IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES, individually and on behalf of those similarly situated,	)	
Plaintiffs,	)	**Case No. __________**
v.	)	**JURY DEMAND**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY	)	
Defendants	)	

COMPLAINT

COMES NOW Plaintiff Toni Jones, individually and on behalf of a class of those similarly situated, and for her cause of action states as follows:

PARTIES

1. Toni Jones is a former student of Pearl-Cohn Comprehensive High School, a magnet school within the Metropolitan Nashville Public School system. She is a citizen and resident of Davidson County, Tennessee.
2. The Defendant Metropolitan Government of Nashville and Davidson County ("Metro") is a local governmental subdivision of the State of Tennessee, as set forth in T.C.A. § 29-20-102(3), and is the proper party to be sued for matters pertaining to the Metro Nashville Public School system ("MNPS"). Metro is a "person" within the meaning of T.C.A. § 29-14-101.

JURISDICTION AND VENUE

3. This is an action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 seeking to redress a deprivation of the plaintiff's rights by the Defendant acting under color of law, which rights are secured by due process provisions of 14th Amendment to the U.S. Constitution.
4. This Court has subject matter jurisdiction pursuant to T.C.A. § 16-10-101 and § 16-16-11-102 because the tortious acts and omissions occurred within the State of Tennessee. Venue is proper pursuant to T.C.A. § 20-4-104 because this cause of action arose in Davidson County, Tennessee, and the Defendant governmental entity is organized and exists in Davidson County.
5. The acts and omissions of the Defendant complained of herein arose from the violation of Plaintiff's rights to procedural and substantive due process guaranteed by the Fourteenth Amendment to the Constitution of the United States, which violations occurred in Davidson County, Tennessee.

ALLEGATIONS OF FACT

6. Plaintiff was provided a public education by the State of Tennessee, was required by law to attend class at Pearl-Cohn Comprehensive High School, and has a constitutionally-protected property interest in her public education by virtue of Article XI § 12 of the Constitution of Tennessee and T.C.A. § 49-6-3001.
7. Plaintiff took Algebra I during the 2013-2014 school year. Plaintiff was required to take practice tests known as Discovery Education Assessments, which the Defendant perceived as "predictive" of her performance on the final End of Course exam. Plaintiff had a passing grade during the fall semester. The school did not inform Plaintiff of the

consequences of the practice exams, or that poor performance could lead to her removal from class, placement in a purported remedial program that lacked direct teacher instruction, or cause significant delay in promotion to the next grade level and in obtaining her high-school diploma.

8. In her second semester, an Assistant Principal, without notice and without ever giving an explanation or opportunity to be heard, abruptly removed Plaintiff from class and deprived her of the opportunity to complete the final End of Course exam.

9. The End of Course exam is used to measure success within the individual Metro public schools. Students were systematically removed from courses and deprived of the benefit and opportunity to take the graded End of Course Exam and be promoted to the next grade level so that Metro public schools could artificially inflate their End of Course scores based on the fraudulently increased percentile of passing students.

10. Because teachers and administrators were instructed by Metro's Central Office to remove students that might perform poorly on tests, the Defendant's actions were pursuant to an official policy or practice.

11. The Defendant made no effort to reach Plaintiff's mother or discuss the decision to remove Plaintiff from class. Plaintiff was never given an opportunity to review or appeal the decision made by the Assistant Principal. Instead, Plaintiff was placed in a remedial "credit recovery" program, and instructed to complete a computer-based "A+ program" without any direct instruction from an actual teacher, thus depriving her of the education she was entitled to receive.

12. The following year, Plaintiff was placed in a Geometry class for which she was grossly unprepared due to the Defendant's actions in removing her from math class the prior

year. Geometry is not accompanied by an End of Course exam and Plaintiff was not pulled out of class and given remedial training. Because of the Defendant's actions the prior year, Plaintiff became frustrated with the workload, performed poorly on the course, and was given a failing grade, which put her another year behind in her coursework.

13. The Defendant's actions placed Plaintiff behind her peers who were allowed to complete their courses, and she has been deprived of her high school diploma. Numerous other students were treated similarly by MNPS.

14. This conduct by MNPS was motivated by cynical and self-serving considerations of personal and institutional ambition.

CAUSES OF ACTION

VIOLATION OF PLAINTIFF'S PROCEDURAL AND SUBSTATIVE DUE PROCESS RIGHTS

15. Plaintiff had a constitutionally protected property interest in her public education, of which she has been deprived in an arbitrary and capricious manner. The Defendant's actions also have unusually harsh consequences because Plaintiff was not promoted to the next grade level and has been deprived of her high school diploma.

16. Without any advance notice and without any opportunity to review the Defendant's decision or retake the practice exam, Plaintiff was pulled from her courses at Pearl Cohn High School, was not promoted to the next grade level, and was denied the benefit of her constitutionally-protected property interest in a free and appropriate public education.

17. As a direct and proximate result of the Defendant's unconstitutional policies and practices, the Defendant violated the Plaintiff's procedural due process right to notice and an opportunity to be heard prior to being deprived of the benefit of her public education.

18. Because Plaintiff was deprived of the benefit of her public education, Plaintiff was also denied a substantive due process right guaranteed by the Fourteenth Amendment of the United States Constitution.

19. The Defendant's policy of pulling students from class was done to artificially inflate a school's End of Course results, to the detriment of Plaintiff's procedural and substantive due process rights, and the Defendant's actions were therefore arbitrary, capricious, fundamentally unfair, and fail to achieve a legitimate state purpose.

CLASS ACTION

20. The number of persons whose rights have been similarly violated by the Defendant are too numerous to join in this action.

21. The questions of law described in this Complaint and the facts regarding them are common to all persons who were subject to the unconstitutional acts by Metro.

22. The claims of Toni Jones are typical of claims of the class.

23. Plaintiff will fairly and adequately protect the interests of the class.

24. The prosecution of separate claims would create a risk of inconsistent adjudications among members of the proposed class, and might establish inconsistent standards of conduct upon Metro and its agents.

25. Adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudication, and might substantially impair or impede their ability to protect their interests.

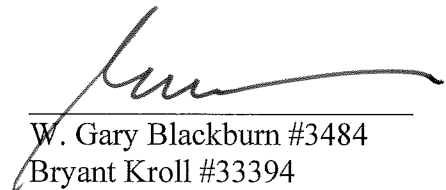
26. The interests of Plaintiff as a class representative are identical to the interests of each class member.

WHEREFORE, Plaintiff demands as follows:

1. That process issue regarding the Defendant Metropolitan Government to plead or respond in the time provided by law;
2. That the Court determine, as soon as practicable, and consistent with the requirements of Tenn.R.Civ.P. 23.03(1), by order that Plaintiffs' proposed class action may be maintained, and provide notice as may be appropriate pursuant to Rule 23.03(2).
3. That the Court upon final hearing declare and find that the actions and policy of the Metropolitan Nashville Public School system have violated the procedural and substantive due process rights of the plaintiffs, which rights are guaranteed by the 14th Amendment to the U.S. Constitution.
4. That Plaintiff be awarded a judgment against the defendant for all damages caused by the Defendant's actions;
5. That Plaintiff be awarded her reasonable attorney's fees, expenses, and costs pursuant to 42 U.S.C. § 1988;
6. That Plaintiff be awarded such general relief to which she may be entitled, at law or in equity.

Plaintiff demands a trial by jury for all issues so triable.

Respectfully Submitted,



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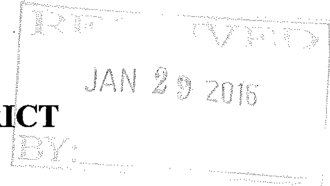

IN THE CHANCERY COURT
FOR THE TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 15-1475 III**
	)	
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY.	)	
	)	
Defendant.	)	
	)	

THE METROPOLITAN GOVERNMENT'S
MOTION TO DISMISS AND MEMORANDUM IN SUPPORT
[TENN. R. CIV. P. 12.02(6)]

The Metropolitan Government hereby moves this Court for dismissal of this action under TENN. R. CIV. P. 12.02(6) for failure to state a claim upon which relief might be granted.

SUMMARY

Plaintiff brings this action under §1983 claiming that her constitutional rights were violated by not being promoted to the next grade level after the 2013-2014 school year. However, she does *not* allege that she was expelled from the Metro school system, or permanently denied a diploma. Instead, Plaintiff claims to have suffered a "significant delay in promotion to the next grade level and in obtaining her high-school diploma" (Compl., ¶ 7) and being put "another year behind in her coursework" (Compl., ¶ 12). However, a student simply does not have a constitutional right to be promoted to the next grade level or to receive a particular course-placement at all. A student does have a property interest in receiving an education, but, because Plaintiff remains in the Metro school system and does not allege that she

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was expelled, her injuries are too hypothetical and, therefore, she lacks standing. For these reasons, this §1983 case should be dismissed.

LEGAL ANALYSIS

I. PLAINTIFF DOES NOT HAVE A CONSTITUTIONALLY-PROTECTED INTEREST IN BEING PROMOTED TO THE NEXT GRADE LEVEL.

Plaintiff alleges that her due process rights were violated when she was "not promoted to the next grade level." (Compl., *Causes of Action*, ¶¶15-16.) Plaintiff alleges that this failure to promote her to the next grade level happened "Without any advance notice and without any opportunity to review the Defendant's decision or retake the practice exam." (Compl., ¶16.)

In *Hartfield v. E. Grand Rapids Pub. Sch.*, 960 F. Supp. 12596 (W.D. Mich. 1997), the court granted the school district's motion to dismiss, ruling that there is no constitutionally-protected property interest in being promoted to the next grade and no due process hearing is required before holding a student back:

> [I]n order to state an actionable claim for violation of procedural due process, plaintiffs must establish that [the students] had a liberty or property interest in promotion to the ninth grade. *See Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).
>
> ***No such property or liberty interest exists***. *See Killion v. Burl,* 860 F.2d 306 (8th Cir.1988) (holding no due process liberty or property interest in promotion to second grade) (citing *Michigan v. Ewing,* 474 U.S. 214, 222 n. 7, 106 S.Ct. 507, 511–12 n. 7, 88 L.Ed.2d 523 (1985)). *See also Gallagher v. Pontiac Sch. Dist.,* 807 F.2d 75, 79 (6th Cir.1986) ("The system of public education ... relies necessarily upon the discretion and judgment of school administrators and school board members, and § 1983 was not intended to be a vehicle for federal-court corrections of errors in the exercise of that discretion which do not rise to the level of specific constitutional guarantees.").
>
> However, even assuming plaintiffs had a property interest in being promoted to the next grade level, ***no due process hearing would be required before a student is held back for academic reasons***. *See Board of Curators of Univ. of Missouri v. Horowitz,* 435 U.S. 78, 86–89, 98 S.Ct. 948, 953–55, 55 L.Ed.2d 124 (1978) (holding that, because of the subjective and discretionary judgments required for

> academic decisions, no due process hearing is required before dismissal for academic, as opposed to disciplinary, reasons).

Hartfield v. E. Grand Rapids Pub. Sch., 960 F. Supp. 1259, 1265-66 (W.D.Mich.1997)(emphasis added).

Similarly, in *Sandlin v. Johnson*, 643 F.2d 1027 (4th Cir. 1981), the plaintiffs brought claims under §1983 alleging certain constitutional violations when the students were not promoted to the next grade level. The Fourth Circuit upheld the dismissal of the suit, stating, "If there is any such cause of action, it does not rise to the level of a constitutional claim and, therefore, is not cognizable in an action pursuant to 42 U.S.C. § 1983." *Sandlin*, 643 F.2d at 1029 (4th Cir. 1981). The court ruled that decisions related to grade-level promotion are to be left to the education officials:

> Decisions by educational authorities which turn on evaluation of the academic performance of a student as it relates to promotion ***are peculiarly within the expertise of educators and are particularly inappropriate for review in a judicial context***. *Board of Curators of University of Missouri v. Horowitz*, 435 U.S. 78, 90-91, 98 S.Ct. 948, 955, 55 L.Ed.2d 124 (1978). ("We decline to further enlarge the judicial presence in the academic community and thereby risk deterioration of many beneficial aspects of the faculty-student relationship.") We, therefore, affirm the district court's dismissal.

Sandlin v. Johnson, 643 F.2d 1027, 1029 (4th Cir. 1981)(emphasis added). *See, also, Johnpoll v. Elias*, 513 F. Supp. 430, 432 (E.D.N.Y. 1980)("With all due respect to the plaintiff's parental concern, this court cannot be used as a vehicle to review fundamental administrative decisions such as student placement. As the Supreme Court noted in *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228 (1968): By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.")

In the instant case, because Plaintiff's constitutional claims are derived from her not being "promoted to the next grade level," "without any advance notice," (Compl., *Causes of Action*, ¶¶15-16) her claims do not rise to the level of constitutional violations, and, therefore, she cannot proceed under §1983. In sum, Metro understands that Plaintiff is upset about not being promoted to the next grade after the 2013-2014 school year and being placed in remedial classes, but that does not mean that her constitutional rights were violated. *Hartfield*, 960 F. Supp. at 1265-66)("No such property or liberty interest exists.")

II. PLAINTIFF DOES NOT HAVE STANDING TO SUE BECAUSE SHE HAS NOT ALLEGED A JUSTICIABLE CLAIM.

"A citizen's standing to sue a governmental entity is a threshold issue that should be resolved before addressing the merits of the case." *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 62 (Tenn. Ct. App. 2001).

To establish standing, a plaintiff must show: (1) a distinct and palpable injury: conjectural or hypothetical injuries are not sufficient; (2) causation; and (3) an alleged injury that is capable of being redressed by the court. *ACLU v. Darnell*, 195 S.W.3d 612, 620-21 (Tenn. 2006)("Specifically, courts should inquire: Is the injury too abstract, or otherwise not appropriate, to be considered judicially cognizable? Is the line of causation between the illegal conduct and injury too attenuated? Is the prospect of obtaining relief from the injury as a result of a favorable ruling too speculative?")

The requirement of standing "limits court access to those who have a justiciable claim." *Thomas v. Tennessee Dep't of Transp.*, No. M2010-01925-COA-R3CV, 2011 WL 3433015, at *6 (Tenn. Ct. App. 2011), citing, *Huntsville Util. Dist. of Scott Cty., Tenn. v. Gen. Trust Co.*, 839 S.W.2d 397, 401 (Tenn. Ct. App. 1992).

Here, Plaintiff cannot establish any of the three (3) elements required for standing as set forth in the *ACLU* case.

The gravamen of Plaintiff's claim is that she was not promoted to the next grade level, and was thus deprived of her education and her high school diploma. (Compl., ¶¶13, 15-17.) However, she does not allege that she was somehow expelled from the Metro school system or permanently denied a diploma. Indeed, according to the Complaint, she remains in the school system. Plaintiff's allegations only speak to a "significant delay in promotion to the next grade level and in obtaining her high-school diploma" (Compl., ¶ 7) and being put "another year behind in her coursework" (Compl., ¶ 12).

Because Plaintiff remains in the Metro school system, and because there are no allegations that she has been expelled or permanently denied a diploma, then she has not alleged a "justiciable claim." *Thomas*, at *6 (Tenn. Ct. App. 2011). Rather than being "distinct and palpable," her alleged injury of not receiving an education, at this point, is "conjectural or hypothetical" on her part. In short, being held back, or placed in remedial programs, or facing a delay in receiving one's diploma are injuries that are simply "too attenuated" to be "redressed by the court." *ACLU*, 195 S.W.3d at 620-21 (Tenn. 2006).

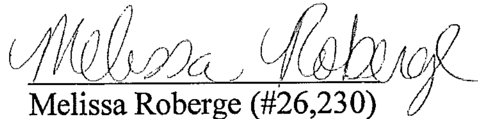
Therefore, Plaintiff lacks standing to pursue this action.

CONCLUSION

For the foregoing reasons, the Metropolitan Government respectfully requests that this action be dismissed under Rule 12.02(6) for failure to state a claim upon which relief might be granted.

Respectfully submitted,

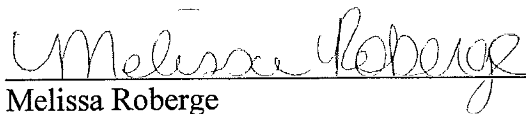
THE DEPARTMENT OF LAW OF THE
METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY
JON COOPER (#23,571)
DIRECTOR OF LAW



Melissa Roberge (#26,230)
Catherine J. Pham (#28,005)
Metropolitan Attorneys
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, Tennessee 37219

THIS MOTION IS EXPECTED TO BE HEARD ON FEBRUARY 12, 2016 AT 9:00 A.M. FAILURE TO FILE A TIMELY WRITTEN RESPONSE TO THIS MOTION MAY RESULT IN THE SAME BEING GRANTED WITHOUT FURTHER HEARING BY THE COURT.

I hereby certify that a true and exact copy of this foregoing has been mailed on January 27, 2016 to: W. Gary Blackburn, The Blackburn Firm, PLLC, 213 Fifth Avenue North, Suite 300, Nashville, TN 37219.



Melissa Roberge

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES, individually and on behalf of those similarly situated,	)	
Plaintiffs,	)	
	)	**Case No. 15-1475-III**
v.	)	
	)	**JURY DEMAND**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendant.	)	

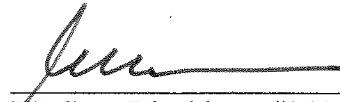
MOTION FOR SUMMARY JUDGMENT

Plaintiff Toni Jones pursuant to Rule 56, Tennessee Rules of Civil Procedure, moves the Court for partial summary judgment upon issues of liability against the Defendant, Metropolitan Government of Nashville and Davidson County, there being no material questions of fact.

Because the legal arguments are identical to those raised in response to Metro's motion filed pursuant to Rule 12, a Memorandum in Support of the Summary Judgment Motion is contained within the same document for convenience.

Plaintiff's Statements of Undisputed Facts and the declarations of the plaintiff and Ms. Kelly Brown have been filed with the Court.

Respectfully Submitted,



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NOTICE OF HEARING

I hereby provide notice to all parties that the hearing on Plaintiff's Motion for Partial Summary Judgment is set to be heard by the Honorable Chancellor Ellen Hobbs Lyle in the Chancery Court for Davidson County on the 1st day of April, 2016 at 9:00 a.m.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, a true and correct copy of the foregoing was sent via United States Mail, postage prepaid to:

Melissa Roberge
Catherine J. Pham
Metropolitan Attorneys
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 37219
Attorneys for Defendant

W. Gary Blackburn

FILED
2016 FEB -8 PM 4:26
CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
______ D.C. & M.

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES, individually and on behalf of those similarly situated,	)	
Plaintiffs,	)	
	)	**Case No. 15-1475-III**
v.	)	
	)	**JURY DEMAND**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendant.	)	

MEMORANDUM OF LAW IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

INTRODUCTION

Toni Jones is a young lady, 18 years of age, with her life ahead of her. Success in this world is, and perhaps always has been, based on or enhanced by educational opportunities and achievement. Ms. Jones and her mother trusted the Metropolitan Nashville Public Schools (MNPS) to provide her this foundation. Ms. Jones and her mother trusted Pearl Cohn High School, an institution with a proud tradition of educating promising African American boys and girls, to supply her the classroom teaching so necessary to academic success.

Like many young people before her, she struggled in certain subjects. But she had a property right, conferred by both State and Federal law, to a free education at her school.

Many of the vicissitudes of life may and will affect the future and well-being of this young lady and the others whom she now seeks to represent. But upon one thing she had an

unqualified right to rely: that our school system in Nashville would perform its duty to provide her a decent public education with all of those things that are a part of that. MNPS and this community have let down Toni Jones. That is what this lawsuit is about.

THE COMPLAINT

The Complaint, each allegation of which is presumptively true for the purpose of this Motion, alleges Ms. Jones was placed in an Algebra I class during the 2013/2014 school year. She was required to take practice tests known as "Discovery Education Assessments". The Defendant perceived these tests as predictive of her performance on the final End of Course exam. Paragraph 7.

Ms. Jones had a passing grade in Algebra during the fall semester. She was never informed of any consequence of the "practice exams" or that poor performance might lead to her removal from the class and placement in a purported remedial program without a teacher. Paragraph 7.

Late in her second semester at Pearl Cohn High School an Assistant Principal, without prior notice and with no explanation or opportunity for Ms. Jones or her mother to be heard, removed her from her Algebra class, and thus deprived her of the opportunity to complete the course and the final End of Course exam. Paragraph 8.

Students, including Ms. Jones, were systematically removed from courses and deprived of the opportunity to take the End of Course exam and thus be promoted to the next grade level. The cynical purpose of this was so that "Metro Public Schools could artificially inflate their [average] End of Course scores based upon the fraudulently increased percentile of passing students." Paragraph 9

Because teachers and administrators were instructed by Metro's central office to remove students that might perform poorly on tests, this behavior was pursuant to official policy or practice of the Metropolitan Government. Paragraph 10.

This was done in a surreptitious manner.

Paragraph 11 states: The Defendant made no effort to reach Plaintiff's mother or discuss the decision to remove Plaintiff from class. Plaintiff was never given an opportunity to review or appeal the decision made by the Assistant Principal. Instead, Plaintiff was placed in a remedial "credit recovery" program, and instructed to complete a computer-based "A+ program" without any direct instruction from an actual teacher, thus depriving her of the education she was entitled to receive.

As a result of this appalling behavior, Ms. Jones in the following year was placed in a geometry class for which she was grossly unprepared because she had been removed from the Algebra class in the year before. Interestingly, geometry is not a course accompanied by an End of Course exam, and Ms. Jones was not pulled from that class or given any remedial training. Being unprepared for that class, she performed poorly and was given a failing grade. Paragraph 12.

Ms. Jones has alleged that she had a "constitutionally protected property interest in her public education." The Metropolitan Government does not dispute this allegation. See, Brief of Defendant, Page 1.

Ms. Jones alleges in Paragraph 15 of her complaint that she was deprived in an arbitrary and capricious manner of her property interest in her education. The Defendants actions "*also* had harsh *consequences* because Ms. Jones was not promoted."

In Paragraph 16 Ms. Jones alleged that she was deprived of her constitutionally protected property interest in a public education "without any advanced notice and without any opportunity to review the Defendant's decision or retake the practice exam." She was pulled from her course at Pearl Cohn and was not promoted.

This conduct constitutes a denial of due process because Ms. Jones was deprived of her interest in property without any notice or opportunity to be heard. She was deprived of substantive due process rights guaranteed by the 14th Amendment of the Constitution of the United States as well.

And in Paragraph 19 Ms. Jones alleges: "The Defendant's policy of pulling students from class was done to artificially inflate the school's End of Course results, to the detriment of Plaintiff's procedural and substantive due process rights, and the Defendant's actions were therefore arbitrary, capricious, fundamentally unfair, and failed to achieve a legitimate state purpose."

THE ARGUMENT OF MNPS

The Defendant, having no legitimate response to the allegations of this Complaint, has chosen to re-characterize it so that they might attack a strawman of their own making. The Defendant argues that Ms. Jones claims a constitutional right to be promoted and to graduate. This is simply untrue.

Ms. Jones has alleged she was not even permitted to take the exam that was a prerequisite to promotion. Ms. Jones was deprived of her undisputed right to be taught Algebra I through a qualified teacher and books suitable for the purpose. Her removal from the class meant that she could not take the End of Course exam and *therefore* could not be promoted. At the time of this shameful behavior, *Ms. Jones was passing Algebra I.* The Court is not being asked to review her

academic performance. It is asked to affirm that she had a right to be educated. She was deprived the opportunity to be promoted because she was not allowed to complete a course that was required for promotion.

It was the duty of MNPS to provide her with training sufficient to give her an opportunity to pass the course. Instead, without so much as a warning to her or her mother, she was placed in front of a computer screen without a teacher and expected to do on her own that which she already found difficult.

Ms. Jones does not contend that she had a constitutional right to pass a course. She argues that she had a constitutionally protected right to be furnished an education through instruction in a class in which she was already enrolled to give her an opportunity to do so.

METRO'S ARGUMENT WOULD LEAD TO ABSURD CONSEQUENCES

The logical consequence of the argument raised is that students who are perceived to be struggling or who are projected to perform poorly on certain standardized tests have no right to a full and free education in Davidson County, Tennessee. This implies that children who struggle with certain subjects, whatever the reason, may simply be segregated from the rest of the student population and ignored by the faculty and administration of the school. It is true that students have no constitutional right to pass any particular course or to be promoted. But the children of this county have an unqualified right to be provided an education sufficient to give them that opportunity.

It is true Ms. Jones could not complain to this Court had she taken the exam and failed to pass it. But she was not trained for the test nor allowed to attempt it. All of education is based upon providing opportunities through the rendering of instruction.

MS. JONES' RIGHT TO A PUBLIC EDUCATION

As stated, the Defendant has conceded in its brief that a property interest exists in the right to a public education in Tennessee. Article 11, Section 12 of the Constitution of the State of Tennessee provides:

> "The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support, and eligibility standards of a system of free public schools. The General Assembly may establish in support such post-secondary educational institutions, including public institutions of higher learning, as it determines."

This section was essential to the landmark decision of the Supreme Court of Tennessee in *Tennessee Small School Systems, et al., v. McWherter*, 851 S.W. 2d 139 (Tenn. 1993), a case which originated in the Chancery Court for Davidson County. This case concerned disparities arising from funding inequities among rural and urban schools. The Defendants in *Tennessee Small School Systems* denied that the Tennessee Constitution guaranteed "an education that is exactly or substantially the same education received by children in other counties," and argued that the education clause contained, "no enforceable qualitative standard for assessing the quality of education." *Tennessee Small School Systems v. McWherter*, supra, at 148. The Supreme Court exhaustively reviewed the law of our sister states on this issue as well as the constitutional history of public education in Tennessee. The Defendant's argument, the Court wrote, "overlooks the plain meaning of Article 11, Section 12. That provision expressly recognizes the *inherent value* of education and then requires the General Assembly to provide for the maintenance, support, and eligibility standards of a system of free public schools." The Court observed that the Constitution "speaks directly to a right of inherent value, education." *Tennessee Small School Systems v. McWherter* at 150.

The Court adopted the definition of "education" found in the Random House Dictionary of the English Language: "The act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally preparing oneself or others intellectually for mature life." *Id.* Adding "modifiers," the Court held, "would detract from the eloquence and certainty of the constitutional mandate - that the General Assembly shall maintain and support a system of free public schools that provides, at least, the *opportunity* to acquire general knowledge, develop the powers of reasoning and judgment, and generally *prepare* students intellectually for mature life." This standard, the Court held, "is an enforceable standard for assessing the educational *opportunities* provided in the several districts throughout the state." *Tennessee Small School Systems,* supra, at 150, 151. (Emphasis added).

The Court described the value of education "to each person and to society" as "immeasurably great." *Id.*

Our Supreme Court quoted from *Brown v. Board of Education,* 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954): "It is doubtful that any child may reasonably be expected to succeed in life if he is denied the *opportunity of an education.* Such an *opportunity*, where the State has undertaken to provide it, is a right which must be made available to all on equal terms."

The Court quoted as well from *Leeper v. State*, 103 Tenn. 500, 515, 53 S.W. 962, 965 (1899) with this declaration:

> "The kind and quality of instruction given to the young is as important as the food furnished the people, and the public school is, in the highest sense, a public institution..." *Id.*

The arbitrary deprivation of a right to public education in Tennessee triggers due process rights. In *Heyne v. Metropolitan Nashville Board of Public Education*, 380 S.W. 3d 715 (Tenn. 2012), the Tennessee Supreme Court acknowledged a fundamental right of pupils for an

opportunity to be educated, in the context of student discipline. "Due process," the Court found, "entitles students facing discipline for infractions of school rules that could result in a suspension greater than 10 days to a hearing 'at a meaningful time and in a meaningful manner.'" *Heyne, 380 S.W.3d* at 734 (quoting *Matthews v. Eldridge* 424 US 319, 333, 96 S.Ct. 893 (1976)). Toni Jones was not disciplined. Her only offense was her performance on tests in which she received no credit.

Toni Jones was arbitrarily deprived of classroom instruction afforded other children. She was deprived of an opportunity to be heard. These were the clear and well-established fundamental rights of Toni Jones on the day she was pulled from her class without explanation. Her claim may be defeated only by mischaracterizing it as something other than what it is.

Although Ms. Jones had no constitutional right to pass the test, she had a well-established right to be trained by a certified and qualified teacher of Algebra and to have afforded to her the *opportunity* to learn.

The deprivation of this right is neither attenuated nor abstract. What remedy may be afforded by this Court is not presently the issue for determination. The Court could, for example, order MNPS to provide Toni Jones a qualified teacher for the course from which she was removed and for the courses for which she was ineligible or unlikely to succeed as a result of being deprived of this fundamental training.

This is not an isolated incident. Plaintiff's counsel believes that there are hundreds of children who have been cynically deprived of their opportunity for an education. For such a wrong this Court will surely craft a remedy.

Metro's standing argument fails for the same reasons. Metro remarkably argues that she suffered no harm because she was not entitled to promotion. Her harm is palpable. It comes from being denied education itself and includes the opportunity to maintain her passing grade.

FURTHER EVIDENCE IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff insists that there are no material questions of fact in this case and that she is entitled to summary judgment against the Metropolitan Government upon all issues of liability pursuant to Rule 56 of the Tennessee Rules of Civil Procedure.[1]

It is undisputed that Ms. Jones was a student at Pearl-Cohn High School 2013-2014 school year, that she was enrolled in Algebra IA and B. (SUF 1 and 2.) Ms. Jones was placed in Algebra IA and IB specifically to provide her with the daily instruction she needed to give her the best chance for success. This placement was based upon her TCAP math scores in the 8th grade. (SUF 3).

It is undisputed that all students enrolled in Algebra I were required to sit for the End of Course State exam. (SUF 6). This exam was not 100 percent of her Algebra score. It would account for 25 percent of the second semester average. The students are not required to pass the EOC, but must achieve a passing grade in the course for a year. (SUF 7).

Ms. Jones was administered tests to predict her success on the EOC. (SUF 9). Pearl-Cohn High School was under pressure to improve its average EOC scores. Failure to do so would have had adverse implications for the principal and for MNPS as a district. (SUF 8).

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[1] Prior to the hearing of this motion, Plaintiff will move to amend the Complaint to allege a denial of equal protection and will move the Court to certify the class of all children being deprived of their education by being pulled from classes in the manner and under the circumstances that she endured.

Ms. Jones last "Discovery Educational Assessment" test was administered on March 3, 2014. (SUF 9). On April 4, 2014, Ms. Jones and other students who likewise had not projected well from the DEA tests were similarly removed from their classes and placed in "independent study." (SUF 10). No explanation was given to Ms. Jones or to her mother for her removal. Her mother was not even notified. (SUF 11).

The program into which Ms. Jones was placed is actually a credit recovery program, and is substandard. It is not intended to be an educational test. It is given as a retake opportunity for those who completed the course but without a passing grade. The children who are placed in these courses have already had the benefit of a full year's education with a certified teacher. (SUF 12).

Ms. Jones did not have an assigned teacher in this so called A+ class and was therefore required to teach herself. (SUF 13). In fact, the teacher assigned to her A+ room, Mr. McCarter, had health problems and was rarely at school during the spring semester. (SUF 15). A substitute "teacher" placed there did not even have access to the A+ computer program. Little or no tutoring was given to Ms. Jones and other students similarly situation. (SUF 16).

The removal of Ms. Jones and other students made it impossible for her to complete Algebra I. (SUF17).

Ms. Jones was passing Algebra under the supervision of a certified Algebra teacher. Her removal and cessation of her education created a devastating gap in her understanding of mathematics. (SUF 18).

Her removal rendered her unable to finish the course, and the removal itself mandated that she be retained in the 9th grade. (SUF 21, 22).

Ms. Jones has now been placed in an adult high school using only the substandard A+ computer program. She is compelled to work from home and tries to study on a smart phone. (SUF 25).

It is now unlikely that she can graduate on time, presently being classified as only a 9th grader. She has forever lost the high school experience to which she was entitled. (SUF 27).

CONCLUSION

The Complaint filed by Ms. Toni Jones states a claim upon which relief may be given and the Metropolitan Government's Motion to Dismiss under Rule 12 T.R.C.P. should be denied.

Because there are no material questions of fact and Ms. Jones has suffered a palpable deprivation of an interest in property guaranteed by the Constitution of Tennessee and the United States, summary judgment upon all issues of liability should be awarded from and against the Metropolitan Government.

Following certification of the class, this matter should be set for hearing upon damages.

Respectfully Submitted,

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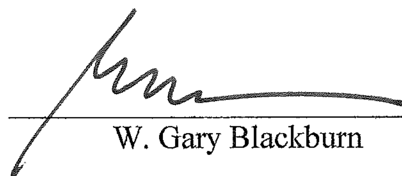
CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, a true and correct copy of the foregoing was sent via United States Mail, postage prepaid to:

Melissa Roberge
Catherine J. Pham
Metropolitan Attorneys
108 Metropolitan Courthouse
P.O. Box 196300
Nashville, TN 37219
Attorneys for Defendant



W. Gary Blackburn

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

FILED
2016 FEB -8 PM 4:26
CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
_______ D.C. & M.

TONI JONES, individually and on behalf of those similarly situated,
Plaintiffs,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,
Defendant.

Case No. 15-1475-III

JURY DEMAND

STATEMENT OF UNDISPUTED FACTS

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1. Plaintiff Toni Jones was a student at Pearl-Cohn High School in the 2013-2014 school year.
(Decl. Toni Jones, Paragraph 1).

Response:

2. Ms. Jones was enrolled in Algebra I during the school year.
(Decl. of Toni Jones, Paragraph 3).

Response:

3. Ms. Jones was placed in Algebra I (A) and (B), in order to provide her with daily instruction to give her the best chance for success. (Decl. Kelly Brown, Paragraph 8). Her placement was based on her TCAP math scores from 8th grade.
(Decl. Kelly Brown, Paragraph 9).

Response:

4. Ms. Jones passed Algebra in the fall semester.
(Decl. Kelly Brown, Paragraph 9).
(Decl. Toni Jones, Paragraph 3).

Response:

5. Ms. Jones was placed in Algebra I as a requirement of the MNPS "Student Progressive Plan," which is authoritative.
(Decl. Kelly Brown, Paragraph 9).

Response:

6. All students enrolled in Algebra I were required to sit for the End of Course (EOC) State exam.
(Decl. Kelly Brown, Paragraph 5).

Response:

7. The EOC exam counts for 25% of the second semester average. Students are not required to pass the EOC, but must achieve a passing course for the year.
(Decl. Kelly Brown, Paragraph 6).

Response:

8. Pearl-Cohn was under pressure to improve its EOC scores. If it failed to do so, it could have had serious implications for the "building administrator" (Principal) and MNPS as a district.
(Decl. Kelly Brown, Paragraph 10).

Response:

9. Ms. Jones was given the "Discovery Educational Assessment" (DEA) tests and scored below proficient. The last test was taken on March 3, 2014.
(Decl. Kelly Brown, Paragraph 11).

Response:

10. On April 4, 2014, Ms. Jones and several other students were removed from the Algebra class and placed in "Independent Study".
(Decl. Kelly Brown, Paragraph 13).
(Decl. Toni Jones, Paragraph 4).

Response:

11. Ms. Jones was given no explanation for her removal. Her mother was not informed.
(Decl. Toni Jones, Paragraph 4).

Response:

12. The program called "A+ Credit Recovery" is substandard. It is not designed for first-time credit class, but for a retake per SPP. The premise is that students already have had the benefit of a certified teacher.)
(Decl. Kelly Brown, Paragraph 14).

Response:

13. Toni Jones did not have an assigned teacher in the so-called A+ Class. She was forced to teach herself.
(Decl. Toni Jones, Paragraph 4).

Response:

14. Ms. Jones and others were removed by administration to prevent them from taking the EOC because they were not projected to score well.
(Decl. Kelly Brown, Paragraph 12).

Response:

15. The person assigned to the room into which Ms. Jones was placed, Mr. McCarter, had health problems and was rarely at school during the spring semester.
(Decl. Kelly Brown, Paragraph 17).

Response:

16. The substitute "teacher" had no access to the A+ computer program. Little or no tutoring was offered to Toni and the other students similarly situated.
(Decl. Kelly Brown, Paragraph 17).

Response:

17. This removal from instruction rendered her unable to complete Algebra I.
(Decl. Kelly Brown, Paragraph 18).

Response:

18. Toni Jones was passing Algebra under the supervision of a certified Algebra teacher. Her removal created a devastating gap in her understanding of mathematics.
(Decl. Kelly Brown, Paragraph 18).

Response:

19. Math as taught is cumulative. Mastery of the first level increases the likelihood of success at the next level.
(Decl. Kelly Brown, Paragraph 19).

Response:

20. Toni Jones was unable to finish the required course because she was placed in front of a substandard computer program and required to learn Algebra on her own.
(Decl. Kelly Brown, Paragraph 21).

Response:

21. This conduct rendered her unable to finish the course, which mandated that she be retained in the 9th grade.
(Decl. Kelly Brown, Paragraph 21).

Response:

22. Because she was deprived of Algebra instructions in Algebra I, she had almost no change of success in higher level math.
(Decl. Kelly Brown, Paragraph 22).

Response:

23. In her third year she was still classified as a 9th grader. She went from passing all her subjects to failing four in her second year.
(Decl. Kelly Brown, Paragraph 23).

Response:

24. Having no preparation, she failed Geometry her second year, yet was placed in Algebra II her third year. She gave up and dropped out of school
(Decl. Kelly Brown, Paragraph 24).

Response:

25. Toni Jones enrolled in a Metro adult high school after she turned 18. This "school" utilized the substandard A+ Program. Ms. Jones has tried to work from home but only has a smart phone to use.
(Decl. Kelly Brown, Paragraph 25).
(Decl. Toni Jones, Paragraph 7).

Response:

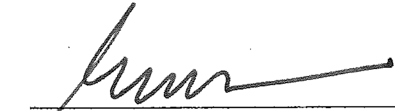
26. Ms. Jones' self-esteem suffered. She and other students in her situation felt humiliated. She was asked why she was not in class by her former classmates.
(Decl. Kelly Brown, Paragraph 27).

Response:

27. It is now unlikely that she can graduate in 4 years' time, still being classified as a 9th grader. She has forever lost the high school experience to which she was entitled.
(Decl. Kelly Brown, Paragraph 27, 28).

Response:

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, a true and correct copy of the foregoing was sent via United States Mail, postage prepaid to:

Melissa Roberge
Catherine J. Pham
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P.O. Box 196300
Nashville, TN 37219
Attorneys for Defendant

W. Gary Blackburn

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

FILED
2016 FEB -8 PM 4:26
CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
C. & M.

TONI JONES, individually and on behalf of those similarly situated,
Plaintiffs,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,
Defendant.

Case No. 15-1475-III

JURY DEMAND

NOTICE OF FILING

Counsel for Plaintiff hereby gives notice of filing the attached Declaration of Toni Jones and Declaration of Kelly Brown in support of her Memorandum of Law in Response to Defendant's Motion to Dismiss and in Support of Plaintiff's Motion for Partial Summary Judgment.

Respectfully Submitted,

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Bryant Kroll #33394
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Metropolitan Attorneys
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Attorneys for Defendant

W. Gary Blackburn

FILED
2015 FEB -8 PM 1:26
CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
_______ D.C. & M.

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES, individually and on behalf of those similarly situated,	)	
Plaintiffs,	)	**JURY DEMAND**
v.	)	**Case No. 15-1475-III**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY	)	
Defendants	)	

DECLARATION OF TONI JONES

Toni Jones declares and states as follows:

1. I am 18 years old, have personal knowledge of the facts stated herein, and I am competent to testify about those facts.
2. In the 2013-2014 school year I was a student at Pearl-Cohn High School.
3. I was a student in Algebra I during the 2013-2014 school year. I was having difficulty with the class but I was passing.
4. In my second semester, an assistant principal pulled me from class without any prior notice and with no explanation of the purpose. My mother was not told of this. I was taken to a room and placed in front of a computer, where I was forced to teach myself Algebra. No teacher was assigned or present to teach me the course.
5. I was never given the opportunity to take the End of Course exam. My removal denied me the opportunity to pass the course.

6. The following year, I was placed in Geometry. I was unprepared because I had not completed Algebra I. I performed poorly in Geometry and received a failing grade, which put me behind another year in the coursework.

7. I am still trying to complete the coursework for Algebra I. Because I do not have a personal computer, I have been forced to access the computer program from my smartphone.

Under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge.

Further declarant sayeth not.

This 3rd day of February, 2016.

Toni Jones

Toni Jones

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CLERK & MASTER
DAVIDSON COUNTY CHANCERY COURT
______ D.C. & M.

IN THE CHANCERY COURT OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
DAVIDSON COUNTY

TONI JONES, individually and on behalf of those similarly situated,	
Plaintiffs,	**JURY DEMAND**
v.	**Case No. 15-1475-III**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY	
Defendants	

DECLARATION OF KELLY BROWN

Kelly Brown declares and states as follows:

1. I am over the age of 18 years, have personal knowledge of the facts stated herein, and I am competent to testify about those facts.

2. I have a Bachelor of Arts degree in Elementary Education for grades 1-8, as well as a Master of Science degree in Pre-K through 12th grade Guidance and School Counseling. I have 11 years experience teaching primarily Reading and Language Arts to 7th and 8th graders. I was a high school counselor at Metro Nashville Public Schools ("MNPS") for 11 years. I served as Lead Counselor for 9 years and Building Testing Coordinator for 9 years. From July 2012 to June 2015, I was the guidance counselor at Pearl-Cohn High School.

3. Students in the state of Tennessee are allowed four years and a summer to be classified as an "on time graduate." Students in MNPS follow a prescribed progression plan, which is

approved each year by the Leadership and Learning team. The Leadership and Learning Team is a committee made up of Executive Leaders employed by MNPS to oversee academic instruction.

4. As it pertains to policies, procedures, and guidelines within the high school realm, the high school Student Progression Plan (SPP) is authoritative. The Leadership and Learning Team, administrators, and high school counselors in MNPS constantly refer to the SPP and are provided an updated copy of the SPP at the beginning of each school year.

5. In the 2013-2014 school year, the typical math progression for ninth graders began with Algebra I. Algebra I was one of seven courses linked by law to an End of Course (EOC) exam. All students enrolled in Algebra I (standard, honors, or Algebra I B) were required to sit for this state exam.

6. The EOC exam counts for only 25% of the second semester average. Students are not required to pass the EOC examinations, but are required to achieve a passing score for the course. *(2013-2014 SPP p. 52).*

7. All students were intentionally placed in the math level administrators deemed appropriate based on eighth grade TCAP math scores. The Algebra I credit could have been earned in one of three ways: (1) Standard Algebra I, (2) Honors Algebra I, or (3) Algebra I A and Algebra I B taken during the same year *(2013-2014 SPP p 45).*

8. Pearl-Cohn High School students, who took Algebra I A and Algebra I B together, were placed there with careful thought and planning. This plan was prescribed in order to give students the very best chance for success. Students who took Algebra I A and Algebra I B would sit in front of a math teacher every day rather than every other day.

9. Miss Toni Jones began high school in August 2013 as a ninth grader. Based on her eighth grade TCAP math scores, she was purposely placed in Algebra I A and Algebra I B, along with the majority of PCHS freshmen. Toni passed the fall semester of both Algebra I A and Algebra I B with a grade of 74. According to the TN mandated grading scale, a grade of 74 is passing and assigned a letter grade of D. A grade of 75 is considered a C, and anything below a 70 is an F *(2013-2014 SPP p 64)*. The last recorded grade for Toni in Algebra I B was 72.

10. Pearl-Cohn was under pressure to improve Math and English End of Course ("EOC") scores that year, and not making gains in student scores could have very serious implications for the building administrator and the MNPS district.

11. Three different times that school year, students were given a predictive assessment called a Discovery Educational Assessment (DEA). On all three occasions, Toni scored below proficient, with the last DEA being taken on March 3, 2014.

12. Toni and several other students at Pearl-Cohn High School were removed by the administration in order to keep them from taking the state mandated EOC in May 2014. Toni, along with these other students, were not projected to score well on the EOC.

13. On or around April 4, 2014, Toni was placed in a class called Independent Study. This class was utilized for credit recovery through a computer program called A+.

14. The A+ credit recovery program is substandard and is not intended to be the prescribed path for first time credit for any student. According to the 2013-2014 SPP, A+ is for course retake *(2013-2014 SPP p 70)*. This is based on the premise that students who have already had full seat time in front of a certified teacher have been exposed to the skills

taught in the traditional classroom setting. Therefore, A+ is an opportunity to go back and repeat skills and show growth in skills not grasped initially in the classroom.

15. The assigned teacher in an A+ computer lab should be certified for subjects covered in the program. Many A+ labs contain students working in a variety of subjects, and teachers that are not certified for the covered subjects cannot tutor a student effectively in content outside of their expertise.

16. When Toni was removed from the traditional classroom setting for Algebra I B and placed in an A+ lab, she was deprived of the benefit of a certified teacher. The person assigned as the Teacher of Record for her Independent Study class was Mr. George McCarter, a high school counselor. Mr. McCarter did not hold a teaching license and had never pursued one. His education and training was in school counseling.

17. Because Mr. McCarter had taken FMLA leave that year due to health concerns and was rarely at school during the spring semester, a substitute teacher was assigned to monitor student behavior. The substitute assigned would not have had authorized access to the A+ program, so much of the technical issues fell on me as the A+ Coordinator. Little to no tutoring was available to these students, including Toni, during the school day.

18. Because Toni was unable to get the instruction she needed, she was unable to complete the spring course of Algebra I through the A+ program. She was denied access to direct classroom instruction by a certified Algebra teacher, with whom she was passing under this teacher's supervision. This created a devastating gap in Toni's level of understanding in mathematics.

19. Much of the math that is taught in high school is cumulative: new concepts will be built upon skills learned in earlier grades. The courses become progressively more difficult as

students advance from one section to the next and from one level to the next. Each section must be mastered or students will not comprehend the next section. Mastery of material from previous math courses therefore increases a student's likelihood of success.

20. Toni's progress ended when she was abruptly removed from a quality learning environment. Toni was never given the opportunity to sit for the Algebra I EOC, which is required by state law.

21. While Toni's peers were allowed the opportunity to finish Algebra I B in this environment, Toni was placed in front of a substandard computer program that required her to learn Algebra completely on her own. She was not provided instruction from a certified math teacher, and she was unable to finish the course and earn the required credit. As a result, Toni was retained in the ninth grade because she had not met the criteria for progressing to the tenth grade *(2013-2014 SPP p 3)*.

22. Toni returned for her second year of high school in August 2014 as a second year freshmen. She was placed in sophomore level courses, including Geometry. Because Toni was not given full instruction in Algebra I the previous year, she was unable to grasp these higher-level math skills and had almost no chance of success.

23. Toni also lost what little confidence she had in her ability to learn higher-level math concepts. Toni shut down and essentially gave up on learning altogether. Toni went from passing all subjects in her ninth grade year to failing four subjects her second year of high school.

24. Toni entered her third year of high school, once again, as a ninth grade student. She was not allowed to finish Algebra I, she in turn failed Geometry; and when she returned in

August of 2015, she found herself enrolled in Algebra II. A few months later, Toni gave up and dropped out of school.

25. Toni enrolled at Bass Adult High School in MNPS shortly after she turned 18 years old. This adult school uses the A+ program exclusively. Students may access the A+ program both at home and at school. Toni has been working from home and primarily uses her cell phone to complete online lessons.

26. Based on Toni's academic performance upon completion of her first year of high school, it is my opinion that she would more likely than not have been on track to graduate with her peers in May 2017 if she had not been removed from her Algebra class.

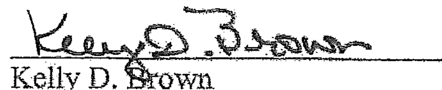
27. Toni's self-esteem suffered significantly when she was removed from her Algebra I B class. Students facing Toni's situation feel humiliated and embarrassed when confronted by peers. Toni had classmates ask her why she wasn't in class anymore, which made her feel uncomfortable. She became self-conscious when she returned to school the following two years because she was still classified as a ninth grader.

28. It is not likely that Toni will graduate on time. She has been deprived of significant portions of her academic needs as well as the opportunity to enjoy her high school experience. Toni was not given the same educational opportunities as her peers, and as a result, will have forever lost the experiences to which she was entitled.

Under penalty of perjury, I declare that the foregoing is true and correct to the best of my knowledge.

Further declarant sayeth not.

This 6th day of February, 2016.



Kelly D. Brown