

WILLIG, WILLIAMS, AND DAVIDSON

DEBORAH R. WILLIG, ESQUIRE

Attorney I.D. No. 21507

JOHN R. BIELSKI, ESQUIRE

Attorney I.D. No. 86790

LAUREN M. HOYE, ESQUIRE

Attorney I.D. No. 307411

WILLIAM J. CAMPBELL IV, ESQUIRE

Attorney I.D. No. 326866

1845 Walnut Street, 24th Floor

Philadelphia, PA 19103

(215) 656-3600

Attorneys for Plaintiffs

PHILADELPHIA FEDERATION OF TEACHERS, AFT,
LOCAL 3, AFL-CIO; JERRY JORDAN, President and
Trustee Ad Litem of the PHILADELPHIA FEDERATION
OF TEACHERS,

Plaintiffs,

v.

THE SCHOOL DISTRICT OF PHILADELPHIA, its
Officials, Agents, Employees and Assigns; and

WILLIAM R. HITE, JR., Ed.D., in his official capacity as
Superintendent of the School District of Philadelphia,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

TERM, 2020

NO.

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NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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NO.

**COMPLAINT IN THE NATURE OF A REQUEST
FOR MANDATORY INJUNCTIVE REVIEW**

I. INTRODUCTION

Plaintiffs, Philadelphia Federation of Teachers, AFT, Local 3, AFL-CIO (“PFT,” “Federation,” or “Union”), and its Trustee ad Litem, Jerry Jordan, the President of the Union (collectively hereinafter “Plaintiffs”) hereby file this Complaint, seeking mandatory injunctive relief. Recent events make undeniably clear that the Philadelphia School

District (“PSD” or “District”) has allowed asbestos hazards at Philadelphia public schools to remain in public school buildings without proper testing and remediation to the point that it is endangering the health and safety of the teachers and staff, represented by the PFT, who work in those buildings as well as the students who attend those schools.

To protect the constitutional and statutory rights of the District’s teachers and staff working for the District, Plaintiffs seek mandatory injunctive relief. In violation of the Pennsylvania Constitution and statutory provisions protecting teachers, staff, and students from bodily harm, the PSD has failed to provide learning and working environments free from asbestos contamination.

It is well-established in the Commonwealth of Pennsylvania (“Commonwealth”) that the Governor and General Assembly have a constitutional responsibility to support and maintain a thorough and efficient system of public education, for the good of all Pennsylvanians, particularly those who work in or attend public schools. Equally well-established in the Commonwealth is that Pennsylvanians have a fundamental right to bodily integrity and personal security, and that the state may not infringe on those rights any more than is necessary to achieve an exceptionally important purpose. In order to fulfill its constitutional responsibilities, the General Assembly has enacted statutes that command public school districts to provide such safe learning environments for teachers, staff, and students. Despite these commands, the PSD has failed woefully in preventing asbestos hazards from deteriorating conditions at its schools and is thereby endangering the health and safety of the teachers and staff who work in those schools and the students who attend them.

The District has acknowledged that its schools' conditions are hazardous and has developed District-wide health and safety standards applicable to asbestos testing and remediation. However, PSD has failed to comply with its own standards despite years of complaints from the Union as well as teachers, staff, and students who occupy District buildings.

The problems with asbestos contamination at District schools were publicly revealed when, on December 19, 2019, both the Laura H. Carnell School ("Carnell") and the Alexander K. McClure School ("McClure") were forced to close due to asbestos contamination. Unsafe asbestos conditions were discovered at both locations during inspections performed by the District. The District then employed insufficient testing methods, without any guidance from the Union, and reopened Carnell on January 13, 2020 and McClure on January 15, 2020. Later, additional testing at McClure revealed high levels of airborne asbestos, and the District closed the school again on January 17, 2020. Carnell remains open.

The situations at both McClure and Carnell demonstrate the District's failure to abide by appropriate health and safety protocols that it promised the Union that it would follow. Initially and for most of the remediation and testing, the District and Union engaged in a collaborative approach at McClure derived from the parties' collective bargaining agreement ("CBA") and past understandings that decisions regarding asbestos remediation be made jointly. Together, the Union and District enacted plans on how to remediate the asbestos which included: the scope of work, practices and procedures, testing methods and protocols, and a focus on asbestos removal instead of patching and repairing the carcinogen. As a result, the remediation was completed

using industry best-practices. However, the PFT became aware through additional testing after McClure reopened on January 15, 2020 that there existed dangerous levels of asbestos contamination at the school and that the District had failed to perform the best practices for testing for ambient asbestos prior to its reopening. In the end, the District did not live up to its commitment to follow best practices and the District was forced to close McClure again due to unsafe levels of poisonous, ambient asbestos.

At Carnell, the District failed to live up to its prior promises to the PFT on the proper procedures for remediating asbestos hazards in public schools. The District did not discuss the remediation plan with the Union or permit the Union's involvement in any decision-making. In this case, the work performed consisted primarily of short-term fixes to the asbestos problem, followed by substandard testing procedures. The Union participated in the testing of only one classroom, in a building where dozens of hazardous asbestos conditions were uncovered. Despite the District's failure to abide by appropriate remedial procedures, the PSD re-opened the school before even the minimum agreed-upon testing was completed. Carnell remains open despite the District's failure to conduct best practice testing.

Despite the PFT's hope that the District would permit the Union's involvement in Carnell's asbestos remediation process and abide by its constitutional, statutory, and contractual obligations, the District denied the Union access to information about its remedial and testing procedures and processes, resulting in uncertainty and skepticism regarding the quality of the work performed. There are at least 170 District-owned buildings with asbestos. The District must abide by its promises to the Union to follow the most appropriate remediation and testing procedures and processes to ensure the

safety of teachers, staff, and students. Unfortunately, the District has refused to consistently follow its own commitments to the Union to follow best practices with respect to asbestos remediation and testing. The District has further failed to satisfy its contractual, constitutional, and statutory duties with respect to providing learning and working environments free from asbestos contamination. Because the PSD has failed to abide by these commitments and duties, and ignored the Union's complaints, concerns, and demands that it abide by its clear duty to maintain school buildings in conditions that are healthy and safe, as they are obligated to do under the law, Plaintiffs now petition this Honorable Court to issue a mandatory injunction as detailed in the Prayer for Relief in this Complaint to ensure the health and safety of the District's teachers, staff, and students, as required by law.

I. PARTIES

1. Petitioner PFT is an unincorporated employee organization within the meaning of the Pennsylvania Public Employee Relations Act, 43 P.S. § 1101.301 ("Act 195"). The Federation is the exclusive collective bargaining representative for approximately eleven thousand (11,000) employees of the Philadelphia School District, including Teachers, Counselors, Teaching Assistants, Secretaries, Paraprofessionals, Comprehensive Day Care Workers, Food Service Managers, Head Start Employees, Per Diem Teachers, Professional/Technical Unit, Reading Assistants, Parent Assistants, and Nurses and Health Room Technicians. The Federation's members include parents or guardians of District students. The Federation's business office is located at 1816 Chestnut Street, Philadelphia, Pennsylvania 19103.

2. Petitioner Jerry Jordan is the President and Trustee Ad Litem of the PFT (hereinafter “President Jordan”) and serves as a Trustee to the Fund. President Jordan’s business address is 1816 Chestnut Street, Philadelphia, PA 19103.

3. Respondent PSD is a school district of the first class pursuant to the laws and statutes of the Commonwealth of Pennsylvania. The District’s principal place of business is located at 440 North Broad Street, Philadelphia, PA 19130.

4. Respondent William R. Hite, Jr. is the Superintendent of Schools for the PSD. As the Superintendent, he is the Chief Executive Officer of the District. Hite is sued in his official capacity as Superintendent of the District. His principal place of business as the Superintendent of Schools is 440 North Broad Street, Philadelphia, PA 19130.

III. JURISDICTION

5. This Court has jurisdiction over this matter pursuant to 42 Pa. C.S. § 931.

IV. FACTUAL ALLEGATIONS

A. Philadelphia School District

1. General Information

6. The District was established by act of the Legislature of the Commonwealth of Pennsylvania (hereinafter “Commonwealth”) in 1818. In 1837, PSD opened the City’s public schools to all school-age children, free of tuition.

7. Pennsylvania categorizes municipalities and school districts according to “classes.” Philadelphia is the only “city of the first class” in the Commonwealth, and PSD is the only “school district of the first class.” 53 Pa. Stat. Ann. § 101; 24 P.S. § 2-202.

8. Since the passage of the 1929 Administrative Code, school attendance in the Commonwealth has been compulsory for children from the ages of 8 to 17 years, or until they graduate from high school, whichever occurs first.

9. PSD is the largest school district in the Commonwealth.

10. Approximately 125,000 pupils attend kindergarten through 12th grade in schools that are operated by PSD.

11. In addition, approximately 7,000 early childhood students and 3,200 alternative education students attend schools that are managed by PSD.

12. Students with disabilities comprise approximately 15% of PSD's student population, and 85% of PSD's student population is economically disadvantaged.

13. PSD has approximately 13,000 employees, of whom approximately half are teachers and the other half non-professional staff. In addition, PSD employs approximately 300 principals and assistant principals.

14. PSD currently manages over 200 schools. The average age of PSD buildings is approximately 70 years, which exceeds the national average school age by 20 years.

2. The School District Has a Clear Legal Duty and Obligation to Provide Healthy and Safe Schools

15. The Commonwealth imposes a legal obligation on all school districts, including the PSD, to provide healthy and safe schools for children who are compelled by state law to receive an education.

16. Article III, Section 14 of the Pennsylvania Constitution imposes an affirmative obligation on the General Assembly to provide compulsory public education

for all Pennsylvania children, by mandating the “maintenance and support” of a “thorough and efficient system of public education.” Pa. Const. art. 3, § 14.

17. Consequently, under Article III, Section 14, the Commonwealth is obligated to provide the necessary facilities and staff to ensure Pennsylvania school age children a public education.

18. This fundamental right to a public education is further enhanced by an obligation to ensure the bodily integrity of those attending public schools.

19. Article I, Section 1 of the Pennsylvania Constitution has long recognized that all Pennsylvanians have a substantive due process right to bodily integrity and personal security. It provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

See, e.g., John M. v. Paula T., 571 A.2d 1380, 1386 (Pa. 1989).

20. Article I, Section 26 of the Pennsylvania Constitution further recognizes and enhances Pennsylvanians’ civil rights, such as those enumerated in Article I, Section 1. It states:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

21. Taken together, Article III, Section 14 and Article I, Sections 1 and 26 protect the substantive due process rights of all Pennsylvanians, including, but not limited to, their fundamental right to bodily integrity and personal security when working in a District building or attending a District school.

22. To fulfill this constitutional obligation, the General Assembly enacted the Pennsylvania Public School Code (“School Code”) and the Administrative Code.

23. Since 1929, the School Code has required:

The board of school directors of each district shall provide the necessary grounds and suitable school buildings to accommodate all the children between the ages of six and twenty-one years, in said district, who attend school. Such buildings shall be constructed, furnished, equipped, and maintained in a proper manner as herein provided. Suitable provisions shall be made for the heating (including the purchase of fuel), ventilating, adequate lighting, and sanitary conditions thereof, and for a safe supply of water, so that every pupil in any such building may have proper and healthful accommodations.

24 P.S. 7-701.

24. Since 1971, the Administrative Code has required: “The buildings, grounds, play area equipment and appurtenances shall be constructed and maintained to minimize health and accident hazards. All space, including cellars, shall be maintained in a clean, dry condition without the presence of unnecessary material in storage.” 25 Pa. Code 171.13.

25. Additionally, the CBA between the Union and the District contains a provision that employees shall carry out their duties in school facilities under safe and healthful conditions. See Collective Bargaining Agreement, Section XVIII.2 at p. 61. (A true and correct copy of the appropriate section of the CBA is attached to this Complaint as Exhibit “A.”)

3. The District Recognizes Its Statutory Obligations

26. The District recognizes its statutory and contractual obligations to provide healthy and safe schools.

27. The District includes a health and safety provision in its policies and procedures “recogniz[ing] that district facilities of this district shall be maintained and operated in a condition that is safe for students, staff, community members and visitors.” PSD Policies, Section 705.1 (Safety). (A true and correct copy of Section 705.1 is attached to this Complaint as Exhibit “B.”)

28. It further states:

The Superintendent delegates to the Office of Safety that the Office of School Safety shall develop and present to the SRC for its approval annually a district safety plans that address school safety issues, as well as, identify, correct and establish an environment free and clear of recognizable hazards and include applicable requirements of law and regulations.

District safety plans shall focus on:

1. Identifying and preventing/mitigating risks, hazards and threats.
2. Ensuring the district is prepared for crisis and emergency incidents.
3. Effectively responding to and investigating crisis and emergency incidents.
4. Providing appropriate academic, physical, emotional, and business recovery.
5. Recording activities that either resulted in losses to the district or injury, had the potential to result in loss or injury to the district and/or its personnel, students or visitors so that the district has meaningful data to develop appropriate risk mitigation strategies. Such activities or incidents shall be

recorded using effective and consistent methods, so the information can be easily compiled and reported.

6. Identifying key personnel and their responsibilities in developing the specific plan.
7. Providing training and instruction to employees on emergency preparedness, emergency responds and crisis management.
8. Developing specific procedures for preventing or mitigating hazards relating to the work environment.

Principals shall inform all staff, students and parents of school emergency policies and procedures at the beginning of the school year, during an employee's initial hiring, or when employees change positions with new job duties.

The Superintendent or designee shall:

1. Ensure curriculum to instruct students and faculty in safety and health, environmental concerns, and fire prevention.
2. Provide required drills to instruct students in safety procedures.
3. Review and evaluate annually district policies, procedures and school emergency operation plans.

Working safely is a responsibility shared by all employees. Managers and supervisors shall maintain the safest possible working conditions by encouraging and enforcing district safety policies and procedures. All of the necessary and available district resources will be utilized to accomplish this important endeavor. All district employees are expected to implement safe practices, identify and eliminate unsafe practices and conditions, and take seriously the matters of accident prevention, injury reduction and safety in the workplace.

PSD Policies, Section 705.3 (Safety). (A true and correct copy of copy of Section 705.3 is attached to this Complaint as Exhibit "B.")

29. The District has promulgated a Health and Safety Policy Statement that reads in its entirety:

Board of Education policy requires the School District of Philadelphia to establish a safe and healthful environment for its employees, students and visitors. To this end the School District will develop internal safety and health policies and procedures, and require compliance with all relevant government regulations.

Maintenance of a safe and healthy work environment is consistent with the Board's objective of providing for a quality education within budgetary limits, as well as a legal obligation.

The School District will maintain a Health and Safety program which will depend on the sincere, consistent and cooperative efforts of all employees. All School District of Philadelphia employees are expected to implement safe practices, identify and eliminate unsafe practices and conditions, and take seriously the matters of accident prevention, injury reduction and safety in the workplace.

PSD, Section 705A (Health and Safety Policy Statement). (A true and correct copy of copy of Section 705A is attached to this Complaint as Exhibit "C.")

30. Clearly recognizing its legal obligation and the duty imposed upon it by the Public School and Administrative Codes, PSD has adopted internal standards for specific hazards. Specifically, PSD has adopted standards that purportedly seek to minimize risk from mold, lead-based paint, poor indoor environmental quality, and asbestos.

31. The PSD departments responsible for complying with the District's internal health and safety standards and for implementing the District's efforts at eliminating hazardous conditions are the Office of Environmental Management and Services ("OEMS"); the Office of Capital Programs ("OCP"); and the Office of Facilities Management and Services ("OFMS").

32. The District's policies require that an evaluation and response action will be complete within 24 hours of a suspected or confirmed imminent asbestos hazard.

33. The District's policies require that repairs will be completed within 48 hours when imminent asbestos hazards are detected.

34. The District, on numerous occasions, has failed to evaluate and repair asbestos hazards within the stated time frame.

35. PSD fails to complete thorough inspections, as the PFT will locate additional hazards when an inspection is done independently or side-by-side.

36. PSD also demonstrates persistent problems in practices and procedures in reporting and documenting environmental hazards.

a. Asbestos

37. Friable asbestos is a term used to describe any asbestos-containing material that when dry, can be easily crumbled or pulverized to powder by hand. Some common examples of friable asbestos are acoustic ceilings and tiles, and any types of plasters, wallboard, joint compound or "mud" and thermal insulation for water heaters and pipes.

38. When asbestos is crushed it disperses a dusting of microscopic fibers in the air that can remain for very long periods of time. These fibers can be unknowingly

inhaled and permanently lodged in lung and other body tissues, yet symptoms might not appear for twenty (20) years or more.

39. Although use of asbestos in commercially available products was banned by 1978, those already in the marketplace remained on the shelves and were used in construction for many years after. They are still commonly found in all but new construction.

40. Approximately half of all schools in the United States were built between 1950 and 1969 – peak years for asbestos use in construction.

41. Exposure to airborne asbestos dust can lead to fatal illnesses, including mesothelioma, asbestosis and lung cancer. Unfortunately, there is no safe level of exposure, which is why asbestos is so dangerous.

42. The U.S. Department of Health and Human Services, the Environmental Protection Agency, and the International Agency for Research on Cancer classify asbestos as a known human carcinogen.

43. According to the National Institute of Health, asbestos exposure can negatively affect breathing and lead to serious health problems beyond cancer, including asbestosis and other nonmalignant lung and pleural disorders. Nat'l Cancer Inst. at the Nat'l Inst. of Health, *Asbestos Exposure and Cancer Risk* (last updated 2009), available at <http://www.cancer.gov/cancertopics/factsheet/Risk/asbestos>.

44. On its website, OEMS states that a licensed Building Inspector performs an asbestos inspection before any construction/renovation activities occur in PSD facilities. The inspection purportedly leads to the generation of an Asbestos Inspection Report that remains on-site for the duration of all construction/renovation projects.

45. According to the OEMS website, during asbestos abatement activities, a licensed Asbestos Project Inspector remains on-site to monitor the project, provide environmental oversight and perform air-sampling. When the abatement is completed, the OEMS website claims, the Inspector collects air-samples. OEMS claims that additional air sampling may be performed by an environmental consulting firm hired by the Fund.

46. After asbestos abatement activities are completed and before areas are reoccupied, OEMS policy requires that air-sample results indicate that the airborne concentrations of asbestos particles are below the normal re-occupancy levels for schools, as established by the EPA, the Asbestos Hazard Emergency Response Act (“AHERA”), and the Philadelphia Asbestos Control Regulations.

4. The District Has Utterly Failed to Provide Healthy and Safe Schools.

47. Despite its clear and undeniable legal duty and obligation which PSD is well aware and recognizes, the District has utterly failed in providing healthy and safe schools for the approximate 125,000 students who attend its schools and the nearly 13,000 teachers and staff who work in them.

48. Numerous unhealthy and unsafe conditions plague the elementary, middle school, and high school buildings throughout the District, including, but not limited, damaged asbestos, including pipe covers, flooring, and ceiling material;

49. PSD, in contrast to past behavior, has demonstrated unwillingness to include substantive stakeholder input and involvement in correcting deficiencies in the school buildings.

50. The failure of PSD to correct and ameliorate unhealthy and unsafe conditions in its school buildings exposes the 125,000 school children and nearly 13,000 teachers and staff to the risk of a multitude of illnesses and disease. The risks include, but are not limited to, asbestos exposure which risks children and staff to a well-known carcinogen.

51. Unhealthy and unsafe conditions existing in PSD schools due to asbestos exposure cause a negative impact on the physical health and well-being of teachers, staff, and students, teachers and School District staff in addition to a loss of building areas or entire school buildings for academic instruction and, thereby, a loss of educational and academic programs.

5. The District Is Well Aware of the Unhealthy and Unsafe Conditions of Its School Buildings, But Have Failed to Ameliorate the Problems

52. During at least the last several decades, PSD was on notice of the unhealthy and unsafe conditions of the District's school buildings as well as the systemic problems with its maintenance program to address these conditions, but they have failed to take corrective action sufficient to address the issue.

a. Coordination with PSD and PFT Health and Welfare Fund

53. The Philadelphia Federation of Teachers Health and Welfare Fund (hereinafter "Fund") is an employee welfare plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(2) and a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code and Section 3(32) of ERISA, 29 U.S.C § 1002(32) (and thereby not subject to the substantive provisions of ERISA under Section 4(b)(1), 29 U.S.C.

1003(b)(1)). In addition, the Fund is a common law trust established and maintained pursuant to the applicable law of the Commonwealth of Pennsylvania. The Fund was established in and has existed since 1971.

54. The Fund is administered by a Board of Trustees (hereinafter "Trustees") in accordance with Fund's Agreement and Declaration of Trust and exists for the exclusive purpose of providing health and welfare benefits to its participants and beneficiaries and defraying the reasonable expenses of administering the plan. The Trustees consist of six (6) individuals appointed by the PFT and two appointed by the District. The Fund receives contributions from the District, which agreed to make contributions thereto by virtue of its having agreed to be bound by a collective bargaining agreement ("CBA") with the PFT which CBA requires such contributions.

55. The Trustees schedule meetings which District and PFT employees are permitted to attend. These meetings include discussions amongst Trustees regarding the current state of the schools of the District, including health and safety problems of those schools. In order to keep the Trustees informed on these issues, the Fund has contracted with a health and safety consultant who reviews District health and safety records of the schools, attends District inspections of its schools, and performs his own studies of those facilities. Until recently, the District gave the health and safety consultant access to its health and safety documentation in order to perform this fiduciary function for the Fund.

56. For about forty (40) years, the Fund has monitored and evaluated PSD activities in connection with school building health and safety. Through these activities, the Fund has worked directly with District personnel from OEMS, OCP, and OFMS.

57. The District and the Fund have worked together to identify and ameliorate the poor conditions of the schools.

58. In 1985, the Fund hired a health and safety consultant whose specific role was identifying health and safety concerns within the District's schools, including developing procedures and practices for inspections and remediation of environmental hazards. Through the involvement of the health and safety consultant, the Fund identified health and safety problems of the schools and offered recommendations to PSD regarding how to mitigate or eradicate those problems.

59. The Fund's health and safety consultant designed a variety of approaches to evaluating building health and safety that PSD agreed to implement, improving PSD's ability to access and organize comprehensive building health and safety data.

60. For decades, the Fund's health and safety consultant regularly engaged in side-by-side environmental sampling and building inspections with PSD, but the District arbitrarily decides when to jointly-develop inspection and response plans to environmental hazards.

61. During this entire time, the District claims never to have objected to the Fund's involvement in these efforts, and, in fact, encouraged its participation.

62. The District had agreed that whenever damaged asbestos was discovered in a school, the PFT environmental consultant would be sent the inspection report, would have the opportunity to inspect the area himself.

63. The District had further agreed that the PFT, though its environmental consultant, would develop remediation plans and procedures jointly, with full notice and input from the PFT before any construction work was performed.

64. When the District and Union jointly developed remediation plans, the details would include:

- a. A specific scope of work to be performed;
- b. Medium to long-term asbestos solutions with a focus on asbestos removal instead of short-term solutions like “patch and repair;”
- c. Isolation of work areas to prevent the spread of asbestos fibers;
- d. Deep cleaning of affected areas followed by “aggressive” air sampling;
- e. Detailed testing procedures using industry best-practices.

65. However, in many instances, the District has not lived up to its agreements and promises and has failed to notify the Union when asbestos is located.

66. The District sometimes has failed to include the Union’s environmental consultant when developing remediation plans.

67. When the Union is excluded from participating in the decision-making process, the District does not utilize industry best-practices in asbestos removal, nor does the District utilize superior testing methods to ensure school community safety.

68. The PFT has been excluded from some or all aspects of the planning and remediation process related to asbestos abatement at the Laura H. Carnell School, Benjamin Franklin High School and Science Leadership Academy, and Thomas M. Peirce School.

6. Current Examples of School-Specific Failures of the PSD to Maintain Safe Schools

69. The systemic unhealthy and unsafe conditions existing in the PSD school buildings and the failures and/or inability of the District to address those conditions are underscored by current, severe problems at specific schools and the PSD's failure and/or inability to correct those problems.

70. Many of these problems were the subject of extensive reporting by the Philadelphia new media.

a. Joseph H. Brown School

71. The Joseph H. Brown School ("J. H. Brown") is an elementary school serving students in Kindergarten to sixth grade, located at 3600 Stanwood Street.

72. A large asbestos abatement/removal project was conducted in July 2018, at J.H. Brown that involved asbestos removal in 13 separate areas including four "major" work areas and nine "minor" work areas.

73. Notification about asbestos the remediation schedule and testing was not properly provided to the PFT as per in-place agreements to do so, making it impossible for PFT to conduct independent assessment and testing. PFT was unaware of these plans until July 5, 2018.

74. According to the on-site District environmental representatives on July 7, 2018, asbestos remediation and cleaning was reportedly complete and final air testing for airborne asbestos fibers had been conducted in multiple work areas.

75. Areas in which asbestos remediation and testing had been completed were considered to have met all asbestos-related requirements for safe occupancy and were reported as such by the District's on-site environmental consultants.

76. On July 7, 2018, PFT arrived at the site to inspect the work done to date and to collect side-by-side air sampling alongside District environmental consultants.

77. PFT observed gross failures and deficiencies in asbestos abatement work practices and procedures and potentially dangerous asbestos exposure conditions in several rooms including, but not limited to, 201, 202, 203 and 204.

78. In all four rooms, we observed dust, dirt and debris on classroom floors and other surfaces that were supposed to be clean of all visible dust. We also found asbestos debris in all four rooms that were inspected.

79. Based on our inspection findings and observations PFT immediately notified the District recommending that there be an immediate cessation of all asbestos remediation work until further detailed assessment was conducted.

80. We met with the District's Environmental Management team and identified the following problems with the asbestos removal project work at J. H. Brown:

- a. Inadequate notification and insufficient details provided about facility condition-related environmental work being planned and implemented by the District.
- b. Project management and oversight were inadequate resulting in asbestos exposure to unprotected workers on site and contaminating multiple building areas
- c. Failures to identify bulk asbestos contamination on floors and other surfaces in classrooms following asbestos removal activities and air sampling performed without our being present

was done utilizing inferior testing approaches and methods and failed to identify significant airborne asbestos exposure hazards.

81. On July 10, 2018, Francine Locke, Director of the Office of Environmental Management Services for the District directed her environmental monitoring consultant to issue a serious of corrective action. These corrective actions included:

- a. Installing containment barriers around contaminated spaces.
- b. Conducting additional cleaning, wet-wiping, and HEPA-vacuuming and other decontamination measures throughout the 1st and 2nd floors of the school
- c. Improved, upgraded visual assessment must be performed in all areas where asbestos abatement has reportedly been completed and PFT must be involved in participating in visual inspection and testing activities
- d. Notify the PFT to schedule joint testing and air sampling.

82. The failures and deficiencies noted at this school led to the start of the joint development of an Asbestos Best Practices initiative—a document that has still not been finalized by the District.

b. James G. Blaine Elementary School

83. The James G. Blaine Elementary School (“Blaine”) is located at 3001 W. Berks Street, Philadelphia, PA 19121.

84. In 2018 and 2019, the District began an extensive asbestos remediation project at Blaine. The project involved large-scale asbestos removal in the basement areas of the school in preparation for major capital improvements.

85. On or about August 2019, the Fund arrived to perform side-by-side final visual evaluation work and to collect air samples.

86. The Fund's visual evaluation and testing indicated that Blaine had areas that were still contaminated with asbestos, in some cases with dangerously elevated levels of airborne asbestos both inside and outside the areas purportedly contained during the renovation, thereby exposing unprotected school personnel to potential risk of airborne asbestos exposure.

87. The Fund concluded that there were multiple problems in conducting the asbestos remediation. These included:

- a. Improper asbestos remediation project planning, work scope determination and abatement implementation, which resulted in a too-restricted work scope, undermining effective abatement and testing activities.
- b. Deficient coordination, scheduling and communication between asbestos abatement project managers and school principals/staff, between mechanical and sub-contractors and asbestos contractors, and between District departments.
- c. Inadequate training, information and knowledge levels of contractors and environmental monitoring oversight personnel to maintain and ensure safety.
- d. Insufficient enforcement and compliance with established rules, regulations, and best work practices and procedures, including directives, guidance, and approaches outlined by OEMS.

- e. Deficient on-site inspection, assessment, oversight, and monitoring of asbestos abatement work practices, procedures and conditions, which requires improvement to ensure occupant safety and health.
- f. Inadequate air sampling and testing methods which rely upon “best practices” to ensure there is no asbestos exposure either inside or outside of the asbestos work areas.

88. Despite promises and representations from the District to work to address the specific concerns and issues raised by the Fund regarding Blaine as well as similar District-wide issues and deficiencies at other asbestos removal projects, the District failed to implement systemic change and improvements.

c. Andrew Hamilton Elementary School

89. Andrew Hamilton Elementary School (“Hamilton”) is located at 5640 Spruce Street, Philadelphia, PA 19139.

90. In early 2019, the District contracted with a vendor to perform extensive asbestos remediation throughout Hamilton. The areas affected included, but were not limited to, the electrical room, the boiler room, stairwells, hallways, storage rooms, multiple classrooms, offices, the cafeteria, closets, and the gymnasium.

91. The remediation work began and continued throughout 2019.

92. In August 2019, the District scheduled testing of various rooms in Hamilton after it declared the remediation completed in those areas.

93. The District scheduled testing of these areas which occurred on August 23, 2019.

94. When representatives of the Fund arrived at the scene, they noticed that work areas were visibly dirty with what appeared to be asbestos tile shards and chips present on the floors with a small amount of asbestos-containing ceiling material in the area.

95. Movable objects, such as a table and chair, were still in place and plastic sheeting was covering the walls throughout all the work areas to be tested despite the area being considered clean and acceptable by the District for final air sampling to be performed.

96. One room not included in the abatement plan was being used as a staging area to store waste materials and equipment.

97. Another room, which was purportedly clean, had evidence of dust that was likely caused by bags or other equipment or materials being dragged along the floor.

98. Based on the review of these areas, the Fund concluded that there was a recognizable and repeated pattern of systemic failures to employ the proper process and procedures for asbestos remediation, causing health and safety hazards for teachers and staff who work at Hamilton or students who attend school there.

99. The Fund further concluded there had been insufficient coordination in ensuring that the remediation would proceed to minimize and/or eliminate these dangers.

100. Ultimately, the Fund outlined the following systemic problems and issues which included, but were not limited to:

- a. Deficiencies in the design of the asbestos abatement project with respect to scale of the remediation, its scope, the very phases by

which it would be conducted, and the subsequent implementation of necessary removal recommendations.

- b. Deficiencies in the air sampling and testing procedures and practices with respect to the collection, analysis, and use of air samples from outside the work area.
- c. Inadequate training, knowledge, and compliance with applicable asbestos regulations, work practices and procedures in general, and those rules of the District and within the City of Philadelphia.
- d. Deficient design, coordination, and communication in the chain of command between the District, the supervisors assigned to the project, and the workers engaged in the remediation.
- e. Insufficient “buffer zones” to prevent potential exposures to unprotected personnel from airborne asbestos fibers.

d. Meredith Elementary School

101. The Meredith Elementary School (“Meredith”) is located at 725 South 5th Street, Philadelphia, PA 19147.

102. On or about September 2019, teachers expressed concerns to the District about the condition and risk of hundreds of feet of in-place asbestos materials on pipes and other locales throughout Meredith which were located in areas highly trafficked by teachers, staff, and students.

103. The asbestos posed a high likelihood and/or potential for contact with teachers and staff working in or students attending this school.

104. The school gymnasium had exposed asbestos insulation materials in close proximity to students and staff with damage to the asbestos from student contact and from being hit by basketballs and other gym equipment.

105. Due to systemic failures by the District, Meredith contained damaged asbestos materials that were present in multiple locations, presenting a hazard for decades.

106. In fact, Meredith was the last work location of a District teacher, Lea Dirusso, who currently suffers from mesothelioma.

107. The District engaged in extensive inspection and asbestos remediation work at Meredith in late 2019 only after the asbestos hazard was brought to the District's attention by Ms. Dirusso's announcement of her mesothelioma and the advocacy by the Fund's Environmental Program and by the school's teachers, staff, and parents.

108. Additional asbestos containing materials remain in place at Meredith and in high traffic, high accessibility, and high contact areas of the school. Ongoing in-place management is required as is further evaluation and remediation.

e. Thomas M. Peirce Elementary School

109. The Thomas M. Pierce Elementary School ("Peirce") is located at 2300 W Cambria St, Philadelphia, PA 19132.

110. On or about September 16, 2019, the Fund conducted an initial inspection at Peirce.

111. As was the case at Meredith, there was extensive, damaged asbestos throughout the school that was located in high trafficked areas, including the gym.

112. The asbestos at Peirce posed a high likelihood and/or potential for contact with teachers and staff who worked in or students who attended this school.

113. After alerting the District, the PSD initially did nothing in the way of inspections or remediation.

114. On or about September 25, 2019, the Fund reiterated its assessment of the school. But the District still did nothing.

115. Only after the PFT publicly announced the problems at the school on October 24, 2019 did the District respond by performing comprehensive inspection and response activities.

116. Inspections conducted by the District's OEMS and/or its consultants on October 25, 2019 and on October 28, 2019 identified at least 17 different work areas, including classrooms, with dozens of specific locations within those rooms needing asbestos remediation. A total of approximately 5,000 linear and square feet of asbestos materials were identified for asbestos removal in the basement area and other locations.

117. Multiple additional inspections were conducted by the District in October and November of 2019

118. A building wide "Indoor Environmental Quality" ("IEQ") inspection was conducted at Peirce on October 30, 2019 by consultants working for the District's OEMS. They identified and documented about 40 separate "non-asbestos" deficiencies including inadequate heating system operation, damaged lead containing paint and plaster throughout the school, evidence of water intrusion and damage and other deficient facility conditions.

119. Only following recommendations by the PFT and aggressive advocacy efforts by staff and parents, did the District respond by closing the school in or around October 2019.

120. The school remains closed to this day.

f. Anna Pratt Elementary School

121. The Anna Pratt Elementary School (“Pratt”) is located at 2200 North 22nd Street, Philadelphia, PA 19132 and provided pre-school and Head Start instruction for children between three (3) and five (5) years old.

122. Around August 2018, a District inspection of Pratt identified eight (8) areas of the school with damaged asbestos materials and requiring asbestos abatement, including four (4) classrooms on the first and second floor as well as supply closets in each classroom.

123. The District performed asbestos abatement in the eight (8) identified areas but no other remedial efforts were undertaken.

124. When Peirce was closed in October 2019, the District deemed the second and third floors of Pratt as appropriate classroom space for the teachers, staff, and students of the former school.

125. However, inspections conducted by the District and the Fund at Pratt confirmed the presence of damaged and exposed friable asbestos in multiple classroom ventilation system units as well as badly damaged asbestos with debris on the floors in the school’s boiler room, which was regularly and routinely accessed by building maintenance personnel.

126. These conditions posed a serious hazard for asbestos exposure as they allowed friable asbestos to travel through Pratt through its ventilation system and constituted an unacceptable hazard to some of the youngest students in the District as well as to the teachers and staff.

127. These conditions existed for several years without being recognized and/or documented by the District and without any appropriate remediation.

128. Due to the hazardous conditions, the District closed Pratt and it remains closed to this day.

g. Alexander K. McClure Elementary School

129. The Alexander K. McClure School (“McClure”) is a kindergarten through fifth-grade school located at 600 West Hunting Park Avenue. The McClure school building was constructed in or around 1911. There are approximately 40 teachers, administrators, and staff working at McClure which has a student population of over 600.

130. District inspections conducted prior to December 19, 2019, failed to identify multiple instances of damaged asbestos-containing materials in high access, high traffic, and high contact areas of the school.

131. On December 19, 2019, a joint inspection conducted by the PFT and OEMS documented multiple instances of damaged asbestos-containing materials.

132. Following this inspection, a joint-recommendation for closing the school was made based on those findings.

133. Based on independent and joint follow-up inspections conducted between December 20, 2019 and December 26, 2019, approximately 20-30 locations in which

more than 1000 feet of asbestos materials existed—including in the basement and the first and second floors of the school--were scheduled for asbestos removal and testing.

134. At McClure, the District and Union, in accordance with their CBA and past practices, developed a plan to remediate hundreds of feet of damaged asbestos. This included focusing on the removal of asbestos instead of patching and repairing the existing asbestos.

135. The District and Union, together, developed procedures on how the work would be performed. In particular, they agreed that each work area would be isolated with air-tight plastic sheets and if possible, furniture and supplies would be moved out of the isolation area.

136. The District and Union also agreed that once the remediation took place, the isolated area and any surfaces would be thoroughly cleaned and vacuumed using High-Efficiency Particulate Air (HEPA) filters. At this point, the isolation barrier would be removed.

137. The District and Union agreed to use the industry best-practice in testing for asbestos, known as “aggressive sampling,” which requires the use of fans or a leaf blower to circulate the air around the work area before air samples are taken.

138. After aggressive sampling, the parties agreed to use Transmission Electron Microscopy (TEM) testing, the best way to analyze the presence of ambient asbestos.

139. The parties also agreed to share responsibility in collecting samples, meaning the Union would collect and test some samples and the District would collect and test others, although both parties would be present at all sample collections.

140. Although these practices were generally followed during the emergency asbestos remediation following the closure of McClure, past failures of the PSD to follow best practices resulted in contamination in the City Year Room.

141. On December 6, 2019, during a walkthrough of McClure, the District noticed that the attic of the school was not properly sealed, even though it was known to be contaminated by asbestos, animal droppings, and bird carcasses. No action was taken at the time.

142. Following asbestos testing, imminent asbestos hazards were detected, and the District ordered McClure closed on December 19, 2019.

143. On January 14, 2020, following the remediation for other parts of McClure, air samples were taken from the City Year Room in McClure.

144. Before the test results were received, the District opened McClure on January 15, 2020.

145. That night, the PFT Director of Environmental Science was notified that the air in the City Year Room was contaminated with asbestos and emergency repairs and testing were commenced.

146. The emergency repairs were completed without any planning and were not performed according to best practices.

147. Students and staff were to report to school January 16, 2020 after preliminary testing showed negative results for asbestos, although the testing was done in a hasty manner and not according to best practices.

148. After additional testing was done, at the urging of the PFT Director of Environmental Science, dangerous levels of airborne asbestos were discovered at McClure.

149. As a result, the District ordered McClure closed on Friday, January 17, 2020, until additional remediation efforts are performed. The school remains closed.

h. Laura H. Carnell Elementary School

150. The Laura H. Carnell School (“Carnell”) is a kindergarten through fifth-grade school located at 1100 Devereaux Avenue. The Carnell school building was constructed in or around 1930. There are approximately forty (40) teachers, administrators, and staff working at Carnell which has a student population of over 800.

151. Asbestos inspections were conducted by the District prior to December 19, 2019 at Carnell, during which several areas of damaged asbestos were documented, including approximately 5 areas classified as “Imminent Hazards” (“IH.”) Despite these findings the school remained open and occupied as normal.

152. On December 19, 2019, the PFT conducted an inspection at Carnell in which additional damage to asbestos materials and additional IH’s were documented and reported to the District.

153. Following the PFT’s asbestos evaluation on December 19, 2019, the District closed Carnell on December 19, 2019.

154. From December 20, 2019 until early January 2020, multiple inspections were frequently conducted by the District without notifying or involving the PFT. Those inspections continued to identify additional areas of damaged asbestos and additional IH’s throughout the school.

155. By January 6, 2019, more than 150 areas with damaged asbestos materials were found throughout all building areas and 15-20 IH's were identified.

156. At Carnell, the District failed to follow the remediation practices it had performed in conjunction with the PFT at McClure and the ones it promised the Union it would abide by. The District significantly restricted and limited Union involvement in the remediation planning and the development of work practices and procedures, including methods for cleaning, area decontamination, and testing.

157. Because the Union was excluded from much of the planning process, the District reverted to using minimal standards in conducting the large majority of asbestos remediation, cleaning and testing.

158. Elements of the scope of work were often poorly defined and non-specific.

159. Much of the work performed at Carnell was not done using isolation barriers and techniques, and instead was done in the open air.

160. Rigorous cleaning of areas around many of the asbestos remediation locations using HEPA vacuuming and wet-wiping techniques and measures was limited and inadequate and did not represent best practices.

161. In almost every instance in which air testing was conducted at Carnell the District did not use aggressive sampling when testing for ambient asbestos before reopening the school.

162. The District employed Phase Contrast Microscopy (PCM) testing instead of TEM, even though the former form of testing is inferior in its accuracy and precision in comparison.

163. On only one occasion prior to opening the school was “best practices” air sampling used. This required using aggressive sampling methods and TEM laboratory analysis, conducted in a “side-by-side” joint manner with the Union and District.

164. Nevertheless, the District reopened Carnell on January 13, 2020 despite its failure to follow the “best practices” with respect to asbestos testing and remediation.

i. Benjamin Franklin High School and Science Leadership Academy

165. Benjamin Franklin High School and Science Leadership Academy (BFHS/SLA) are two high schools that share the same facility, located at 550 N. Broad Street in Center City.

166. Starting in 2018, the District began a \$40 million construction project on the BFHS/SLA campus. The construction is ongoing and has not yet been completed.

167. In April 2018, a 15-page Asbestos Inspection Report [A.I.R.] identifying hundreds of areas with asbestos containing building materials [ACBMs] was developed by the District’s environmental consultant at the time.

168. At least as early as March 2019, school staff and students complained about health problems and concerns associated with dust, noise, fumes and vapor from construction activities

169. The measures adopted by the District were not effective to adequately control construction related exposures to occupants during the balance of the 2018-2019 school year.

170. The construction project work was supposed to be completed by the end of the summer in time for full occupancy by all BFHS staff and students as well as the

SLA staff and students who were being moved into the newly renovated building combining both high schools.

171. Multiple visits were conducted by PFT between the end of August through the beginning of September during which 10 “urgent items” were identified as needing to be addressed prior to occupancy

172. The PFT recommended that the building should not open on Tuesday, September 3, 2019.

173. SDP representatives continued to repeatedly promise that all work would be completed by start of school and all students and staff would be able to attend school as normal on September 3, 2019. Letters and communication were sent to teachers, staff, and parents, but the District’s communications were grossly inaccurate.

174. On their return to the school on September 4, 2019, students and staff encountered unacceptable and dangerous construction-related exposure to conditions that impacted health and safety that also precluded them from setting up their rooms

175. Constant construction-related exposure issues continued to occur at the school over the next 2-3 weeks with construction materials blowing off of the school roof, children and staff being sickened by demolition activities and by roofing fume, dust and other exposures sending some students and staff to the hospital.

176. During a joint inspection of the school boiler room conducted on September 25, 2019, the PFT observed damaged asbestos-containing materials that had previously been unidentified. This condition posed serious potential exposure risks to those in and around the boiler room. Major “emergency” asbestos removal and remediation work was required.

177. Following the identification of the asbestos containing materials in the boiler room additional asbestos-containing materials were found in the first floor “Commons Area” as well, requiring that area as well to require closure and emergency, major asbestos abatement.

178. During the period October 2019 - January 2020, some additional asbestos-containing materials were identified and a large amount of asbestos containing materials were removed, including tens of thousands of square feet of asbestos floor tile in multiple school areas and ceiling plaster in the auditorium.

179. Hundreds of jointly collected air samples were taken to evaluate airborne asbestos exposures throughout the building and the District also documented particulate exposure conditions related to construction activities on a daily basis.

180. BFHS/SLA has remained closed, except for a few weeks during September 2019, with BFHS students using/sharing a Charter School location at 929 Sedgley Avenue and SLA students dislocated to, and using the School District Administration Building as their temporary school.

COUNT I

EQUITABLE MANDATORY INJUNCTIVE RELIEF FOR VIOLATIONS OF PENNSYLVANIA CONSTITUTION AND STATUTORY LAW

v. Defendants District and Hite, Jr.

181. Petitioners hereby incorporate Paragraphs 1 through 180 as if fully set forth herein.

182. The Commonwealth imposes a constitutional and statutory obligation on all school districts, including the PSD, to provide healthy and safe schools for children who are compelled by state law to receive an education.

183. Article III, Section 14 of the Pennsylvania Constitution imposes an affirmative obligation on the General Assembly to provide compulsory public education for all Pennsylvania children, by mandating the “maintenance and support” of a “thorough and efficient system of public education.” Pa. Const. art. 3, § 14.

184. Consequently, under Article III, Section 14, the Commonwealth is obligated to provide the necessary facilities and staff to ensure Pennsylvania school age children receive a public education.

185. The School Code requires every Pennsylvania child to attend school, at a minimum, from the age of eight until the age of 17. 24 P.S. 11.13.

186. This fundamental right to a public education is further enhanced by an obligation to ensure the bodily integrity of those attending public schools.

187. Article I, Section 1 of the Pennsylvania Constitution has long recognized that all Pennsylvanians have a substantive due process right to bodily integrity and personal security. It provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

See, e.g., John M. v. Paula T., 571 A.2d 1380, 1386 (Pa. 1989).

188. Article I, Section 26 of the Pennsylvania Constitution further recognizes and enhances Pennsylvanians' civil rights, such as those enumerated in Article I, Section 1. It states:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

189. Taken together, Article III, Section 14, and Article I, Sections 1 and 26, protect the substantive due process rights of all Pennsylvanians, including, but not limited to, their fundamental right to bodily integrity and personal security when working in a District building or attending a District school.

190. To fulfill this constitutional obligation, the General Assembly enacted the Pennsylvania Public School Code ("School Code") and the Administrative Code.

191. Since 1929, the School Code has required:

The board of school directors of each district shall provide the necessary grounds and suitable school buildings to accommodate all the children between the ages of six and twenty-one years, in said district, who attend school. Such buildings shall be constructed, furnished, equipped, and maintained in a proper manner as herein provided. Suitable provisions shall be made for the heating (including the purchase of fuel), ventilating, adequate lighting, and sanitary conditions thereof, and for a safe supply of water, so that every pupil in any such building may have proper and healthful accommodations.

24 P.S. § 7-701.

192. Since 1971, the Administrative Code has required: “The buildings, grounds, play area equipment and appurtenances shall be constructed and maintained to minimize health and accident hazards. All space, including cellars, shall be maintained in a clean, dry condition without the presence of unnecessary material in storage.” 25 Pa. Code § 171.13.

193. Additionally, the CBA between the Union and the District contains a provision that employees shall carry out their duties in school facilities under safe and healthful conditions. See CBA, Section XVIII.2 at p. 61, Exhibit “A.”

194. Compelling students, teachers, and staff to attend and/or work in school buildings that endanger their health and safety infringes on the school community’s fundamental right to bodily integrity and personal security at public schools.

195. PSD students are deprived of their constitutionally protected right to bodily integrity and personal security at schools when they are compelled to attend school in buildings that endanger their health and safety.

196. The District in its own policies and through its actions has recognized its duty and obligation to provide healthy and safe schools.

197. Plaintiffs have a clear legal right to attend and/or work in public schools that are healthy and safe for the District’s 125,000 students and its nearly 17,000 teachers and staff.

198. Defendants offer no permissible reason why they should be allowed to violate their legal obligation and duty to provide healthy and safe schools.

199. This failure violates Article III, Section 14, Article I, Sections 1 and 26, and the School Code and Administrative Code because maintaining school buildings in

conditions that endanger public school students, teachers, and staff's health and safety infringes on their fundamental right to bodily integrity and personal security, without being narrowly tailored to a compelling state interest.

200. The District and Hite, Jr.'s failure to comply with the Commonwealth safety statutes and their violations of Article III, Section 14, and Article I, Sections 1 and 26, undermine a thorough and efficient system of public education because they result in PSD students, teachers, and/or staff attending and/or working in school buildings that pose safety and health risks.

201. Failing to maintain school buildings in conditions that are healthful, pose minimal health and accident hazards, and are clean and dry constitutes a violation by Defendants of the fundamental right to bodily integrity at public schools for PSD teachers, staff, and students.

202. Considering the facts of this case, Plaintiffs are entitled to mandatory injunctive relief.

203. Because the District has failed or is unwilling to adopt and enforce necessary processes and procedures to prevent asbestos exposure by District teachers, staff, and students, the injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by damages.

204. Far greater injury would result to the District's teachers, staff, and students from refusing the injunction than from granting it, and, concomitantly, the issuance of an injunction will not substantially harm other interested parties in the proceedings.

205. The mandatory injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

206. The Pennsylvania Constitution and its statutes make clear that Plaintiffs have a clear right to relief and are likely to prevail on the merits.

207. The injunction simply seeks measured relief that is reasonably suited to abate the District's illegal activity.

208. The mandatory injunction will not adversely affect the public interest, and in fact, would protect the public.

WHEREFORE, Petitioners respectfully request that the Court order that Defendants, Philadelphia School District and William R. Hite, Jr. maintain school buildings in conditions that are healthful and pose minimal health and accident hazards by ordering the following relief:

1. The District and PFT shall jointly develop written, comprehensive practices and procedures representing the industry standard of "best practices" for conducting inspections, assessments, remediation/removal, post remediation clean up, and testing of asbestos hazards and present this plan for review and approval by this Court;

2. The District shall perform urgent response inspections when the District knows, or should know, those buildings present asbestos hazards to the health, safety and welfare of the public to supplement existing and ongoing periodic and systematic inspections of all District facilities at which teachers and other staff work or its students attend. All inspections shall be compliant with the standards and procedures developed jointly with the PFT, to evaluate the presence and condition of asbestos materials and the need to remove or abate these hazards to ensure the health, safety and welfare of all school building occupants;

3. The District and PFT shall jointly agree to a timeline of inspections and to ensure that PFT Environmental representatives receive a 72-hour prior notice to perform joint inspections or asbestos hazards at any District building at which teachers and other staff work or students attend;

4. The District shall provide the PFT all data, reports and schedule of future work by the District, its employees, consultants and

contractors regarding asbestos in District building at which District teachers and other staff work or students attend, and shall continue to provide such information to the PFT as soon as practicable and no more than 24 hours after becoming available to the District;

5. The District and the PFT shall provide to appropriate stakeholders, (including but not limited to, parents, teachers, principals and staff), jointly developed and proposed asbestos inspection, remediation and testing plans, at least 72 hours before any asbestos-related actions occur;

6. The District and the PFT shall provide to appropriate stakeholders, all data, including remediation methods, post remediation inspection reports and testing results within 48 hours of completing all work;

7. The District and the PFT shall agree to keep closed any District building or section within such building which its teachers and other staff work or its students attend when an area identified as an imminent hazard is found and until such an area is remediated and tested and is compliant with the agreed-upon standards as developed jointly with PFT;

8. The District and PFT shall jointly develop protocols that define asbestos conditions that require abatement or remediation, appropriate timelines for abating/remediating different types of asbestos conditions, protocols for when school closures are required, and protocols for what conditions need to be met for reopening schools closed for asbestos hazards;

9. The District, in collaboration with PFT, shall develop standards for facility planning, management and equity, standards for condition and adequacy of school facility conditions, meaningful metrics that can be used for comparisons across schools, and accountable efforts and standards for situations where current, in-place management and work practices result in unhealthy and/or unsafe school conditions;

10. The District, in collaboration with PFT, shall develop and implement training related to asbestos hazards and best practices for stakeholder groups including: a) facility inspectors, b) teachers, principals and other school staff and c) parents and students;

11. The District, in collaboration with PFT, shall design and ensure implementation of regular school cleaning practices and additional post asbestos abatement/removal cleaning practices;

12. The District shall establish a regular maintenance and operations reporting system for facilities personnel, available for PFT access and review, to better enable them to effectively schedule and implement maintenance, repairs and improvements;

13. This Court shall exercise jurisdiction over this matter until both parties agree that adequate safeguards are in place to ensure the health and safety of the District's teachers, staff, and students from asbestos hazards and inform this Court of the same, or, if after a hearing pursuant to a motion by one of the parties, this Court concludes the same;

14. Award Plaintiffs reasonable attorney's fees and costs; and

15. Grant such other relief as may be deemed necessary and proper.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

s/ John R. Bielski

Deborah R. Willig, Esquire

Email: dwillig@wwdlaw.com

Attorney I.D. No. 21507

John R. Bielski, Esquire

Email: jbielski@wwdlaw.com

Attorney I.D. No. 86790

Lauren M. Hoyer, Esquire, Esquire

Attorney I.D. No. 307411

William J. Campbell IV, Esquire

Email: wcampbell@wwdlaw.com

Attorney I.D. No. 326866

WILLIG, WILLIAMS & DAVIDSON

1845 Walnut Street, 24th Floor

Philadelphia, PA 19103

Office: (215) 656-3600

Facsimile: (215) 561-5135

Attorneys for Petitioners

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