

education due to the actions of Defendants, the School Board of Collier County, Florida, and Superintendent Kamela Patton, in her official capacity (“Defendants”).

4. When Plaintiffs were denied enrollment in public school, Defendants did not give them any option to attend any other educational program.

5. Defendants did not even keep a formal record of the interaction that took place at the school.

6. Defendants maintain a custom, policy, and practice of excluding recently-arrived, foreign-born, ELL students ages fifteen (15) and older from enrollment in Collier County public schools.

7. Defendants’ actions deny Plaintiffs and other foreign-born ELLs a free public education alongside their peers, the chance to learn core educational content and skills (“Florida Standards”), and access to other activities and programs available to students enrolled in public school.

8. Defendants deprive Plaintiffs and other foreign-born ELLs of the opportunity to earn credits toward a standard high school diploma and to realize their full learning and eventual earning potential.

9. Defendants’ refusal to enroll Plaintiffs and other ELL immigrant students denies them meaningful and equal educational opportunity and

violates the Equal Educational Opportunities Act (“EEOA”), 20 U.S.C. §§ 1703(a) and (f); Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, (“Title VI”); the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution, U.S. Const., amend XIV, § 1; the Florida Educational Equity Act, Fla. Stat. § 1000.05; and Fla. Admin. Code Ann. r. 6A-19.001.

10. Plaintiffs ask the Court to grant declaratory and injunctive relief to them and similarly situated students, including an injunction requiring Defendants to enroll Plaintiffs in free public school.

11. Named Plaintiffs also seek compensatory damages for their claims under Title VI and the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

JURISDICTION

12. This case arises under the United States Constitution and the laws of the United States, including the EEOA, 20 U.S.C. § 1703; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d; and 42 U.S.C. § 1983.

13. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331(a), 1343, 2201, and 2202, and 20 U.S.C. §§ 1706, 1708.

14. The Court may exercise supplemental jurisdiction over Plaintiffs' state law claims under the Florida Educational Equity Act, Fla. Stat. §§ 1000.05 and Fla. Admin. Code Ann. r. 6A-19.001. *See* 28 U.S.C. § 1367(a).

VENUE

15. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because “a substantial part of the events or omissions giving rise to the claim[s] occurred” in this district.

PARTIES

Named Plaintiffs

16. Nehemy Antoine resides within Golden Gate High School's attendance zone in Collier County. Nehemy is of limited English proficiency and Haitian national origin.

17. Ingrid Alonzo resides within Naples High School's attendance zone in Collier County. Ingrid is of limited English proficiency and Guatemalan national origin.

Defendants

18. Defendant School Board of Collier County, Florida (“School Board”), is responsible for directing, operating, controlling, and supervising all free public schools in Collier County.

19. The School Board is responsible for the operation of schools within the Collier County School District.

20. The School Board is the contracting agent on behalf of the School District and is subject to suit.

21. The School Board has acted under color of state law at all times referenced in this complaint within the meaning of 42 U.S.C. § 1983.

22. Defendant Kamela Patton, as Superintendent of the Collier County Public Schools, is the secretary and executive officer of the Collier County School Board.

23. Superintendent Patton is responsible for the administration and management of the schools.

24. She is charged with recommending the operation of schools, classes, and services as are needed to provide adequate educational opportunities for all children in the district.

25. Defendant Patton is also charged with ensuring that all laws and rules of the State Board of Education are properly observed.

26. She is responsible for enforcing school attendance of all students subject to compulsory school age in the school district. Superintendent Patton has acted under color of state law at all times referenced in this complaint within the meaning of 42 U.S.C. § 1983. She is sued in her official capacity.

BACKGROUND

Defendants' Obligation to Educate English Language Learners

27. The education of children is a fundamental value of the people of the State of Florida under its constitution.

28. Education in Florida is compulsory for all children between the ages of six (6) and sixteen (16) without exception. Even after age sixteen (16), students are expected to remain in school unless they file a declaration with the school board explaining their intent to terminate school enrollment.

29. Federal and state laws and regulations require ELLs to receive access to the same curriculum and opportunity as non-ELLs.

30. Defendant School Board, as the contracting agent of the School District, receives federal funding, including but not limited to English Language Acquisition funding, to provide instructional programs and services to ELL students.

31. On September 14, 2016, Defendant Patton signed and submitted to the Florida Department of Education a "District ELL Plan." *See* Ex. 1. The plan certifies Collier County public schools' compliance with, *inter alia*, the EEOA, Title VI and the requirements of the Office for Civil Rights Standards for Title VI compliance; Fla. Stat. § 1003.56; applicable administrative

regulations; and the Florida Educational Equity Act—all of which require equal access to educational opportunities for ELL students. Ex. 1.

32. The District ELL Plan sets forth the policies and procedures for providing instruction to ELL students, including identification, evaluation, and placement.

33. The ELL Plan requires schools to identify ELL students at the time of registration using a home language survey. Ex. 1 at 5-6.

34. Under Defendants' ELL Plan, schools must individually assess both 1) the student's English language skills and 2) the student's academic skills. *Id.* at 6-9.

35. As part of these assessments, schools are to administer the Comprehensive English Language Learning Assessment (CELLA), specifically the "On-line Form 3 CELLA." *Id.* at 7-8.

36. Based on results of the assessment, the school's ELL committee is then to place the student in an English language class. *Id.* at 8-10.

37. The school is also required to assess ELL students' academic level using testing and previous school records, and, in the absence of such records, using interviews of the student and parents and other assessment tools. *Id.* at 9-10.

38. To “address the placement of ELLs with limited or no prior school experience(s), or whose prior school records are incomplete,” the ELL plan provides that “school personnel will request records” from the previous school. *Id.* at 9.

39. After such assessment, the ELL contact or guidance counselor is to place the student in an appropriate school grade and develop an ELL student plan for the student. *Id.* at 7-11.

40. The ELL plan requires that placements be “age appropriate.” *Id.* at 9.

**Defendants’ Policy and Practice of Denying Equal Access
to Educational Opportunity**

41. On or about February 12, 2013, Defendant School Board adopted School Board Policy 5112.01 (“the Policy”), which states:

Persons **who are seventeen (17) years old or older** and who by earning eight (8) credits per academic year, cannot meet graduation requirements including grade point average (GPA), prior to the end of the school year in which they attain the age of nineteen (19), shall not be permitted to attend the regular high school program **beyond the end of the academic year in which they attain the age of seventeen (17)**. Such persons shall be afforded an opportunity to pursue a high school diploma through the Adult High School or General Educational Development (GED) programs of the District.

Ex. 2 (emphasis added).

42. By its plain language, the Policy applies only to children “who are seventeen (17) years old or older.” *Id.* It allows those children to attend school through the end of the academic year in which they “attain the age of seventeen (17).”

43. However, Defendants purport to rely on the Policy to deny enrollment to ELL students as young as fifteen (15) years old.

44. Defendants have a custom, policy, and practice of denying school enrollment to recently-arrived, foreign-born, ELL students aged fifteen (15) and older.

45. Upon information and belief, children aged fifteen (15) and older who are not recently-arrived, foreign-born, ELL students are permitted to either enroll in or continue to attend Collier County public schools and receive a free public education in which they earn credits toward a standard high school diploma. This includes students who have been retained, who are not on grade level, and who are not on track to graduate.

46. During a January 2013 School Board Workshop meeting discussing the proposed policy, Board members raised a concern about the Policy’s impact on currently enrolled students. District employee Christy Kutz emphasized that the Policy was targeted at “new kids enrolling at our schools.”

47. The District maintains no formal records of attempts of recently-arrived, foreign-born ELL students aged 15 and older who seek to enroll in schools but are turned away.

48. School officials make the discriminatory assumption that such children are likely to fail academically when they deny them enrollment.

49. This assumption is not based on any testing or assessment of the individual student; rather, the denial of enrollment occurs without any individualized assessment.

50. At most, this enrollment determination is based solely on the student's transcript from a prior school.

51. By denying enrollment to recently-arrived, foreign-born ELL students ages fifteen (15) and older, Defendants procedurally and substantively depart from the norms as embodied in their ELL Plan and enrollment of students in general.

52. Not only are these students not assessed as required by the ELL Plan; they are also deprived of the other benefits of the ELL Plan required by law.

53. These students are not offered an individualized ELL student plan, as required by the ELL plan.

54. These students are not offered mathematics, science, or social studies classes, as required by the ELL plan and by law.

55. These students are not offered classes taught to the Florida Standards, as required by the ELL plan and by law.

56. These students are not offered equal access to the regular curriculum, as required by the ELL plan and by law.

57. These students are not offered instruction equal in amount, sequence and scope to that provided to non-ELL students, as required by the ELL plan and by law.

58. These students are not offered assessments of their academic and language progress, as required by the ELL plan and by law.

59. After denying enrollment, school officials refer some of these students to off-site, noncredit, Adult English for Speakers of Other Languages (“ESOL”) programs at Lorenzo Walker Technical College, Immokalee Technical College, also known as Immokalee Technical Center (“iTech”), or other locations, which charge a fee.

60. Defendants provide other students with no additional information and leave them to fend for themselves.

61. Since 2013, several hundred foreign-born children between the ages of fifteen (15) and eighteen (18) have found their way to these Adult ESOL programs after being excluded from Collier County public schools.

62. Defendants are aware of the large numbers of foreign-born ELL students turned away from Collier County public high schools.

63. To the extent Defendants divert these students to a noncredit, fee-based Adult ESOL program, Defendants procedurally and substantively depart from the norms set out in the ELL Plan in a number of ways, as described below.

64. Adult ESOL is an English language program. It does not teach the skills and subject matters required under Florida law and the ELL Plan.

65. The Adult ESOL program was designed only to improve the employability of the state's workforce through development of communication skills and cultural competencies, as well as learning English.

66. The Adult ESOL program does not provide instruction in basic subject areas of math, science or social studies, as required by the ELL Plan and by law.

67. Students enrolled at Collier County public high schools, by contrast, do receive such instruction.

68. The Adult ESOL program does not provide any credit toward a standard high school diploma.

69. By contrast, basic ESOL classes for ELL students in free public schools must provide credits toward a high school diploma.

70. Defendants do not evaluate ELL children excluded from public school to determine whether and when they should transition into high school. For these children, Adult ESOL classes are an educational dead-end.

71. For a time, Adult ESOL cost Plaintiff Nehemy Antoine and other foreign-born ELLs thirty dollars (\$30.00) per semester plus other costs, in violation of the Florida Constitution, which mandates free public schools.

72. Defendants have since represented that they do not currently charge the \$30.00 fee to Plaintiffs and other similarly situated students.

73. ELL students who are diverted from high school and who enroll in the Adult ESOL program are segregated from their peers and denied the opportunity to participate in any of the high school's academic enrichment, sports, or extracurricular activities.

74. This violates Florida administrative regulations that entitle ELL students to equal access to programs and services other than ESOL.

75. It is also contrary to federal guidance stating that ELL students should have equal opportunities to meaningfully participate in all school programs and activities.

76. At the Adult ESOL programs, students as young as fifteen (15) are enrolled in classes with adults, some of whom are older than the students' parents or grandparents.

77. This contravenes federal guidelines and Defendants' ELL Plan, which require age appropriate placement. Ex. 1 at 8.

78. By signing the District ELL Plan, Defendant Patton certified the District's compliance with civil rights statutes, including Title VI and the EEOA, and with federal administrative guidance on the District's obligations under these laws.

79. Defendants were on notice that these laws require them to provide meaningful access to a public education for ELL students.

80. Through their custom, policy, and practice, Defendants segregate Plaintiffs and other foreign-born ELLs from their peers and deprive them of equal access to educational opportunities offered in high school.

81. Through their custom, policy, and practice, Defendants deprive these students of the opportunity to earn credits toward a high school diploma and to learn skills and core subject matter that they will need in the future.

82. Defendants' custom, policy and practice limit these children's educational and career opportunities, and their future earning potential.

83. Upon information and belief, Defendants' custom, policy, and practice of denying enrollment to recently-arrived, foreign-born ELL students have had a chilling effect on student enrollment. Some immigrant students have not sought to enroll in school because they have heard that they cannot enroll if they are fifteen (15) or older.

NAMED PLAINTIFFS' ALLEGATIONS

84. Nehemy Antoine, who is from Haiti, arrived in Naples in February 2016 at the age of seventeen (17).

85. He lives with his father, Emile Antoine.

86. Nehemy's favorite subjects are math, physics, and French.

87. He likes to tinker with electronics in his spare time.

88. He aspires go to college, study computer science, and work with computers and electronics when he grows up.

89. When Nehemy left his school in Haiti in January 2016 to move to the United States, he was in what was considered there to be the ninth grade.

90. On February 29, 2016, Nehemy and his father, Emile Antoine, went to Lely High School in Naples to enroll Nehemy in school.

91. They brought their cousin along to interpret.

92. School staff told them that Nehemy needed immunizations to enroll.

93. Nehemy obtained the required immunizations and returned to Lely High School on March 4, 2016, with proof of immunizations, along with his passport, social security card, and his report cards from Haiti.

94. The school staff person then told Nehemy and his father that Nehemy was too old to attend Lely High School.

95. Nehemy and his father later learned that the assigned high school for their home was actually Golden Gate High School, not Lely.

96. Soon after, in March 2016, Nehemy went with his father to Golden Gate High School to request enrollment.

97. They did not have anyone available to interpret, and the school did not provide an interpreter.

98. Nehemy and his father presented the same paperwork that they had presented at Lely to the Golden Gate staff person.

99. A staff person at the school gave Nehemy and Emile Antoine a piece of paper written only in English. The paper stated that Nehemy was “no longer eligible to pursue a traditional High School Diploma in Collier County Public Schools, including those programs offered through Alternative Programs.”

100. Emile Antoine understood that a staff person at Golden Gate High School would communicate with him by phone about Nehemy's enrollment in school, but no one ever called him.

101. Emile Antoine followed up by telephone, but Nehemy was not permitted to enroll at Golden Gate High School.

102. Soon after, a friend told Emile Antoine about a program at Lorenzo Walker Technical College ("Lorenzo Walker").

103. Emile Antoine took Nehemy to Lorenzo Walker where he paid thirty dollars (\$30.00) to enroll Nehemy in Adult ESOL.

104. At Lorenzo Walker, Nehemy has attended classes with people much older than he is, including one man Nehemy estimates is in his 40s.

105. Nehemy does not receive instruction pursuant to the Florida Standards in content areas such as math, science or social studies, and does not receive credits toward a high school diploma.

106. High school programs and activities are not available to him.

107. He feels frustrated and desperate due to the Defendants' refusal to allow him to access a high school education.

108. Ingrid Alonzo, who is from Guatemala, arrived in Naples in January 2017.

109. At that time, her birth certificate indicated that she was seventeen (17), although she later learned from family members that the birth certificate inaccurately stated the year of her birth as one year earlier than her true age.

110. She lives with her aunt, Marta Alonzo, in Naples.

111. Ingrid's favorite subjects are math and science.

112. She aspires to become a nurse because she likes to help people.

She would like to practice nursing in a hospital.

113. When Ingrid arrived in Naples, Marta Alonzo asked a friend where she needed to go to enroll Ingrid in school.

114. Her friend told her that she would give her a ride to the place where foreign students were supposed to enroll.

115. In early February 2017, they went to the Student Registration department of the Collier County School District administration building, located at 5775 Osceola Trail in Naples, Florida.

116. Marta Alonzo and Ingrid brought Ingrid's birth certificate and her school records from Guatemala.

117. They provided Ingrid's documents to a secretary in the Student Registration office and told her that they wanted to enroll Ingrid in school.

118. The secretary took the documents and gave Marta and Ingrid a Collier County Public Schools envelope that contained a checklist of items that

Ingrid needed to register for school, including a declaration of domicile and proof of immunizations and physical. The secretary told them to return with the requested documents.

119. Marta and Ingrid obtained the requested items and returned to Student Registration a few days later.

120. Ingrid and Marta spoke to a different secretary during their second visit to Student Registration.

121. The second secretary gave Marta and Ingrid documents in English and explained that the Collier County School District had a translator translate her school records into English.

122. The translation reflected that Ingrid had completed 10th grade in Guatemala.

123. The secretary also gave them a printout of an email from Collier County Schools staff that contained a translation of Ingrid's birth certificate.

124. The second secretary told Marta and Ingrid that she did not need any additional documents from them.

125. She told them, however, that Ingrid did not qualify to go to school because she was almost an adult and she was too old. She wrote on the outside of the envelope “*MAX AGE*.” *See* Ex. 3.

126. Marta asked the second secretary where Ingrid could go to school. The second secretary told Marta that she would need to check to find out if any other school would accept Ingrid.

127. Marta asked the second secretary whether she needed to come back or whether she should call. The secretary told Marta to call her back in a week to find out whether or not another school would accept Ingrid.

128. Marta called the second secretary a week later, but the secretary said that she did not have an answer yet.

129. The second secretary then called Marta a few days later. She told Marta that Ingrid did not qualify for school because she was too old.

130. The secretary did not provide Marta with any other option as to where Ingrid could attend school.

131. Marta knew about Lorenzo Walker because she had attended English classes there in the past. Her friend also suggested that Ingrid attend Lorenzo Walker.

132. Marta took Ingrid to Lorenzo Walker, where Ingrid was offered only the option of enrolling in the Adult ESOL program.

133. At Lorenzo Walker, Ingrid does not receive instruction in the basic subject areas required by the Florida Standards such as math, science or social studies, and does not receive credits toward a high school diploma.

134. High school programs and activities are not available to her.

135. She feels frustrated due to the Defendants' refusal to allow her to attend high school.

136. Ingrid feels bad, disappointed, excluded and desperate as a result of her exclusion from District high schools.

137. Both Plaintiffs want to continue their education.

138. Neither Nehemy nor Ingrid has ever filed a declaration of intent to terminate school enrollment with any school board or otherwise relinquished their right to attend school.

139. No one at Lely, Golden Gate High School, or at the Collier County School District administration building, ever assessed these students to determine their academic level or English proficiency before denying them enrollment in Collier County public schools.

140. Neither Nehemy or Ingrid, nor their parents or guardians, were given the opportunity to appeal the decision to deny them enrollment.

141. On September 17, 2015, Plaintiffs' attorney wrote a letter to Defendant Patton, identifying the Defendants' refusal to enroll ELL students aged sixteen (16) and older in Collier County public schools; stating that enrollment of students in Adult ESOL rather than in school violated state and federal laws; requesting rescission of Policy 5112.01; requesting that

immediate steps be taken to enroll two minors, former Plaintiffs G.O. and M.D. in school; and requesting that similarly situated students be ensured equal access to educational opportunities.

142. Defendants' general counsel responded to the letter, but refused to enroll the students in high school or to revise the School Board's policy or practice relating to enrollment.

143. Around the spring of 2016, Defendants began a program for 16-21 year-old ELLs in Adult Education that they called the ELCATE ("English Literacy for Career and Technical Education") Academy at Lorenzo Walker and Immokalee Technical College.

144. In the "ELCATE Academy," students take Adult ESOL classes until they demonstrate that they are ready to sit for initial testing for the Test for Adult Basic Education ("TABE").

145. Once they have completed a certain level of Adult ESOL, students can start taking preparation courses for a General Educational Development ("GED") test.

146. Both Plaintiffs are currently enrolled at Lorenzo Walker. The only classes they have taken are: Adult ESOL (Nehemy and Ingrid) and GED Preparation courses (Nehemy).

CLAIMS FOR RELIEF

COUNT I

Equal Educational Opportunities Act of 1974 (“EEOA”)

147. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-8 (summary of facts); 16-26 (Plaintiffs and Defendants); 27-83 (Defendants’ obligations to ELLs, ELL plan, and policy); and 84-146 (Named Plaintiffs’ allegations) of this Complaint as if fully restated herein.

148. Defendants Collier County School Board and Superintendent Patton are bound by the provisions of the EEOA, 20 U.S.C. § 1703.

149. Section 1703 of the EEOA states in part:

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex or national origin by:

(a) the deliberate segregation by an educational agency of students on the basis of race, color, sex or national origin among or within schools;

[or] . . .

(f) the failure of an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

20 U.S.C. § 1703(a), (f).

150. Through their actions and inactions, including the act of excluding Plaintiffs from public school, Defendants have denied Plaintiffs and

similarly-situated students equal educational opportunity on account of their national origin by deliberately segregating them from their peers because of their national origin.

151. Defendants' "ELCATE Academy" segregates Plaintiffs and other foreign-born ELLs, ages 16-21, from their English-speaking peers who are enrolled in District high schools.

152. Through their actions and inactions, including denying Plaintiffs enrollment, Defendants have denied Plaintiffs equal educational opportunities on account of their national origin by failing to take appropriate action to overcome language barriers that impede Plaintiffs' equal participation in Defendants' public school programs.

153. Defendants' failure to take appropriate action includes but is not limited to refusing to enroll Plaintiffs in public school.

154. Defendants' failure to take appropriate action includes but is not limited to funneling Plaintiffs to noncredit Adult ESOL classes that do not teach to the Florida standards or provide any opportunity to reintegrate into public school or earn credits toward a standard high school diploma.

155. Defendants' failure to take appropriate action includes but is not limited to failing to properly assess Plaintiffs' English proficiency and academic levels, place them according to English and academic skills, and

develop an ELL student plan for each student in accordance with Defendants' ELL Plan.

156. As a result, Defendants deny Plaintiffs and similarly situated students a free public education, the opportunity to learn the skills and subject matter set forth in the Florida Standards, credits toward a standard high school diploma, access to the other activities and programs available to students enrolled in public schools, and their full learning and earning potential.

157. Defendants' refusal to enroll Plaintiffs and others similarly situated in public high schools, which leaves them with no other option but to attend Adult Education, is not based on a sound educational theory.

158. Placement of Plaintiffs and other similarly-situated ELLs in Adult Education, as opposed to public high school, is not based on any sound educational theory that is reasonably calculated to overcome the language barriers that impede the equal participation in Defendants' regular instructional program.

159. Adult Education, including the "ELCATE Academy" is a wholly inappropriate educational placement for Plaintiffs.

160. Defendants further violate the EEOA because their Adult Education Programs, including the "ELCATE Academy," are not reasonably calculated to implement effectively any sound educational theory to overcome

the language barriers that impede the equal participation of Plaintiffs and those similarly situated in Defendants' instructional programs.

161. Placement of Plaintiffs and those similarly situated in Adult Education, including the "ELCATE Academy," further violates the EEOA because Defendants' Adult Education programs fail to produce results showing that language barriers to equal participation in the instructional programs are actually being overcome.

162. By failing to take appropriate action to overcome language barriers that impede Plaintiffs' equal participation in Defendants' instructional programs, Defendants have denied Plaintiffs an equal education in violation of the EEOA on account of their national origin.

163. Defendants' conduct violates Plaintiffs' rights under the EEOA.

164. As a result of Defendants' actions and inactions, Plaintiffs have suffered and will continue to suffer irreparable harm, which includes, but is not limited to, the loss of education, an inability to overcome language barriers, and diminished educational and future employment opportunities.

165. Plaintiffs request declaratory and injunctive relief to remedy Defendants' ongoing violation of these rights.

COUNT II

Title VI of the Civil Rights Act of 1964

166. The named Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-8 (summary of facts); 16- 21(Plaintiffs and Defendant School Board of Collier County); 27-83 (Defendants' obligations to ELLs, ELL plan and policy); and 84-146 (Named Plaintiffs' allegations).

167. Title VI provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program receiving federal funding. 42 U.S.C. § 2000d.

168. As a recipient of federal funding, Defendant the School Board of Collier County, Florida, is prohibited from discriminating against Plaintiffs by excluding them from instructional services, failing to provide them with instructional services, or providing them with inferior services on the basis of their national origin.

169. Defendant is aware of its Title VI obligations, as certified in its ELL Plan.

170. Defendant, under color of law, deprived Plaintiffs and other foreign-born ELL students of their right to a free public education on the basis of their national origin.

171. Defendant acted intentionally or with deliberate indifference to the likelihood that the federally-protected rights of Plaintiffs and other foreign-born ELLs would be violated.

172. Defendant has discriminated against Plaintiffs and other similarly situated students on the basis of their national origin by excluding them from Defendant's schools.

173. Defendant has discriminated against Plaintiffs and other similarly-situated students on the basis of their national origin by referring some of them to noncredit Adult ESOL classes that segregate them from their peers.

174. Defendant has discriminated against Plaintiffs and similarly-situated students on the basis of their national origin by failing to teach math, science, social studies and other skills and subject matter set forth in the Florida Standards.

175. Defendant has discriminated against Plaintiffs and similarly-situated students on the basis of their national origin by failing to provide credits toward a high school diploma.

176. Defendant has discriminated against Plaintiffs and similarly-situated students on the basis of their national origin by denying access to other activities and programs available to students enrolled in public schools.

177. Defendant denies enrollment to Plaintiffs and similarly-situated students based on a discriminatory blanket assumption that these children are likely to fail academically in a regular high school program, rather than performing individualized language and academic assessments of Plaintiffs and class members.

178. Defendant knows that recently-arrived, foreign-born ELL students have been and are being denied enrollment from public high schools in Collier County.

179. Defendant is also aware of the large numbers of these students enrolled in noncredit adult ESOL classes that fail to provide instruction in any other curricular areas or offer an opportunity to progress toward a standard high school diploma.

180. Yet Defendant continues to deny these students enrollment in its public schools.

181. Defendant fails to maintain formal records of foreign-born ELLs who have attempted to enroll in Collier County high schools, which facilitates the evasion of their own ELL Plan, state and federal law.

182. Through its actions and inactions on the basis of national origin, Defendant has excluded Plaintiffs, and those similarly situated, from participation in a public school education and Defendant's ELL program,

denied them the benefits of these programs, and subjected them to discrimination as set forth above.

183. As a result of Defendant's actions and inactions, Plaintiffs have suffered and will continue to suffer irreparable harm, which includes, but is not limited to, the loss of educational time, an inability to overcome language barriers, and diminished educational and future employment opportunities.

184. Defendant's actions have caused and will continue to cause the named Plaintiffs to suffer compensable injuries, entitling the named Plaintiffs to compensatory damages.

185. Plaintiffs seek declaratory and injunctive relief to remedy these ongoing violations. Plaintiffs also seek compensatory damages.

COUNT III

Fourteenth Amendment Equal Protection Clause (42 U.S.C. § 1983)

186. The named Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-8 (summary of facts); 16- 21(Plaintiffs and Defendant School Board of Collier County); 27-83 (Defendants' obligations to ELLs, ELL plan and policy); and 84-146 (Named Plaintiffs' allegations).

187. The Fourteenth Amendment's Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

188. Defendant the School Board of Collier County, Florida, under color of state law, has acted and continue to act pursuant to a policy and practice to deprive Plaintiffs, and those similarly situated, of the right to equal protection of the laws under the Fourteenth Amendment.

189. Defendant maintains a custom, policy, and practice of excluding recently-arrived, foreign-born ELL students from enrollment in public school.

190. School officials deny enrollment, acting purportedly pursuant to a District Policy that excludes children from public school in the academic year after they turn seventeen (17) years old, under the assumption that these children will not meet certain academic requirements by the time they turn nineteen (19).

191. Defendant discriminates against Plaintiffs and those similarly situated by enforcing that policy against recently-arrived, foreign-born ELL children as young as fifteen (15) seeking enrollment in school.

192. The Policy was adopted and is enforced with the intent to discriminate against Plaintiffs and those similarly situated on the basis of their national origin.

193. As the result of Defendant's actions, hundreds of recently-arrived, foreign-born ELL students—including those as young as 15—have

been prevented from enrolling in public schools. Some have enrolled in the Adult ESOL program for a fee, alongside individuals decades their senior.

194. Defendant is aware of the large numbers of students excluded from public school, but maintains this unconstitutional policy and practice.

195. As a result, Defendant denies Plaintiffs, and those similarly situated, a public school education, the opportunity to learn the skills and subject matter set forth in the Florida Standards, credits toward a standard high school diploma, access to the other activities and programs available to public school students, and their full learning and earning potential.

196. Defendant's actions in denying Plaintiffs and other foreign-born ELLs access to a public school education depart procedurally and substantively from the norms set forth in, *inter alia*, their own ELL Plan.

197. As a result of Defendant's actions and inactions, Plaintiffs have suffered and will continue to suffer irreparable harm, which includes but is not limited to the loss of educational time, an inability to overcome language barriers, and diminished educational and future employment opportunities.

198. Defendant's actions have caused and will continue to cause the Plaintiffs to suffer compensable injuries, entitling them to compensatory damages.

199. Plaintiffs seek declaratory and injunctive relief to remedy these ongoing, constitutional violations. Plaintiffs also seek compensatory damages.

COUNT IV

Fourteenth Amendment Due Process Clause (42 U.S.C. § 1983)

200. The named Plaintiffs, on behalf of themselves and all those similarly-situated, re-allege and incorporate by reference the allegations set forth in paragraphs 1-8 (summary of facts); 16-21 (Plaintiffs and Defendant School Board of Collier County); 27-83 (Defendants' obligation to ELLs, ELL plan, and policy); and 84-146 (Named Plaintiffs' allegations).

201. Through their actions and inactions, Defendant the School Board of Collier County, Florida has deprived Plaintiffs and all others similarly situated, of their constitutionally-protected property interest to a public education by denying them the right to enroll in public school.

202. Defendant's lack of any procedures following denial of enrollment is constitutionally inadequate.

203. Defendant denied Plaintiffs, and all others similarly situated, the right to attend public school without any procedures, including notice, an opportunity to be heard, or an avenue to challenge an adverse determination.

204. As a result, Defendant denies Plaintiffs, and similarly situated students, notice and an opportunity to be heard regarding their denial of public school enrollment and related educational opportunities.

205. Defendant acted pursuant to a custom, policy, and practice in depriving Plaintiffs, and all others similarly situated, of a public education without notice or opportunity to be heard.

206. As a result of Defendant's actions and inactions, Plaintiffs and class members have suffered and will continue to suffer irreparable harm, which includes, but is not limited to, the loss of educational time, an inability to overcome language barriers, and diminished educational and future employment opportunities.

207. Defendant's actions have caused and will continue to cause the named Plaintiffs to suffer compensable injuries, entitling the named Plaintiffs to compensatory damages.

208. The named Plaintiffs, on behalf of themselves and others similarly situated, seek declaratory and injunctive relief to remedy these ongoing, constitutional violations. The named Plaintiffs, individually, also seek compensatory damages.

COUNT V

Florida Educational Equity Act, Fla. Stat. §§ 1000.05 et seq. and
Fla. Admin. Code Ann. r. 6A-19.001 et seq.

209. The named Plaintiffs, on behalf of themselves and all others similarly situated, re-allege and incorporate by reference the allegations set forth in paragraphs 1-8 (summary of facts); 16-27 (Plaintiffs and Defendants); 27-81 (Defendants' obligations to ELLs, ELL plan and Defendants' policy); and 82-144 (Named Plaintiffs' facts).

210. The Florida Educational Equity Act prohibits the exclusion of or discrimination against students on the basis of national origin. *See* Fla. Stat. § 1000.05(2)(a).

211. Under the Act, "discrimination" includes taking admission actions that adversely affect an applicant for admission based on "linguistic characteristics of a national origin group," or "belonging to a national origin minority group, unnecessarily based on limited-English-language skills." Fla. Admin. Code Ann. r. 6A-19.001.

212. The Act also bans admissions criteria that result in a disparate impact. Fla. Stat. § 1000.05(2)(b) ("[T]he criteria for admission to a program or course shall not have the effect of restricting access by persons of a particular race, ethnicity, national origin, gender, disability or marital status").

213. Defendants' actions and inactions to exclude Plaintiffs and other foreign-born ELLs from enrollment in public school violate the Florida Educational Equity Act.

214. Defendants' policy and practice violate Plaintiffs' rights under the Florida Educational Equity Act.

215. Defendants deny Plaintiffs and other recently-arrived foreign-born ELLs a public school education, the opportunity to learn the skills and subject matter set forth in the Florida Standards, credits toward a standard high school diploma, access to other activities and programs available to students enrolled in public school, and their full learning and earning potential.

216. The named Plaintiffs seek declaratory and injunctive relief to remedy these ongoing violations of the Florida Educational Equity Act.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Assume jurisdiction over this matter;
- b. Certify Plaintiffs' Due Process claims (Count IV) as class claims pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;

- c. Designate named Plaintiffs as representatives for the Due Process class and designate the named Plaintiffs' counsel as counsel for the class pursuant to Federal Rule of Civil Procedure 23;
- d. Declare that Defendants' acts and omissions violate the rights of Plaintiffs under the Equal Educational Opportunities Act;
- e. Declare that Defendant School Board of Collier County's acts and omissions violate the rights of Plaintiffs under Title VI of the Civil Rights Act of 1964;
- f. Declare that Defendant School Board of Collier County's actions and omissions violate the rights of Plaintiffs under the Fourteenth Amendment Equal Protection Clause;
- g. Declare that Defendant School Board of Collier County's acts and omissions violate the rights of Plaintiffs and class members under the Fourteenth Amendment Due Process Clause;
- h. Declare that Defendants' acts and omissions violate the rights of Plaintiffs to be free from discrimination under the Florida Educational Equity Act;
- i. Declare Defendants to be liable for the days of school Plaintiffs missed due to Defendants' unlawful policy and practice of denying them enrollment;

j. Enter injunctive relief in the form of:

1. Requiring Defendants to enroll Plaintiffs in the District's public high school system.
2. Requiring Defendants to adopt policies, procedures, and training to end Defendants' ongoing violations of the EEOA, Title VI, the U.S. Constitution and state law, and to publicize to the community at large and to class members, in a language and form of communication that they understand, those new policies and procedures.
3. Requiring Defendants to adopt policies and procedures to provide prospective students with notice and an opportunity to be heard regarding decisions about eligibility for enrollment in Defendants' public schools.
4. Requiring Defendants to provide compensatory education to Plaintiffs to remedy the harms caused by Defendants' unlawful policy and practice of denying them enrollment.

- k. Award compensatory damages to Plaintiffs for emotional distress, mental anguish, and/or related emotional damages that Plaintiffs have incurred as a result of Defendants' unlawful conduct in violation of Title VI and the Equal Protection and Due Process Clauses of the Fourteenth Amendment;
- l. Award nominal damages to Named Plaintiffs for their Title VI, Equal Protection, and Due Process claims;
- m. Award Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and Fla. Stat. § 1000.05(7); and
- n. Grant any other relief the Court deems just and reasonable.

Respectfully submitted this 1st day of March, 2019,

SOUTHERN POVERTY LAW CENTER

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CERTIFICATE OF SERVICE

I certify that on March 1, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide service to the following:

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