STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

AMERICAN FEDERATION OF TEACHERS, AFT MICHIGAN, DETROIT FEDERATION OF TEACHERS, IVY BAILEY, *as Interim President of the Detroit Federation of Teachers***, MONIQUE BAKER MCCORMICK,** *individually and on behalf of* **KM**, *a minor***, CYNTHIA SAMUEL-BAKER,** *individually and on behalf of* **MB**, *a minor***, LATRICE BERRY,** *individually and on behalf of* **LB,** *a minor***, TAKEYSHA DANIELS**, *individually and on behalf of* **AI**, *a minor***, TOFORAYA WILLIAMS,** *individually and on behalf of* **MG**, *a minor***, CHRISTOPHER ROBINSON,** *individually and on behalf of* **TR,** *a minor***, SHONIQUA KEMP,** *individually and on behalf of* **IK** *and* **TK,** *minors***, SHANI BURRELL,** *individually and on behalf of* **KB** *and* **KB,** *minors***, and DANA DACRES**, *individually and on behalf of* **SD, WD,** *and* **JD,** *minors***, SONYA LEWIS**, *individually and on behalf of* **SG** *and* **MG**

Plaintiffs,

v.

DETROIT PUBLIC SCHOOLS, and DARNELL EARLEY, in his Official Capacity as the State Appointed Emergency Manager for the Detroit Public Schools under Public Act 436 of 2012,

Defendants.

Case No.:

Hon. _____

_____/

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COMPLAINT
AND DEMAND FOR TRIAL BY JURY

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint against Defendant.

/s/Robert D. Fetter
Robert D. Fetter

Plaintiffs **AMERICAN FEDERATION OF TEACHERS, AFT MICHIGAN, DETROIT FEDERATION OF TEACHERS, IVY BAILEY, MONIQUE BAKER MCCORMICK, INDIVIDUALLY AND ON BEHALF OF KM, A MINOR, CYNTHIA SAMUEL-BAKER, INDIVIDUALLY AND ON BEHALF OF MB, A MINOR, LATRICE BERRY, INDIVIDUALLY AND ON BEHALF OF LB, A MINOR, TAKEYSHA DANIELS, INDIVIDUALLY AND ON BEHALF OF AI, A MINOR, TOFORAYA WILLIAMS, INDIVIDUALLY AND ON BEHALF OF MG, A MINOR, CHRISTOPHER ROBINSON, INDIVIDUALLY AND ON BEHALF OF TR, A MINOR, SHONIQUA KEMP, INDIVIDUALLY AND ON BEHALF OF IK AND TK, MINORS, SHANI BURRELL, INDIVIDUALLY AND ON BEHALF OF KB AND KB, MINORS, DANA DACRES, INDIVIDUALLY AND ON BEHALF OF SD,WD, AND JD, MINORS, AND SONYA LEWIS INDIVIDUALLY AND ON BEHALF OF SG AND MG**, minors, ("Plaintiffs"), by and through their attorneys, **MILLER COHEN, P.L.C.**, for their Complaint and Demand for Trial by Jury, state as follows:

INTRODUCTION

Detroit Public Schools (DPS), under Emergency Manager Darnell Earley's control, has not performed its duty to its students, parents, teachers, and community to provide a minimally adequate education and to properly maintain the schools. Instead, Defendants have allowed the physical condition of Detroit's schools to deteriorate to the point of crisis and have forced

Detroit's school-age children to spend their young lives in deplorable surroundings risking their health and safety in the process and imposing on students and their teachers an atmosphere that interferes with their securing a minimally sufficient education. The sorry state of these schools has been covered in incredible detail by the media in recent weeks revealing the startling gravity of the crisis at DPS. In attempting to attain an education, children are being required to learn in rodent and insect infested buildings that are badly water damaged. Children are being exposed to black mold as these buildings continue to crumble with debris falling from the ceilings. There are unrepaired bullet holes, exposed wires, and boarded up windows. Heating systems are in such disrepair that many classrooms have temperatures below freezing or above 90º. Technology schools are without internet. It is not a surprise that due to this, and other reasons, including budget cuts and mismanagement, that DPS is in dead last in academic performance with a majority of its students being left behind the rest of the country. Teachers, who have raised these conditions repeatedly, have labored heroically to teach in these oppressive conditions risking their own well-being in these classrooms. They have advertised and protested these horrible conditions, even at their own personal risk and have been ignored. It is for that reason that Plaintiffs bring this suit to compel Defendants to meet their constitutional and statutory obligations to the children of Detroit, their parents, and their teachers—to repair the damage that they caused to the school facilities and, take appropriate action to remedy these deplorable conditions.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff American Federation of Teachers, AFL-CIO (AFT) is a labor organization representing Detroit Public School teachers. At the request of the Detroit

Federation of Teachers, it has placed the DFT under voluntary trusteeship in order to try and assist it in assuring necessary representation of teachers during the current crisis in DPS.

2. Plaintiff Detroit Federation of Teachers (DFT) is a labor organization representing Detroit Public School teachers. DFT has requested that AFT put it under trusteeship so that it could bring to bear its resources to aid the Local and its teachers in their efforts during the current crisis in DPS.

3. Plaintiff AFT Michigan is a labor organization representing Detroit Public School teachers.

4. Plaintiff Ivy Bailey is the Interim President of the DFT and a DPS teacher.

5. Plaintiff Monique Baker McCormick is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff KM.[1]

6. Plaintiff KM is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Cass Technical High School.

7. Plaintiff Cynthia Samuel-Baker is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff MB.

8. Plaintiff MB is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Spain Elementary.

9. Plaintiff Latrice Berry is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff LB.

10. Plaintiff LB is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Spain Elementary.

[1] To preserve their confidentiality considering their status as minors, Plaintiff-Student names have been abbreviated.

11. Plaintiff Takeysha Daniels is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff AI.

12. Plaintiff AI is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Spain Elementary.

13. Plaintiff Toforaya Williams is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff MG.

14. Plaintiff MG is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Spain Elementary.

15. Plaintiff Christopher Robinson is a citizen and resident of the State of Michigan and the City of Detroit and is the father of Plaintiff TR.

16. Plaintiff TR is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Spain Elementary.

17. Plaintiff Shoniqua Kemp is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiffs IK and TK.

18. Plaintiff IK is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Osborn High School.

19. Plaintiff TK is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Osborn High School.

20. Plaintiff Shani Burrell is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiff KB and KB.

21. Plaintiff KB is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Burton International Academy.

22. Plaintiff KB is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Burton International Academy.

23. Plaintiff Dana Dacres is a citizen and resident of the State of Michigan and the City of Detroit and is the mother of Plaintiffs SD, WD, and JD.

24. Plaintiff SD is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Burton International Academy.

25. Plaintiff WD is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Burton International Academy.

26. Plaintiff JD is a minor under the age of eighteen, residing in the State of Michigan and the City of Detroit who is a student attending Burton International Academy.

27. Defendant Detroit Public Schools is a Michigan public school district responsible for educating over 47,000 children in the City of Detroit.

28. Defendant Darnell Earley is the current Emergency Financial Emergency Manager appointed by Governor Snyder for Detroit Public Schools under the authority granted by MCL §141.1541 *et seq.*. He comes to Detroit after leaving the City of Flint a disaster area where he also acted as an Emergency Manager.

29. This Court has jurisdiction over this case under MCL § 600.601 and § 600.605 and by MCR 2.605.

30. Venue is proper pursuant to MCL § 600.1615, since the State exercises governmental authority within this county and judicial circuit.

GENERAL ALLEGATIONS

31. Plaintiffs incorporate herein by reference each of the preceding paragraphs.

32. For almost seven years, DPS has been under the control of State-appointed Emergency Managers. In those six years, DPS has had four emergency managers appointed by the governor to manage DPS; yet, despite being under emergency management, DPS is in worse shape than before being taken over by the State.

33. Currently, DPS faces $515 million in past debt and is projected to be unable to fund its payroll come April 2016. Under emergency management, DPS' assets have been practically given away and its student body split amongst charter schools and the Education Achievement Authority (EAA). (***Exhibit A***) DPS' per pupil funding has dropped significantly. As a result, DPS' fiscal emergency is worse than ever. After six years of state control, the annual budget deficit is larger this year than the last fiscal year that a locally elected school board governed the District.

34. DPS' fiscal condition and administrative indifference has left facilities in disrepair. Defendants have failed to meet their duty to the parents, students and teachers of Detroit Public Schools allowing DPS facilities to crumble while refusing and failing to repair these dilapidated school facilities.

35. By failing to properly maintain and manage Detroit's public schools, Detroit students have been exposed to dangerous conditions, including black mold, bacteria, freezing cold temperatures in classrooms, rodent and insect infestations, exposed wiring, hazards that could lead to incidents of tripping, and falling debris to name a few. Students are suffering from respiratory illnesses due to the toxic environment.

36. According to DFT Interim President Ivy Bailey, the children of Detroit are being "exposed to atrocious, environmental hazards" including "rat and other rodent infestations, crumbling walls, holes in ceilings, cracked sidewalks, [and] dangerous broken boilers and no

heat." (***Exhibit B***) According to President Bailey, these conditions have only become worse in the last six years. (Id.)

37. As a result, Defendants are failing to meet their primary function—to provide an environment conducive to teaching and learning. The budgetary issues are intruding into the classroom with DPS facilities being allowed to crumble and decay.

38. Teachers have taken action to expose the terrible conditions that students are forced to endure in order to receive an education by publishing pictures revealing the poor state of these facilities, demonstrating, engaging in sick outs at great personal risk, organizing the community and advertising to call this tragedy to the attention of the public. Many took this action after internal complaints and reports were ignored.

39. Spain Elementary-Middle School is an example of the increasing neglect and decay as a result of the actions of the DPS. The pictures posted of Spain reveal unrepaired gaps in the walls letting in cold air and vermin, elementary schools students clutching themselves for warmth as they walk down the halls, severe water damage in the gymnasium that has remained unrepaired for years causing the gym floor to warp and wave as well as mold and fungus accumulating with trash in the ventilation ducts, and a rat infestation. (***Exhibit C***)

40. Lakia Wilson, student counselor at Spain Elementary-Middle School, summarized the conditions best in an article entitled "How bad are conditions in Detroit public schools? This appalling." (***Exhibit D***) Ms. Wilson described the conditions that DPS students are forced to endure as follows:

> The 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.
>
> I have been at Spain for 19 years, first as a first-grade teacher, then, after earning a master's degree in counseling, as a school counselor. 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 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?

(Id.); *See also* https://www.youtube.com/watch?v=ROCxtuyFjp0&sns=em.

41. Another teacher at Spain Elementary, Patricia Hall, filed a complaint with the Michigan Occupational Safety and Health Administration (MIOSHA) in October 2015 regarding the dangerous conditions in the school, including the inhalation of dangerous mold. (***Exhibit E***) For years, DPS allowed the water damage in the gym to go unrepaired and did nothing to remediate the mold that grew as a result. (Id.)

42. Ms. Hall complained that the children and employees at Spain Elementary had been experiencing health concerns similar to symptoms from exposure to black mold spores, including but not limited to respiratory ailments, chronic fatigue, stomach pain, difficulty concentrating, and sore throats.

43. DPS responded to that complaint that it would fix the problem within fifteen days causing MIOSHA to close the investigation. (Id.)

44. Nonetheless, DPS did nothing and the mold remains. (Id.) DPS did put a tarp over the door of the gym, however, this was not sufficient to trap the toxic air. Instead, the intent was to block media and other visitors from seeing the disaster.

45. Another egregious example is Osborn High School. At Osborn, the pictures show rodent droppings, exposed wiring, unsanitary bathrooms with nonfunctioning equipment and disgusting conditions, exposed leaky pipes, severely water damaged ceilings and floors, fungus growing out of the walls, missing tiles, warped floors, broken windows that have been taped or boarded up, and even bullet holes that have not been repaired. (***Exhibit F***)

46. DFT conducted an on-site examination of that facility on January 13, 2016 and issued a report summarizing the investigation team's findings on January 14, 2016. (***Exhibit G***) In that report, the team noted that the building "lacked routine maintenance or major modernization." The team found pest droppings and water damage, including damaged ceiling tiles and missing windows. The team went on to report that the faculty was "universally frustrated by the temperature extremes (too hot and too cold) throughout the school, broken windows, inoperable water fountains and continued leaks throughout the building." (Id.) "Several [teachers] commented how demoralizing it was for students to be in an environment that needed so many repairs, pointing out the bullet-ridden windows that have not been replaced in years." (Id.)

47. Particularly alarming, the report described the link between the conditions found in Osborn and the health and safety of the student body:

> Students in this school are predominantly African American and research has found that the asthma prevalence is especially high (upwards of 40%) in this population. It is imperative that any asthma triggers such as mold or dirt be addressed immediately to make the environment safe for those students.

(Id.)

48. At Carleton Elementary, Teachers posted pictures showing water damage and pieces of tile coming loose and falling off the ceiling. One teacher reported the debris striking a student in the head during testing. (***Exhibit H, Exhibit W***) Similar conditions were

photographed at Carstens Academy of Aquatic Science (***Exhibit I***), Detroit International Academy (***Exhibit J***), Gardner Elementary (***Exhibit K***), and Noble Elementary-Middle School. (***Exhibit L***)

49. At Dossin Elementary-Middle School, teachers took pictures of rodent droppings, gaps being allowed to exist between windows, and, once again, water damage and mold. (***Exhibit M***) Also, desks in some classrooms are not only used for students, but also to hold buckets to catch the rain water dripping from the ceiling.

50. At A.L. Holmes Elementary, the sidewalks are in disrepair and are a potential hazard for those attempting to enter the school. (***Exhibit N***)

51. Keidan Special Education Center is infested with mice and bugs with students learning around rodent droppings. (***Exhibit O***) Similarly, at Thirkell Elementary-Middle School, the toilets routinely overflow and leak into the preschool room and students and faculty are forced to deal with a severe cockroach infestation. (***Exhibit X***)

52. One teacher even posted a video of a live mouse running around the halls of Davis Aerospace Technical High School:

https://www.facebook.com/DFT231/videos/1273005666058588/.

53. This problem is not isolated to the schools described above. One teacher, Pam Namyslowski, 4th Grade Teacher at Mann Elementary School wrote a letter to Darnell Earley that was published by the Huffington Post describing the neglect in "[m]any schools." (***Exhibit P***) In that letter, Ms. Namyslowski discusses the problems facing DPS:

> Many schools have numerous plumbing problems in the lavatories, drinking fountains and sinks. Many outdated school buildings are crumbling -- roofs, floors, windows, doors and locks that are broken or in desperate need of repair. Far too many classrooms are overcrowded, creating conditions that are not even safe, let alone conducive to learning.

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> In the winter, we often work with them in freezing rooms with our coats on. In the summertime, we survive with them in stifling heat and humidity in temperatures that no one should have to work in. We wipe their tears and listen when they are upset. We send food home with them. We encourage them to persevere and to be hopeful about their futures. We celebrate their successes. We comfort them when they experience loss and tragedy. We give up time with our own children to support our students, who we also consider our children. We spend our own money to buy not only learning materials, but things such as uniforms, hand soap, sanitizer and Kleenex.
>
> *****
>
> We have watched the debt increase to ridiculous, unsustainable levels under state appointed emergency managers, while the conditions we teach in have deteriorated alarmingly. We have been set up to fail in every way. The successes that happen in classrooms every day, both academic and emotional, largely go unseen, and most cannot be measured or displayed on a data wall.

(Id.)

54. Nor are these problems merely being raised by teachers alone. Detroit's Mayor, Mike Duggan, demonstrating the leadership that has been sorely lacking from the Defendants, recently took a tour of DPS schools. (***Exhibit Q***) After that tour, Mayor Duggan was quoted describing what he had witnessed: "I saw 4-year-olds in a classroom where it was about 50 degrees . . . . They told me they usually wear their coats until lunchtime, when they warm up a bit ... because there's a part of each day they actually expect to have to wear their coats in the classroom." (Id.) The Mayor also found a dead rodent and a severely warped gym floor that students were forced to utilize. (Id.) He described his tour as "deeply disturbing" and "heartbreaking." (Id.)

55. On January 20, 2016, the City of Detroit Building, Safety Engineering, and Environmental Department released the results of its own inspection of eleven DPS schools,

including Spain, Osborn, and Dossin. (***Exhibit R***) Those inspections found, on average, fourteen violations of the Detroit Property Maintenance Code per building. (Id.)

56. Of the schools inspected, Cody High School had a staggering thirty violations. (Id.) These violations included broken windows, insect and rodent infestations, roof leaks and water damage, non-functioning equipment in the bathrooms, obstructions and hazards blocking emergency exiting, a broken boiler, and mold and mildew caused by water damage. (Id.)

57. The City inspection of Spain Elementary found additional threats to health and safety of the children and teachers. Spain Elementary was the only school to apparently receive an air quality and environmental inspection, even though mold was found at other schools. (Id.) The result of the air quality inspection at Spain Elementary found "Mold growing under wood flooring in the gym, with possible diffusion of mold spores throughout the building . . . ." (Id.) In addition, "Evidence of vermin infestation, including fecal matter and carcasses were observed in various rooms." (Id.) The inspector summarized: "Operations must verify dampers and all ventilation have been closed in the blocked off areas of the building to prohibit mold spores from affecting air quality in the breathing zones of the open areas within this facility. Vermin infestation must be mitigated." (Id.)

58. Each inspection noted that DPS had failed to submit an annual "Certificate of Compliance." Under Sections 9-1-35(d) and 9-1-36a of the Detroit Property Maintenance Code, schools must be inspected and any violations of the Code that are found must be corrected on an annual basis. Section 9-1-36a specifically provides that:

> It shall be unlawful to occupy or use a building, premises, or structure required to have a certificate of compliance under this article, or cause same to be occupied, without the required certificate of compliance for the building, premises, or structure. Upon the issuance of a blight violation notice and a finding that the building, premises, or structure is unsatisfactory for human

> habitation, the director of the buildings and safety engineering department or public health director may order such building, premises, or structure vacated.

Id. Had DPS followed this process, these health and safety issues should have been exposed and corrected a long time ago.

59. Despite these widely publicized, well documented, and alarming hazards, DPS under Emergency Manager Darnell Earley has failed to take action to repair and maintain the public schools.

60. In fact, Emergency Manager Earley recently admitted that he knew about the conditions at Spain Elementary a long time ago stating "This did not just happen overnight." (***Exhibit S***) Mr. Earley cavalierly acknowledged that "Code violations are not new to Detroit Public Schools." (Id.) Instead of taking action to correct the health and safety concerns raised by teachers regarding the water damage in the gym and the mold that grew as a result of it, Earley told school workers to just avoid using the gym because DPS was planning on selling the property to Detroit Medical Center anyway. (Id.)

61. Sadly, Mr. Earley has a pattern and practice of managing public systems in this regard. Prior to his appointment to DPS, Mr. Earley was the emergency manager for the City of Flint. During his tenure at the City of Flint, Mr. Earley implemented the shift in drinking water from the Detroit Water System District to the Flint River to allegedly decrease costs.[2] (***Exhibit T***) That change has also made national news with thousands of Flint residents being exposed to lead poisoning. (Id.) Even though complaints had been made by local residents during Mr. Earley's administration, nothing was done and residents were encouraged to drink the water.

62. Even the DPS spokeswoman, Michelle Zdrodowski, has acknowledged that school buildings are in "complete disrepair." (***Exhibit U***) Instead, it excuses its failure to repair

[2] Recent reports from former Detroit Water and Sewerage Department officials cast doubt as to whether disconnecting from the Detroit water system would have resulted in cost savings.

and maintain its facilities stating that its response is "based on the resources available" and noting that $50 million is needed to repair DPS buildings. (Id.)

63. Yet, DPS is also in the news as its "executives are still among the highest paid in the country." (***Exhibit V***) Take for instance Ms. Zdrodowski, the Executive Director of Communications for DPS—she recently entered into a one-year agreement for $161,111—more than those in similar positions in Los Angeles and Chicago, much larger school districts. (Id.)

64. Mr. Earley holds the position of Emergency Manager illegally. The statute under which he holds office is a bastardization of a previous statute that was repealed by the citizens of this state in an initiative referendum. Although the citizens rejected the Emergency Manager law through a referendum, the Governor signed a nearly identical law shortly thereafter. The enactment of the statute was made under dubious legal conditions, so bad in fact, that the Sixth Circuit observed:

> Apparently unaffected that voters had just rejected Public Act 4, the Michigan Legislature enacted, and the Michigan Governor signed, Public Act 436. Public Act 436 largely reenacted the provisions of Public Act 4, the law that Michigan citizens had just revoked. In enacting Public Act 436, the Michigan Legislature included a minor appropriation provision, apparently to stop Michigan voters from putting Public Act 436 to a referendum.

City of Pontiac Retired Employees Ass'n v. Schimmel, 726 F.3d 767, 770 (6th Cir. 2013), reh'g en banc granted, opinion vacated (Nov. 8, 2013), on reh'g en banc, 751 F.3d 427 (6th Cir. 2014)

65. The impact of Defendants' mismanagement on students has been tragic. The numerous budgetary cuts have led to uninhabitable public schools—some of which should probably be condemned.

66. DPS students have been deprived of a minimally adequate education. The state of DPS facilities create terrible obstacles to student learning and teacher's teaching-- obstacles that are difficult to overcome even with the tremendous perseverance of Detroit students and

the valiant efforts of teachers to teach. However, asking a child to learn or a teacher to instruct with steam coming from their mouth due to the cold in the classroom, in vermin infested rooms, with ceiling tiles falling from above, with buckets to catch the rain water falling from above, or in buildings that are literally making them sick is more than what is legally or constitutionally tolerable. This is far from the provision of a minimally adequate education as the U.S. and Michigan constitutions require. It is any wonder that DPS students given these conditions, as well as the other effects of austerity and poverty, have some of the worst achievement results in the country.

COUNT I
WRIT OF MANDAMUS

67. Plaintiffs incorporate herein by reference each of the preceding paragraphs.

68. Plaintiffs seek a writ of Mandamus, against Defendants to compel them to comply with the various statutory and regulatory laws.

69. Plaintiffs have a clear legal right to learn and work in a school building that is properly maintained. In Michigan, "Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public." MCL §691.1406.

70. There is no basis for the exercise of discretion or judgment regarding the mismanagement of Detroit's public schools—simply put, their current condition is unconscionably impermissible.

71. Plaintiffs allege that no other remedy exists, other than this Court compelling the Defendants to follow the law, with respect to their legal duty.

72. These children, their parents, and their teachers, as well as all other similarly situated citizens, are exposed to dangerous conditions unsuitable for day care let alone a school

tasked with the responsibility of teaching future generations of informed citizens. They will suffer serious and irreparable harm to their health, safety, welfare, and educational opportunities if Defendants are not compelled to repair and maintain the public schools.

COUNT II
VIOLATION OF SUBSTANTIVE DUE PROCESS

73. Plaintiffs incorporate herein by reference each of the preceding paragraphs.

74. The Due Process Clause of the U.S. Constitution guarantees that an individual will not be deprived of life, liberty, or property without due process of law. US CONST amend V. Furthermore, under the Fourteenth Amendment, no one may be "deprived of life, liberty or property without due process of law" nor be denied equal protection of the laws. US CONST amend. XIV, § 1.

75. Similarly, the Michigan Constitution ensures:

> No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.

Mich Const (1963), art I, §17.

76. These constitutional provisions protect citizens from the deprivation of their fundamental rights—those rights specifically identified in the Constitution or principles of justice so rooted in the tradition and conscience of our people as to be ranked as fundamental and therefore implicit in the concept of ordered liberty. *See e.g.*, ***Washington v. Glucksberg***, 521 U.S. 702, 721 (1997).

77. The importance of education to a democratic society has been noted by the U.S. Supreme Court in the past:

> [N]either is [education] merely some governmental "benefit" indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction. The "American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance. We have recognized "the public schools as a most vital civic institution for the preservation of a democratic system of government," and as the primary vehicle for transmitting "the values on which our society rests." "[A]s . . . pointed out early in our history, . . . some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. And these historic "perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists." In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests. In addition to the pivotal role of education in sustaining our political and cultural heritage, denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.

Plyer v. Doe, 457 U.S. 202, 221 (1982) (citations and quotations omitted).

78. The Michigan Constitution also specifically notes the importance of education to a well-ordered society: "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." MICH CONST (1963), art I, §1. As such, "The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin." MICH CONST (1963), art I, §2.

79. Even Section 9-404 of the Detroit City Charter further affirms the important role of education: "Every resident of Detroit has a right to an education that will permit the full development of his or her potential. City government has a responsibility to cooperate with the

school districts serving the people of Detroit in the achievement of this objective and to exercise such influence and to provide such ancillary or supplemental services to the people or to the school districts as may be necessary or helpful in the furtherance of this objective."

80. Consequently, there is a right to a "minimally adequate education" that no one can be deprived of by state action without violating substantive due process.

81. Students enrolled in DPS have been deprived of a "minimally adequate education" due to Defendants' failure to properly maintain the educational environment.

WHEREFORE, and for the above-stated reasons, Plaintiffs request that this Honorable Court grant the following relief:

a. Remove Emergency Manager and restore local control over DPS;

b. Compel Defendants to perform the duties enjoined upon them directing them to promptly conduct periodic and systematic inspections of all school buildings in the City of Detroit which Defendants know, or should know, present serious hazards to the health, safety and welfare of the students, teachers, and parents of the City;

c. Compel Defendants to perform the duties enjoined upon them directing them to promptly investigate the complaints filed by parents and teachers regarding the deteriorating physical conditions described therein;

d. Compel Defendants to perform the duties enjoined upon them directing them to investigate complaints filed by teachers to provide a safe and hazard free workplace to the teachers who work in the City public schools;

e. Compel Defendants to perform the duties enjoined upon them directing them to remedy all existing violations of the City and State Building Codes and to maintain City public schools in accordance with the standards set forth therein;

f. Compel Defendants to develop and institute a capital plan that provides the students of Detroit 21st century schools in which parents would want to send their children and educators would want to teach, and that provide students the opportunity to be prepared for life, career and college.

g. Award Plaintiffs their costs and expenses in this proceeding;

h. Grant such other further relief to Plaintiffs as may be just and proper; and

i. Continue jurisdiction over this matter to receive reports from Defendants of inspections to the plant and equipment of the school system, the results of the inspections and the steps being undertaken to remedy the problems.

Respectfully submitted,

MILLER COHEN, P.L.C.

By: /s/Robert D. Fetter

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Date: January 28, 2016

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

AMERICAN FEDERATION OF TEACHERS, AFT MICHIGAN, DETROIT FEDERATION OF TEACHERS, IVY BAILEY, *as Interim President of the Detroit Federation of Teachers***, MONIQUE BAKER MCCORMICK,** *individually and on behalf of* **KM**, *a minor***, CYNTHIA SAMUEL-BAKER,** *individually and on behalf of* **MB**, *a minor***, LATRICE BERRY,** *individually and on behalf of* **LB,** *a minor***, TAKEYSHA DANIELS**, *individually and on behalf of* **AI**, *a minor***, TOFORAYA WILLIAMS,** *individually and on behalf of* **MG**, *a minor***, CHRISTOPHER ROBINSON,** *individually and on behalf of* **TR,** *a minor***, SHONIQUA KEMP,** *individually and on behalf of* **IK** *and* **TK,** *minors***, SHANI BURRELL,** *individually and on behalf of* **KB** *and* **KB,** *minors***, and DANA DACRES**, *individually and on behalf of* **SD, WD,** *and* **JD,** *minors***, SONYA LEWIS**, *individually and on behalf of* **SG** *and* **MG**

Plaintiffs,

v.

DETROIT PUBLIC SCHOOLS, and DARNELL EARLEY, in his Official Capacity as the State Appointed Emergency Manager for the Detroit Public Schools under Public Act 436 of 2012,

Defendants.

Case No.:

Hon. _____

_____/

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_____/

DEMAND FOR TRIAL BY JURY

NOW COME all Plaintiffs, by and through their attorneys, **MILLER COHEN, P.L.C.**, and hereby demand for a trial by jury, for all issues so triable.

Respectfully submitted,

MILLER COHEN, P.L.C.

By: /s/Robert D. Fetter

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