Florida Constitution further requires “the State to make adequate provision for the education of all children.”

23. This constitutional provision mandates that free public school education be “uniform, efficient, safe, secure, and high quality.”

24. The right to a uniform, efficient, safe, secure, and high quality education found in Article IX, Section 1 of the Florida Constitution is the result of a 1998 Amendment to the Florida Constitution enacted by the people of Florida to strengthen and define the right to education in Florida.

25. In order to provide a uniform, efficient, safe, secure, and high quality public education to the children of Palm Beach County, the Governor, the President of the Florida Senate, the Speaker of the House of Representatives, the Commissioner, the Department, and the Board are charged with implementing this mandate of the Constitution of the State of Florida.

26. Pursuant to, *Schroeder v. Palm Beach County School Bd.*, 10 So.3d 1134 (Fla. App. 4 Dist. 2009), the State is the correct defendant in this matter.

V. CLASS ACTION REPRESENTATION ALLEGATIONS

27. Plaintiffs bring this Class Action pursuant to FLA. R. CIV. P. 1.220 on behalf of themselves and all Palm Beach County students who are attending, or may in the future attend, public elementary, middle, or high school in Palm Beach County.

28. All Plaintiffs are members of the class they seek to represent.

29. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, among others: (1) whether the class members are receiving a uniform, efficient, safe, secure, and high quality education as required by Article IX, Section I of the Florida Constitution; and (2) whether injunctive relief and other equitable remedies for the class are warranted.

30. The members of the class identified herein are so numerous that joinder of all members is impracticable. The exact number of members of the class is unknown, but the class is currently believed to have approximately 175,000 members. As the proposed class includes future students, that number represents a low estimate of the number who will be members of the class while this case proceeds.

31. The representative Plaintiffs' claims are typical of the claims of the class.

32. The representative Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. The Plaintiffs have retained counsel competent and experienced in complex class action and educational reform litigation.

33. Class certification is appropriate pursuant to FLA. R. CIV. P. 1.220(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the members of the class, making final declaratory and equitable relief appropriate.

VI. FACTUAL ALLEGATIONS

34. The Palm Beach County School District currently has approximately 170,215 students and 186 schools, including 23 high schools.

35. There are several methods by which the high school graduation rates in Palm Beach County can be calculated. Under each of these methods, Defendants have failed to provide its students with a constitutionally adequate education.

36. The first method by which to calculate the graduation rates in Palm Beach County is the State of Florida's self-reported method.

37. Florida's self-reported graduation rates rely on a longitudinal tracking of individual student records.

38. The State of Florida's self-reported graduation rates overstate the actual graduation rates.

39. Florida currently includes students who do not receive a standard academic diploma ("special diploma" recipients) in its calculation of graduates. Florida will not include students with special diplomas in its calculation of graduates beginning in the 2011-2012 academic year.

40. Florida also counts students who have repeated a grade as graduates of the class with which they graduated, rather than the class with which they entered. Although the State is adding these students to the count of students who have graduated in that year, the State does not also add those students to the cohort (students counted in the denominator when graduation rate percentages are calculated) of students with whom they should have graduated in four years. This practice artificially inflates the percentage of four year "graduates" by making it appear that more students graduated in one four-year cohort than actually did.

41. There is evidence that Florida was removing from the total number of students those students who drop out of school and immediately enroll in a GED program. These students are known as W26 withdrawals. However, these students were not added to the cohort of students who should have graduated that year.

42. In addition, there is evidence of significant inconsistencies in the data from which the State calculates graduation rates. In addition to its own method, the State also reports graduation rates utilizing a method responsive to the federal No Child Left Behind Act ("NCLB"). The 2004-2005 NCLB graduation rate for Palm Beach County is based on a cohort of 11,468, but an accurate count of that cohort reveals that there were

13,817 students. There are similar seemingly inconsistent data elements throughout the data set used by Florida to calculate graduation rates.

43. Another method of calculating high school graduation rates employs the Cumulative Promotion Index (“CPI”). This method was developed by Christopher Swanson and has been utilized by the Harvard Civil Rights Project and the Urban Institute. The CPI method provides a method of estimating the number of ninth graders who will graduate if certain conditions exist. The CPI relies on data generated by the United States Department of Education.

44. The CPI method calculates graduation rates using a four-year graduation rate and includes only students receiving a regular high school diploma.

45. A method of adjusting high school graduation rates in Palm Beach County for two of the documented problems was developed by Professor Sherman Dorn, Ph.D. of the University of South Florida. Professor Dorn’s method relies on Florida’s self-reported numbers, but corrects for several of the inaccuracies in Florida’s method for calculating high school graduation rates.

46. Professor Dorn’s method does not and cannot correct fully for the seeming inconsistencies of the data elements contained in Florida’s self-reported numbers.

47. Due to problems in the data sets, none of the methods provides a perfectly accurate and reliable measure of graduation rates.

48. Under each of these three methods, the Palm Beach County School District’s high school graduation rates evidence the Defendants’ failure to provide its students in the Palm Beach County School District with a high quality education.

49. Based on Florida's self-reported numbers, the overall high school graduation rates in the Palm Beach County School District for the years 2001 to 2007 were:

2001: 64.9%
2002: 66.6%
2003: 66.0%
2004: 65.9%
2005: 69.0%
2006: 69.3%
2007: 71.4%

50. Using the CPI method for calculating high school graduation rates, the overall high school graduation rates in the Palm Beach County School District for the years 2001 to 2004 were:

2001: 46.6%
2002: 56.0%
2003: 55.2%
2004: 56.1%

51. Finally, using Professor Dorn's method for calculating high school graduation rates, the overall high school graduation rates in the Palm Beach County School District for the years 2002 to 2006 were:

2002: 53.8%
2003: 54.9%
2004: 55.5%
2005: 58.0%
2006: 58.1%

52. Under each of the methods for calculating graduation rates in Palm Beach County discussed in paragraphs 28 through 44, there is a significant and troubling disparity between the graduation rates of African-American and Hispanic students and those of white students.

53. The substantial disparity between the high school graduation rates of African American and Hispanic students and white students establishes the Defendants' failure to make adequate provision for the education of all children.

54. Based on Florida's self-reported numbers, disparities between the high school graduation rates for African-American students in the Palm Beach County School District and those of white students for the years 2002 to 2007 were approximately:

2002: 26%
2003: 31%
2004: 31%
2005: 29%
2006: 28%
2007: 29%

55. Using the CPI method for calculating high school graduation rates, the high school graduation rate for African-American students in the Palm Beach County School District in 2002 was only 43.6% compared to a rate of 63.3% for white students.

56. Based on Florida's self-reported numbers, disparities between the high school graduation rates for Hispanic students and those of white students in the Palm Beach County School District for the years 2002 to 2007 were approximately:

2002: 20%
2003: 20%
2004: 22%
2005: 19%
2006: 20%
2007: 20%

57. Using the CPI method for calculating high school graduation rates, the high school graduation rate for Hispanic students in the Palm Beach County School District in 2002 was only 53.7%, compared to a rate of 63.3% for white students.

58. Other school districts within Florida that have similar enrollment numbers and demographics to the Palm Beach County School District have significantly higher high school graduation rates than Palm Beach County. Accordingly, Palm Beach County's low high school graduation rates and the disparity between the graduation rates of African-American and Hispanic students and those of white students cannot be attributed to socio-economic status, immigrant status, or student transfers to private schools.

59. For example, using the CPI method, in 2004 the Hillsborough County School District in Florida had an overall graduation rate of 75.1% and the Orange County School District in Florida had an overall graduation rate of 65.6%, compared to the Palm Beach County School District's overall graduation rate that year of 56.1%.

60. Similarly, other school districts around the country with similar enrollment numbers and demographics to Palm Beach County have significantly higher high school graduation rates.

61. For example, using the CPI method, in 2004 the Baltimore County Public School System in Maryland had an overall graduation rate of 81.1%; the Fairfax County Public School System in Virginia had an overall graduation rate of 80.4%; and the Montgomery County Public Schools in Maryland had an overall graduation rate of 80.3%, compared to the Palm Beach County School District's overall graduation rate that year of 56.1%.

62. The Palm Beach County School District's overall graduation rate is also significantly less than the national average, which for 2004 using the CPI method was 69.9%.

63. Even if its overall graduation rates mirrored the national average graduation rates or the graduation rates of other districts in Florida, the Palm Beach County School District would still fail to provide a uniform, efficient, safe, secure, and high quality education to its students. Even if the low graduation rates or high disparities between the graduation rates of African American and Hispanic students and white students can be attributed to socio-economic status or immigrant status, the State of Florida, through the Defendants, has a constitutional obligation to develop and implement programs and measures that enable all of its students to graduate, regardless of the students' race or ethnicity.

64. Regardless of the cause of the Palm Beach County School District's low graduation rates, an essential component of a uniform, efficient, safe, secure, and high quality education is a meaningful opportunity to graduate from high school.

65. High school graduation rates as low as those in the Palm Beach County School District establish the Defendants' failure to provide a uniform, efficient, safe, secure, and high quality education.

66. Large high school dropout rates are also evidence of a school district's systemic failure to meet the needs of its student body. High school graduation rates as low as those in the Palm Beach County School District establish Defendants' failure to meet the needs of its student body.

67. The substantial disparity between the high school graduation rates of African-American and Hispanic students and the rates of white students establishes the Defendants' failure to provide African-American and Hispanic students in the Palm

Beach County School District with a uniform, efficient, safe, secure, and high quality education.

68. There is a disparity in graduation rates among the schools in the Palm Beach County School District. This disparity also establishes Defendants' failure to provide all students with a uniform, efficient, safe, secure, and high quality education.

69. Dropping out of high school often leads to economic and social tragedy for an individual. High school drop-outs are far more likely than graduates to be unemployed, in prison, and living in poverty.

70. Children of high school drop-outs are far more likely to attend weak and low-performing schools, perform badly in school, and drop out of high school themselves, thereby creating powerful intergenerational social and economic problems.

71. In 2001, the unemployment rate for drop-outs 25-years-old and over was almost 75% higher than for high school graduates – 7.3% compared to 4.2%.

72. In a 2003 study based on data generated by the United States Department of Corrections, two-thirds of state prison inmates in this country are high school drop-outs and an incredible 52% of all African-American male drop-outs in their early thirties had a prison record.

73. Beginning in the 2009-2010 academic year, the Florida Department of Education changed its definition of graduation rates to exclude students with GEDs.

74. The inadequate education provided by the Defendants has had effects on the named plaintiffs and, as a result, their chances of graduating from high school are diminished.

75. Like many students formerly in the Palm Beach County School District, plaintiff Edward Aho has dropped out of high school because the Palm Beach County School District was not providing him an adequate education. Edward Aho suffers and will continue to suffer the consequences of not having completed his high school degree as a result. His mother, Barbara Aho, would compel him to re-enroll in a public high school if Palm Beach County would provide him with an adequate education.

76. Like many students formerly in the Palm Beach County School District, plaintiff Erika Aho has dropped out of high school because the Palm Beach County School District was not providing her an adequate education. Erika Aho suffers and will suffer the consequences of not having completed her high school degree as a result. She would re-enroll in a public high school if Palm Beach County would provide her with an adequate education.

77. Like many students in the Palm Beach County School District, plaintiff Raynard Coney is having academic problems and is being subjected to school discipline. Because Raynard is a student at Lake Shore Middle School in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of its students every year, Raynard is not receiving a uniform, efficient, safe, secure, and high quality education.

78. Like many students in the Palm Beach County School District, plaintiff Rubin Coney is having academic problems and is being subjected to school discipline. Because Rubin is a student at Lake Shore Middle School in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of

its students every year, Rubin is not receiving a uniform, efficient, safe, secure, and high quality education.

79. Because plaintiff Will Milner is a student at Suncoast High School in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of its students every year, Will is not receiving a uniform, efficient, safe, secure, and high quality education.

80. Like many students in the Palm Beach County School District, plaintiff Student T is having academic problems and is being subjected to school discipline. Because Student T is a student at Park Vista High School in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of its students every year, Student T is not receiving a uniform, efficient, safe, secure, and high quality education.

81. Like many students in the Palm Beach County School District, plaintiff Keandre Brooks is having academic problems and is being subjected to school discipline. Because Keandre is a student at John F. Kennedy Middle School in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of its students every year, Keandre is not receiving a uniform, efficient, safe, secure, and high quality education.

82. Like many students in Palm Beach County School District, plaintiff Ernest Brooks has special educational needs. He is referred to as an Exceptional Student Education (ESE) student. During the 2008-2009 school year, he attended Duncan Middle School in Palm Beach County. At the end of the school year, his legal guardian and uncle, Daryl Brooks, learned that the ESE program at Duncan Middle School would be

dismantled before the beginning of the 2009-2010 school year. Though the ESE teachers remain at Duncan Middle School, the dismantling of the ESE program meant that Ernest could no longer have his educational needs met. As a result, Daryl Brooks transferred Ernest to Independence Middle School. Shortly thereafter, the principal at this school informed Daryl Brooks that he had no trained staff for Ernest's ESE classes. Because Ernest is a student in the Palm Beach County School District, and because the District fails to graduate a very significant percentage of its students every year, Ernest is not receiving a uniform, efficient, safe, secure, and high quality education.

VII. CLAIM FOR RELIEF

83. Plaintiffs incorporate paragraphs 1 through 82 as alleged above.

84. This claim is brought on behalf of all Plaintiffs and the members of the class.

85. By failing to provide Palm Beach County public school students with a regular high school diploma within four years, Defendants have failed to provide the Plaintiffs and the class they represent a uniform, efficient, safe, secure, and high quality education as required by Article IX, Section I of the Florida Constitution.

86. Plaintiffs request relief as hereinafter provided.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the members of the class pray for relief as follows:

87. Certification of this case as a class action on behalf of the proposed class;

88. Designation of Plaintiffs Edward Aho, Erika Aho, Raynard Coney, Rubin Coney, Will Milner, Student T, Keandre Brooks, and Ernest Brooks as representatives of the class;

89. A declaratory judgment that the low high school graduation rate in the Palm Beach County School District is a violation of the Defendants' constitutional obligation to provide a uniform, efficient, safe, secure, and high quality education in Palm Beach County;

90. A declaratory judgment that the disparity in the high school graduation rates of African-American students and those of white students in the Palm Beach County School District is a violation of the Defendants' constitutional obligation to provide a uniform education to all students in Palm Beach County;

91. A declaratory judgment that the disparity in the high school graduation rates of Hispanic students and those of white students in the Palm Beach County School District is a violation of the Defendants' constitutional obligation to provide a uniform education to all students in Palm Beach County;

92. An injunction and order that Defendants adopt a definition of graduation rate approved by the Court that accurately measures graduation rates;

93. An injunction and order mandating the Defendants improve the overall graduation rate in the Palm Beach County School District and the graduation rate for each racial subgroup of students, students who qualify for the school lunch program, and English Language Learners in the Palm Beach County School System by a percentage to be set by the Court each academic year beginning with the 2009-2010 academic year; and

94. Such other and further equitable relief as this Court deems necessary, just, and proper.

Dated this 4th day of November, 2009.

Respectfully submitted,

By: Muslima Lewis

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