

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Tiffini Flynn Forslund; Justina Person;
Bonnie Dominguez; and Roxanne Draughn,

Court File No.: _____
Case Type: Other Civil

Plaintiffs,

vs.

COMPLAINT

State of Minnesota; Mark Dayton, in his official capacity as the Governor of the State of Minnesota; the Minnesota Department of Education; and Brenda Cassellius, in her official capacity as the Commissioner of Education,

Defendants.

Plaintiffs Tiffini Flynn Forslund, Justina Person, Bonnie Dominguez, and Roxanne Draughn, (collectively, “Plaintiffs”) complain of Defendants and allege:

I. PRELIMINARY STATEMENT

In the aggregate, Minnesota’s public-school children outperform students from nearly all other states in nationwide academic assessments. At the same time, Minnesota’s public schools are plagued by significant disparities in education opportunity. The result is that, on average, Minnesota’s low-income students and students of color fall well behind their peers in high school graduation rates, performance on academic assessments, and other markers of student learning and preparedness. By this action, Plaintiffs challenge the constitutionality of certain Minnesota laws—Minn. Stat. § 122A.40 (the “Continuing Contract Law”) and Minn. Stat. § 122A.41 (the “Tenure Act”) (collectively, the “Challenged Statutes”)—which perpetuate Minnesota’s opportunity gaps and prevent efforts to improve Minnesota’s public school system. Plaintiffs allege that Defendants’ continued enforcement of the Challenged Statutes results in a deprivation

of their fundamental right to a uniform and thorough education, as well as their right to equal protection and due process of law, all guaranteed by the Minnesota Constitution. Plaintiffs ask this Court to declare the Challenged Statutes unconstitutional on their face and as-applied, and to permanently enjoin their enforcement.

II. INTRODUCTION

1. Quality public education is the lynchpin of a responsible and productive citizenry. Sixty-two years ago, the U.S. Supreme Court noted that “education is perhaps the most important function of state and local governments.”¹ In demanding equality of opportunity for all public-school children, the Supreme Court observed:

Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.²

2. This observation is as true today as it was in 1954: More than 90 percent of school-age children nationwide attend public elementary and secondary (“K-12”) schools, and children must obtain mastery of an increasingly sophisticated skillset in order to fully participate in an “exponentially more complicated and complex” economy and civic society.³

3. Maintaining a quality public education system is equally as important in Minnesota as it is nationwide. Minnesota is home to over 2,000 public schools serving a diverse

¹ *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 493 (1954).

² *Id.*

³ See Nat’l Educ. Assoc., *Preparing 21st Century Students for a Global Society: An Educators Guide to the “Four Cs”*, at p. 5.

population exceeding 840,000 students. More than 92 percent of school-age children in Minnesota attend public schools.

4. Minnesota has demonstrated an early and enduring commitment to public education. The Minnesota Constitution expressly guarantees children a “general and uniform,” “thorough and efficient system of public schools throughout the state”⁴; the Minnesota Supreme Court has repeatedly emphasized that “education *is* a fundamental right under the state constitution, not only because of its overall importance to the state but also because of the explicit language used to describe this constitutional mandate”⁵; the Minnesota Legislature passed a series of laws in the early 1970s—dubbed the “Minnesota Miracle”—that revolutionized school funding and equalized per-pupil expenditures across the state; and, in the aggregate, Minnesota’s children continue to outpace their peers from other states on the National Assessment of Educational Progress (“NAEP”), “the Nation’s Report Card.”

5. Certainly, for many Minnesota children, “The Good Life” exists now just as it did in August 1973, when Time Magazine ran a cover-story declaring Minnesota “A State That Works.”

6. Unfortunately, this perception of Minnesota belies a harsh reality. Although Minnesota’s public-school children tend to outperform their peers in other states, the majority graduate high school unprepared to succeed in college.

⁴ The “Education Clause,” Minn. Const. art. XIII, § 1, reads:

The stability of a republican form of government depending mainly on the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a uniform and thorough system of public schools throughout the state.

⁵ *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993) (emphasis in original).

7. In addition, dramatic opportunity gaps exist across socioeconomic status, race, and ethnicity. These gaps emerge early and persist through the course of children’s public education experience.

8. The result of these opportunity gaps is well-documented: For example, on the 2015 Minnesota Comprehensive Assessments (“MCAs”), Minnesota fourth-graders qualifying for free or reduced-price lunch (“FRL”) trailed their more affluent peers by 31 percentage points in math, and by 33 points in reading.

9. On the same assessment, African American fourth-graders, on average, trailed white fourth-graders by 36 percentage points in math and 32 points in reading; Latino and Hispanic students trailed white students by 30 points in math and 31 points in reading; Native American students trailed by 30 points in math and 29 points in reading; and Asian American students trailed by 12 points in math and 16 points in reading.

10. Results of the 2015 NAEP exam show similar disparities across socioeconomic status, race, and ethnicity.

11. Minnesota’s disparities in academic outcomes are among the worst in the nation, and are further reflected in Minnesota’s high school graduation rates. As detailed in a March 2016 Minnesota Public Radio expose, Minnesota’s African American, Latino and Hispanic, Asian American, and Native American children “are less likely to graduate on time than their counterparts in nearly every other state in the country.”

12. If provided their rightful uniform and thorough education, children of all socioeconomic, racial, and ethnic backgrounds are capable of learning and achieving academic benchmarks. Recognizing as much, the Minnesota Legislature recently prioritized “clos[ing] the

academic achievement gap among all racial and ethnic groups of students and between students living in poverty and students not living in poverty.”⁶

13. Despite this legislative mandate, studies show that few school districts in Minnesota are making significant progress. Two of Minnesota’s largest school districts—the Minneapolis Public Schools and the St. Paul Public Schools—exemplify the problem. According to the Minnesota Department of Education’s (“MDOE”) most recent progress report, the St. Paul public schools did not meet *any* of its 2015 goals for closing gaps in scores on math and reading tests; the Minneapolis Public Schools district did not reach its goals for closing gaps related to low-income students or students of color.

14. School districts across the State reported similar results: More than half of Minnesota’s school districts failed to meet score targets for low-income students, African American students, and English learners.

15. In sum, Minnesota’s public schools are falling well short of providing all Minnesota children their fundamental right to a uniform and thorough education.

16. Worse, Minnesota’s laws are perpetuating the problem. Despite widespread agreement that a key determinant of a child’s educational advancement is teacher quality and effectiveness, certain Minnesota statutes—specifically, the Continuing Contract Law, Minn. Stat. § 122A.40, and the Tenure Act, Minn. Stat. § 122A.41—prevent district administrators and school leaders from making employment decisions about teachers based on classroom effectiveness, as measured by student learning.

17. Instead, the Challenged Statutes force school leaders to: (1) grant new teachers virtually permanent employment after only three years on the job (well before a teacher’s long-

⁶ Minn. Stat. § 120B.11(1)(C).

term effectiveness can be accurately predicted); (2) keep ineffective teachers in the classroom long after they have demonstrated themselves to be ineffective; and (3) terminate less-senior teachers when budget constraints demand staff reductions *regardless* of whether such teachers achieve better results for their students than more senior teachers.

18. The problems caused by the Challenged Statutes affect Minnesota public school students statewide. In any given school year, any student may be arbitrarily assigned to an ineffective teacher whose position is protected by the Challenged Statutes.

19. The problem is worse for students at schools serving predominantly low-income students and students of color because such schools employ a disproportionate share of ineffective teachers. In general, low-income students and students of color are more likely to be taught by ineffective teachers than students attending schools serving more affluent and/or majority-white student populations.

20. The Challenged Statutes perpetuate Minnesota’s opportunity gaps by protecting ineffective teachers and encouraging their placement in already low-performing schools.

21. Because “[e]ducation has a unique impact on the mind, personality, and future role of the individual child,” and “is basic to the functioning of a free society,” it necessarily “evokes special judicial solicitude.”⁷ Put differently, state laws that have the effect of burdening children’s fundamental right to a uniform and thorough education are subject to “strict scrutiny” and must be narrowly tailored and “necessary to [achieve] a compelling government interest” in order to withstand a legal challenge.⁸

⁷ *Van Dusartz v. Hatfield*, 334 F. Supp. 870, 875 (D. Minn. 1971).

⁸ *Skeen*, 505 N.W.2d at 312; *see also* a *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 19 (Minn. 1995) (“statutes which impinge upon a fundamental right are subject to strict scrutiny by the judiciary” (citing *Skeen*, 505 N.W.2d at 312)).

22. This lawsuit seeks to strike down the Challenged Statutes because they prevent schools and educators from delivering to Minnesota children their rightful uniform and thorough education.

23. More specifically, the Challenged Statutes, on their face and as applied, protect ineffective teachers with the consequence that many children are denied their fundamental right to a uniform and thorough education.

24. The Challenged Statues are not narrowly tailored, and the State of Minnesota has no interest in denying certain groups of children their rightful uniform and thorough education, much less a *compelling* one. Accordingly, the Challenged Statutes are unconstitutional.

25. Plaintiffs, as parents and natural guardians of children enrolled in Minnesota's Public Schools, or expected to be enrolled during the pendency of this action, bring this lawsuit in order to redress the denial of their fundamental right to a uniform and thorough education, a right secured by the Education Clause of the Minnesota Constitution, Article XIII, Section 1; the Equal Protection Clause of the Minnesota State Constitution, Article I, Section 2; and the Due Process Clause of the Minnesota Constitution, Article I, Section 7.

26. Plaintiffs ask this Court to declare the Challenged Statutes unconstitutional on their face and as-applied and to permanently enjoin their enforcement.

III. PARTIES

27. Plaintiff TIFFINI FLYNN FORSLUND is a resident of the City of Minneapolis, and brings this action as parent and natural guardian of her minor child, K.F., age 17, a student in the Anoka-Hennepin School District 11.⁹ K.F. is African American and qualifies for free or reduced-priced lunch. The Challenged Statutes have a real and appreciably negative impact on

⁹ The Anoka-Hennepin School District serve cities that are not cities of the first class. *See* Minn. Stat. § 410.01. Accordingly, the provisions of the Continuing Contract Law apply to teachers in the Anoka-Hennepin School District. *See* Minn. Stat. § 122A.40(18).

K.F.'s fundamental right to a uniform and thorough education because, as a direct result of the Challenged Statutes, K.F. has been assigned to, and/or is at substantial risk of being assigned to, an ineffective teacher who impedes K.F.'s equal access to the opportunity to receive a uniform and thorough education, and K.F. lacks notice of and opportunity to challenge the same.

28. Plaintiff JUSTINA PERSON is a resident of the city of Eagan, and brings this action as parent and natural guardian of her minor children, J.C., age 14, and D.C., age 8. J.C. and D.C. are currently students in the West St. Paul-Mendota Heights-Eagan Area schools, Independent School District ("ISD") 197,¹⁰ and previously attended public school in the St. Paul Public Schools, ISD 625. J.C. and D.C. are Caucasian and qualify for free or reduced-priced lunch. The Challenged Statutes have a real and appreciably negative impact on J.C.'s and D.C.'s fundamental right to a uniform and thorough education because, as a direct result of the Challenged Statutes, J.C. and D.C. have been assigned to an ineffective teacher who impedes their equal access to the opportunity to receive a uniform and thorough education, and J.C. and D.C. lack notice of and opportunity to challenge the same. Indeed, J.C. and D.C. transferred from the St. Paul Public Schools to the West St. Paul-Mendota Heights-Eagan Area schools following experiences with ineffective teachers. Despite having transitioned schools and school districts, and as a direct result of the Challenged Statutes, J.C. and D.C. remain at substantial risk of being assigned to ineffective teachers.

29. Plaintiff BONNIE DOMINGUEZ is a resident of the city of Duluth, and brings this action as parent and natural guardian of her minor child, E.Q., age 13, a student in the

¹⁰ The West St. Paul-Mendota Heights-Eagan public schools serve cities that are not cities of the first class. *See* Minn. Stat. § 410.01. Accordingly, the provisions of the Continuing Contract Law apply to teachers in the West St. Paul-Mendota Heights-Eagan public schools. *See* Minn. Stat. § 122A.40(18).

Duluth Public Schools, ISD 709.¹¹ E.Q. is Native American and qualifies for free or reduced-priced lunch. The Challenged Statutes have a real and appreciably negative impact on E.Q.'s fundamental right to a uniform and thorough education because, as a direct result of the Challenged Statutes, E.Q. has been assigned to, and/or is at substantial risk of being assigned to, an ineffective teacher who impedes E.Q.'s equal access to the opportunity to receive a uniform and thorough education, and E.Q. lacks notice of and opportunity to challenge the same.

30. Plaintiff ROXANNE DRAUGHN is a resident of the city of St. Paul, and brings this action as parent and natural guardian of her minor child, A.D., age 7, a student in the St. Paul Public Schools, ISD 625.¹² A.D. is African American and qualifies for free or reduced-priced lunch. The Challenged Statutes have a real and appreciably negative impact on A.D.'s fundamental right to a uniform and thorough education because, as a direct result of the Challenged Statutes, A.D. has been assigned to, and/or is at substantial risk of being assigned to, an ineffective teacher who impedes A.D.'s equal access to the opportunity to receive a uniform and thorough education, and A.D. lacks notice of and opportunity to challenge the same.

31. As parents and natural guardians of students residing within the boundaries of the State of Minnesota, Plaintiffs have a fundamental, constitutional right to a uniform and thorough education, which cannot be achieved without effective teachers.

32. Defendant STATE OF MINNESOTA is the duly constituted government of Minnesota established by the Constitution of 1857 and Act of Congress of May 11, 1858, and is the legal and political entity required by the Minnesota Constitution to maintain and oversee a uniform and thorough system of public schools in Minnesota. It has plenary responsibility for

¹¹ The Duluth public schools serve the city of Duluth, a city of the first class. Minn. Stat. § 410.01. Accordingly, the provisions of the Tenure Act apply to teachers in the Duluth public schools. Minn. Stat. § 122A.41(2)(a).

¹² The St. Paul Public Schools serve the city of St. Paul, a city of the first class. Minn. Stat. § 410.01. Accordingly, the provisions of the Tenure Act apply to teachers in the St. Paul Public Schools. Minn. Stat. § 122A.41(2)(a).

educating all Minnesota public school students, including the responsibility to establish and maintain a uniform and thorough system of public schools and to ensure that the fundamental right to education is afforded to all Minnesota public school students.

33. Defendant MARK DAYTON is the Governor of the State of Minnesota and is sued in his official capacity. Pursuant to Minn. Stat. § 15.06, he is responsible for appointing the Commissioner of Education, with the advice and consent of the Senate. Under Minn. Stat. § 127A.06, Governor Dayton receives recommendations from the Commissioner of Education concerning laws relating to the state system of education, and also receives a biennial education budget. As the chief executive officer of the State of Minnesota, Governor Dayton is ultimately responsible for ensuring that Plaintiffs are fully accorded and not deprived of their fundamental rights under the Education, Equal Protection, and Due Process Clauses of the Minnesota Constitution.

34. Defendant MINNESOTA DEPARTMENT OF EDUCATION is a department of government of Minnesota and is charged with carrying out the provisions of Minn. Stat. chapters 120A to 129C and other related education provisions under law, as provided by Minn. Stat. § 120A.02, which responsibilities include exercising general supervision over public schools and public educational agencies in the State of Minnesota.

35. Defendant DR. BRENDA CASSELLIUS is the Commissioner of Education, appointed by the Governor, with the advice and consent of the Minnesota Senate, as provided in Minn. Stat. §§ 15.06 and 119A.03, and is sued in her official capacity. The Commissioner performs duties prescribed by law and is generally responsible for the administration and operation of the Minnesota Department of Education.

36. Defendants, and those subject to their supervision, direction, and control, are responsible for the enforcement of the statutes challenged herein. Except where otherwise specified, the relief requested in this action is sought against each Defendant, as well as against each Defendant's officers, employees, and agents, and against all persons acting in cooperation with Defendant(s), under their supervision, at their direction, or under their control.

IV. JURISDICTION AND VENUE

37. This case raises questions under the Constitution of the State of Minnesota. Thus, this Court has jurisdiction over all of Plaintiffs' claims.

38. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. § 555.01, and to grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.

39. Venue is proper in this Court pursuant to Minn. Stat. §§ 542.03 and 542.09 because one or more of the Defendants reside in this county and the causes of action alleged herein, or some part thereof, arose in this county.

V. FACTS

A. Teacher effectiveness is the key determinant of students' educational advancement

40. Under Minnesota law, a child's fundamental right to an education means more than mere access to a classroom. The Minnesota Constitution expressly mandates that children be provided a "uniform" and "thorough" education,¹³ and Minnesota courts draw distinctions between what does and what does not qualify as a uniform and thorough learning environment.

¹³ Minn. Const. art. XIII, § 1.

41. Extensive research over the past 35 years confirms what students and parents have always known: Teachers matter. Indeed, the key determinant of educational effectiveness and student learning is teacher quality.

42. Teacher quality affects student success more than any other in-school factor.

43. When provided high-quality instruction from effective teachers, children of all backgrounds are equally capable of learning and achieving academic benchmarks.

44. Additionally, high-quality instruction from effective teachers helps students overcome the disadvantages associated with low socioeconomic status, and may have the greatest positive impact on low-performing students and students of color.

45. Top-performing teachers obtain an entire year's worth of additional learning from their students compared to ineffective teachers.

46. In the short-term, effective teachers provide tangible educational results in the form of better performance on academic assessments and higher graduation rates.

47. In the long-term, students taught by effective teachers are given a strong foundation from which to advance and achieve. Students assigned to effective teachers are, over time, less likely to have children during their teenage years; more likely to graduate high school; more likely to attend college; more likely to attend higher quality colleges; and will, on average, earn more, live in higher socioeconomic status neighborhoods, and save more for retirement.

48. Conversely, students taught by ineffective teachers suffer lifelong disadvantages, which include falling further behind grade-level with each successive school year, and lower future wages and earnings over the course of their careers after school. According to one recent study, replacing an ineffective teacher with an effective teacher increases the present value of students' lifetime income by \$267,000 per classroom taught by that ineffective teacher.

49. In light of this data, Minnesota’s public-school teachers are, without question, vital to providing Minnesota students their rightful uniform and thorough education. And while the majority of Minnesota’s teachers deliver to students a uniform and thorough education, far too many Minnesota public school students are taught by teachers who fail to provide their students with the most basic skills necessary to achieve academic benchmarks, participate as a citizen, and compete in the marketplace.

50. If Minnesota’s district administrators and school leaders were able to replace ineffective teachers, it would add enormous value to the future earnings of students and the U.S. economy as a whole.

51. Given the substantial and enduring impact that teachers have on their students’ learning, it is in the interest of all Minnesota public school students to ensure that (1) ineffective teachers are not hired into the Minnesota public school system; (2) if hired, ineffective teachers are dismissed upon discovery of chronic ineffective performance; and (3) in the event of layoffs, dismissal decisions are based on objective measures of teacher effectiveness and student learning.

B. Minnesota’s schools retain ineffective teachers at alarming rates

52. Minnesota’s teachers have a profound impact on students’ learning. As such, the sentiment is common among Minnesotans that there is “no room in our schools for ineffective teaching.”¹⁴

53. Nonetheless, ineffective teachers are routinely hired into the Minnesota school system and granted effectively lifetime employment.

¹⁴ Tom Doohar, *Opinion: Yes, evaluate teachers. But let’s be smart about it*, ST. PAUL PIONEER PRESS, Mar. 26, 2011.

54. Even after their chronic ineffective performance is discovered, such teachers are rarely dismissed. In an editorial dated May 15, 2010, the Minneapolis Star Tribune observed: “The state Department of Education doesn’t track [] how many low-performing teachers are fired. The best information comes from arbitration records. They show that since 1992, only 10 Minnesota teachers fired for poor performance have challenged their dismissals through that process. That’s 10 cases among more than 60,000 state teachers.”¹⁵

55. A more recent statewide survey of Minnesota public school teachers reveals that teachers *themselves* believe that more than 17 percent of their colleagues are “ineffective”—*i.e.*, unable “to advance student learning such that, on average, students demonstrate at least one year of academic learning during a school year.”¹⁶ Accepted as true, these survey results imply that nearly 9,400 of Minnesota’s 55,277 public school teachers are failing to deliver on the State’s promise of a uniform and thorough education for all public-school children.

56. The retention of chronically ineffective teachers in the Minnesota public school system is a result of the continued enforcement of the Challenged Statutes and attendant policies, contracts, and practices, which (1) prematurely confer near permanent employment on Minnesota teachers; (2) effectively prevent the removal of chronically ineffective teachers from their classrooms and, instead, result in the shuffling of ineffective teachers from higher-performing schools to already lower-performing schools; and (3) in economic downturns, require layoffs in strict accordance with teachers’ seniority (or lack thereof), rather than teachers’ effectiveness.

57. In other words, the Challenged Statutes prevent school leaders from prioritizing— or even meaningfully considering—the best academic interests of students when making

¹⁵ Editorial, *A failing grade in evaluating teachers: State needs a stronger system for judging teachers, principals*, MINNEAPOLIS STAR TRIBUNE, May 15, 2010.

¹⁶ The Minnesota Campaign for Achievement Now, *2012 MinnCAN Teacher Survey*, at ¶ 11, Nov. 8-30, 2012.

employment and dismissal decisions. By forcing critical employment decisions to be made primarily or exclusively on grounds other than teacher effectiveness—and therefore perpetuating retention of significant numbers of ineffective teachers—these laws burden Minnesota public-school children’s fundamental right to a uniform and thorough education.

58. A series of recent investigative reports is illustrative. For example, in Wayzata, a teacher kept his job despite extensive allegations that he spent most of his class time surfing the Internet. In Minneapolis, the district paid a teacher \$35,000 to resign, rather than pursue lengthy and costly dismissal proceedings. In the Anoka-Hennepin School District, one of the state’s largest, officials cannot remember the last time they fired a veteran teacher for classroom ineffectiveness.

59. The public record also contains egregious examples of exceptional teachers losing their jobs due to layoffs while ineffective teachers in the same district remained in the classroom.

60. The presence of ineffective teachers in the Minnesota public school system creates arbitrary and unjustifiable inequality among students: Even within the same school, some students are taught by teachers who fail to teach at a minimally effective level, while other students receive an education from effective teachers.

61. As a result of these arbitrary distinctions, children of substantially equal age, aptitude, motivation, and ability do not have substantially equal access to a uniform and thorough education. Because education is a fundamental right under the Minnesota Constitution, statutory provisions that dictate this unequal, arbitrary result violate the Education Clause of the Minnesota Constitution.

62. Moreover, as a result of the same Challenged Statutes and policies, contracts, and practices that flow from them, ineffective teachers are disproportionately assigned to schools

serving predominantly low-income students and students of color. Thus, in practice, the Challenged Statutes make the quality of education provided to school-age children in Minnesota a function of socioeconomic status, race, and/or ethnicity in violation of the Equal Protection Clause of the Minnesota Constitution.

63. Finally, because the Challenged Statutes effectively deprive public-school children of their rightful uniform and thorough education without notice or the opportunity to be heard, they also violate students' right to due process as guaranteed by the Due Process Clause of the Minnesota Constitution.

C. The Challenged Statutes prevent school leaders from making employment and dismissal decisions that benefit students

64. The Challenged Statutes make it nearly impossible for school leaders to dismiss ineffective teachers. These statutes instead compel school leaders to leave ineffective teachers in place, or, when feasible, coordinate in-district transfers, allow out-of-district transfers, and implement expensive alternatives to dismissal—such as contract buyouts.

65. As noted by one former Minnesota superintendent, it is so overwhelmingly burdensome to winnow out ineffective teachers that school leaders pursue termination only “in the absolute worst possible scenario, where they don't have a choice.”

66. The continued employment of ineffective teachers in Minnesota's public schools is the natural consequence of the Challenged Statutes and causes grave harm to Minnesota's students generally and, in particular, to Minnesota's low-income students and students of color.

67. This statutory scheme, enacted by the State of Minnesota through its Legislature and enforced by Defendants, inevitably presents a conflict with the fundamental right to a uniform and thorough education guaranteed by the Minnesota Constitution because it forces an arbitrary subset of Minnesota's children into classrooms taught by ineffective teachers unable to

provide students with basic tools to achieve academic benchmarks, compete in the marketplace, and participate in civil society.

68. In the absence of this statutory scheme, school leaders would have the ability to make employment and dismissal decisions that serve the interests of Minnesota’s children. A school leader could decline to offer permanent employment to a teacher unless and until she determined that the teacher’s performance merited such an offer; could dismiss a teacher proven to be ineffective; could retain only those teachers she believed to be at least minimally effective; and could reward and incentivize teachers who exhibit superior performance.

69. The Challenged Statutes prevent school leaders from meaningfully considering their students’ need for effective teachers when making teacher employment and dismissal decisions. On information and belief, in the absence of the Challenged Statutes, school leaders would make teacher employment and dismissal decisions based, in larger part and/or entirely, on their students’ need for effective teachers.

1) Minnesota’s Tenure Provisions

70. Pursuant to Minn. Stat. §§ 122A.40(5) and (7), and §§ 122A.41(2) and (4)¹⁷ (the “Tenure Provisions”), Minnesota’s school districts must decide whether to grant permanent employment to new teachers after only a 3-year “probationary period.”

71. Further, within the 3-year probationary period, a new teacher must only teach 120 of the minimum 165 days of student instruction each school year. Minn. Stat. §§ 122A.40,(5)(e); 122A.41(2)(d).

¹⁷ As indicated above, *supra* nn. 9-12, the Tenure Act applies to “[a]ll teachers in the public schools in cities of the first class.” Minn. Stat. § 122A.41(2)(a). A city of the “first class” is defined as a city “having more than 100,000 inhabitants.” Minn. Stat. § 410.01. As of the 2010 census, four Minnesota cities qualified as first-class cities: Minneapolis, St. Paul, Rochester, and Duluth. The Continuing Contract Law applies to all public school teachers that do not teach in cities of the first class. *See* Minn. Stat. § 122A.40(18).

72. Tenure confers extraordinary benefits and protections, but it is out of the ordinary for a teacher to be denied tenure. The default is to grant teachers tenure after three years in the classroom without regard for how well teachers actually perform or how much their students learn. The tenure process is a formality, rather than an appraisal of teacher effectiveness.

73. Minnesota's Tenure Provisions provide little guidance to districts regarding what criteria must be assessed when making tenure decisions about probationary teachers. Instead, they require that local school boards "adopt a plan for written evaluation of teachers during the probationary period" according to certain guidelines. *See* Minn. Stat. §§ 122A.40(5)(a); 122A.41(2)(a).

74. Significantly, school districts *may*, but are *not* required to consider evidence of effectiveness in the classroom when making tenure decisions. *See* Minn. Stat. §§ 122A.40(8)(b)(9); 122A.41(5)(b)(9). Even when districts choose to incorporate teacher effectiveness into tenure decisions, such "value-added models or student learning goals" may only "determine 35 percent of teacher evaluation results." *See* Minn. Stat. §§ 122A.40(8)(b)(9); 122A.41(5)(b)(9).

75. Complicating matters further, Minnesota's 3-year probationary period is too short to make an accurate prediction of a teacher's continued effectiveness over the course of his career. Studies consistently show that a minimum of 4- to 5-years' classroom experience is required in order to accurately predict a teacher's ongoing effectiveness. Thus, even if *assumed* that districts across Minnesota are consistently incorporating evidence of classroom effectiveness into teacher tenure decisions, the 3-year probationary period is still too short to determine whether a teacher is effective, much less whether he will continue to be effective over his lifetime in the classroom.

76. The result of the Tenure Provisions is that Minnesota teachers are prematurely granted tenure—which, as explained below, amounts to near permanent employment.

77. Once a teacher receives tenure, continued employment is guaranteed except in limited enumerated circumstances and, even then, only after the school leader seeking to terminate the teacher navigates a byzantine array of due process guarantees (discussed below). *See* Minn. Stat. §§ 122A.40(7)(a) & 8; 122A.41(6)–(10).

78. In sum, Minnesota’s Tenure Provisions, alone and in conjunction with the Dismissal Provisions and the Last-In-First-Out Provisions (discussed below), ensure that many ineffective teachers who are unable to prepare students to achieve academic benchmarks, compete in the marketplace, and participate in civil society are granted near permanent employment in the Minnesota school system.

79. The Tenure Provisions, alone and in conjunction with the other provisions at issue, also ensure that children of substantially equal age, aptitude, motivation, and ability will not have substantially equal access to a uniform and thorough education. Even within the same schoolhouse, some students will be assigned to ineffective teachers, while other students are assigned to effective teachers.

80. Under Minnesota law, students and their parents lack any method by which to challenge a school district’s decision to grant tenure to ineffective teachers.

2) Minnesota’s Dismissal Provisions

81. Public employees in Minnesota are afforded due process rights before being subject to termination or other adverse employment decisions. Such due process rights must include “notice of the charges, an explanation of the evidence, and an opportunity for the

employee to present his side of the story” before the proposed discipline or termination can be imposed.¹⁸

82. The Challenged Statutes, however, award tenured Minnesota teachers *super* due process rights—an unequaled array of additional rights and privileges—before they may be dismissed for unprofessional conduct or ineffective performance. These rights and privileges are codified primarily at Minn. Stat. §§ 122A.40(7)(a), 8(b)(12), (9), (13)–(17), and 122A.41(5)–(10), and include: (i) written notice of the proposed grounds for dismissal and the opportunity to seek a pre-dismissal hearing, §§ 122A.40(7)(a), 122A.41(7); (ii) opportunity and assistance to “correct the deficiency” identified in the written notice within “reasonable time” when the “specific items of complaint” involve classroom ineffectiveness, § 122A.40(8)(b)(12)–(13) & (9); *see* § 122A.41(5)(b)(12)–(13) & (6)(a)(3); (iii) a pre-dismissal hearing before the school board, or arbitration before the school board or an arbitrator, §§ 122A.40(14)–(15), 122A.41(7)–(8), (13); (iv) the right to legal representation throughout dismissal proceedings, §§ 122A.40(14), 122A.41(8); (v) strict time limitations for when a final dismissal decision must be rendered, *see* §§ 122A.40(16), 122A.41(10); and, for certain teachers, (vi) the right to commencement of dismissal proceedings at least four months before the close of the school year, § 122A.41(10); *or* (vii) the right to judicial review of adverse dismissal decisions, § 122A.40(17); *and* (vii) the right to suspension with pay during the pendency of dismissal proceedings, § 122A.40(13) (collectively, the “Dismissal Provisions”).

83. The cumulative effect of the Dismissal Provisions is to create time-consuming and expensive hurdles that make the dismissal of chronically ineffective, tenured teachers almost impossible.

¹⁸ *See Carrillo v. Fabian*, 701 N.W.2d 763, 775 (Minn. 2005).

84. The result is that chronically ineffective teachers remain in place, thereby depriving students of their rightful uniform and thorough education.

85. Even when district officials and school leaders manage to negotiate the hurdles created by the Dismissal Provisions, the process is rarely completed in less than one academic year, thus ensuring that students assigned to a teacher in the midst of the dismissal process lose their rightful uniform and thorough education for that year.

86. In light of the difficulty, complexity, cost, and length of time required to remove a teacher under the Dismissal Provisions, dismissal proceedings are rarely initiated for ineffective classroom instruction alone. Even when the dismissal process is initiated based on teacher performance, it frequently results in an outcome other than dismissal, such as a transfer to another public school. When such transfers occur, the transferred teacher is frequently re-assigned to an already lower-performing school.

87. The negative impact of Minnesota's Dismissal Provisions has attracted widespread attention. The National Council on Teacher Quality ("NCTQ")—a nonpartisan research and policy organization dedicated to "the vision that every child deserves effective teachers"—has repeatedly given Minnesota an "F" in "exiting ineffective teachers" on its annual report card on state teacher policies. Among the various reasons for assigning Minnesota a failing grade in 2015, NCTQ observed that although a Minnesota teacher "[m]ay be dismissed for 'inefficiency' as it pertains to the state's evaluation system," the Dismissal Provisions do not provide an "explicit definition that ties inefficiency to classroom ineffectiveness."

88. In the absence of the Dismissal Provisions, teachers would retain the same due process rights afforded to other Minnesota public employees, which, as stated, include "notice of

the charges, an explanation of the evidence, and an opportunity for the employee to present his side of the story.”¹⁹

89. On information and belief, in the absence of the Dismissal Provisions, school leaders could and would dismiss chronically ineffective teachers that remain in place under the current system.

90. The Dismissal Provisions, alone and in conjunction with the other provisions at issue, ensure that many ineffective teachers who are unable to prepare students to achieve academic benchmarks, compete in the marketplace, and participate in civil society retain their employment in the Minnesota school system.

91. The Dismissal Provisions, alone and in conjunction with the other provisions at issue, also ensure that children of substantially equal age, aptitude, motivation, and ability do not have substantially equal access to a uniform and thorough education. Even within the same schoolhouse some students are assigned to ineffective teachers, while other students are assigned to effective teachers.

92. Under Minnesota law, students and their parents lack any method by which to challenge a school district’s ongoing employment of ineffective teachers.

3) Minnesota’s Last-In First-Out (“LIFO”) Provisions

93. Minn. Stat. §§ 122A.40(10)–(11) and 122A.41(14) (the “LIFO Provisions”) dictate the default criteria by which teachers must be included in any layoff.

94. The LIFO Provisions create a seniority-based layoff system, irrespective of a teacher’s classroom effectiveness. Specifically, the LIFO Provisions provide that when staff reductions are required, public school teachers are to be laid off “in the inverse order in which

¹⁹ See *Carrillo*, 701 N.W.2d at 775.

they were employed by the school district.” Minn. Stat. § 122A.40(11)(b); *see* Minn. Stat. § 122A.4(14)(a).

95. The LIFO Provisions further require that in all public school districts serving cities of populations less than 100,000, reinstatement of laid-off teachers must occur “in the inverse order of placement on leave of absence.” Minn. Stat. § 122A.40(11)(e).

96. Multiple perverse effects flow from Minnesota’s LIFO Provisions. First, and perhaps most important, studies consistently demonstrate that seniority—defined as a teacher’s number of years of teaching experience—is not an accurate predictor of classroom effectiveness. Yet the LIFO Provisions require that the selection of teachers included in any layoff be governed exclusively by seniority.

97. Second, because Minnesota public school teacher salaries generally increase according to the number of years a teacher has spent in the classroom, the LIFO Provisions create the possibility that districts must lay-off a greater number of less-senior but effective teachers to meet the same budgetary shortfalls as could be met by laying off a smaller number of more-senior, ineffective teachers. And because fewer teachers across any given district necessarily results in larger class sizes, an additional consequence is that *more* students will likely be subjected to the remaining senior ineffective teachers.

98. Third, the LIFO Provisions hinder recruitment of new teachers by creating an environment in which recent hires face a heightened risk of being laid off regardless of their performance.

99. Fourth, the LIFO Provisions allow public school districts to develop their own idiosyncratic methods for determining seniority as between two teachers with ostensibly the same number of years in the classroom. For example, when determining seniority for layoff

purposes, some Minnesota districts use the day and hour a teacher was hired to break a tie; other districts flip a coin; still others look to which teacher has the smallest last four Social Security number digits, and/or the highest cumulative undergraduate and graduate grade-point averages.

100. Fifth, implementation of layoffs under the LIFO Provisions almost invariably results in “bumping,” whereby a “senior” teacher licensed in multiple fields—but often teaching in just one—“bumps” a “junior” teacher out of her primary position when the senior teacher’s position is eliminated. The resulting loss for students is two-fold: The “junior” but otherwise more knowledgeable teacher is terminated; the “senior” but otherwise less knowledgeable teacher is retained. In other words, by blindly retaining the most experienced teacher without regard to effectiveness, the district has retained a teacher with minimal knowledge in a particular subject matter.

101. Experiences in Minnesota school districts that have implemented layoffs in accordance with the LIFO Provisions bear out the arbitrary nature of quality-blind layoffs. Between 2008 and 2013, nearly 2,200 Minnesota teachers were laid off statewide, regardless of how effective they were in the classroom. Upon information and belief, this number includes a large share of effective classroom teachers. Upon further information and belief, the number of teachers that escaped layoff during the same period includes a number of ineffective teachers that was more than sufficient to spare the jobs of the terminated effective teachers.

102. Indeed, the public record reflects that on at least two occasions in recent years, a Minnesota *Teacher of the Year* was fired as a result of the LIFO Provisions, even while less effective teachers maintained their jobs.

103. On information and belief, in the absence of the LIFO Provisions, school leaders forced to implement layoffs would select teachers to be included in such layoffs based, in larger

part or entirely, on teacher effectiveness and student outcomes. And because a higher number of effective teachers would be retained despite layoffs, fewer children would suffer the loss of an effective teacher.

104. The LIFO Provisions, alone and in conjunction with the Tenure Provisions and the Dismissal Provisions, ensure that ineffective teachers who are unable to prepare students to achieve academic benchmarks, compete in the marketplace, and participate in civil society retain employment in the Minnesota public school system.

105. The LIFO Provisions, alone and in conjunction with the other provisions at issue, also ensure that children of substantially equal age, aptitude, motivation, and ability do not have substantially equal access to a uniform and thorough education. Even within the same school, some students will be deprived of the opportunity to be taught by an effective teacher that was laid off, or will be taught by an ineffective teacher that avoided losing his job by virtue of seniority alone, while other students will be taught by effective teachers.

106. Under Minnesota law, students and their parents lack any method by which to challenge a school district's obligation to conduct layoffs according to seniority and without consideration for teacher effectiveness.

D. The Challenged Statutes have a disproportionate adverse effect on low-income students and students of color

1) The Tenure and Dismissal Provisions have a disproportionate adverse impact on students of color and low-income students

107. The Challenged Statutes, separately and together, have a disproportionate adverse effect upon low-income students and students of color.

108. As described above, teacher quality affects student success more than any other in-school factor; yet the Challenged Statutes result in the hiring and retention of ineffective teachers who are unable to minimally prepare students to achieve academic benchmarks,

compete in the marketplace, and participate in civil society. Rather than dismiss ineffective teachers for their poor performance, the Challenged Statutes force school leaders to find other ways to remove them from their ranks, such as by transferring them to other schools within the district.

109. And because lower-performing district schools generally have higher rates of staff turnover than higher performing schools, ineffective teachers are frequently re-assigned to positions at lower-performing schools in lieu of being fired.

110. The result is that, over time, already low-performing schools become staffed with an ever-increasing share of ineffective teachers.

111. Recent investigative reports are illustrative of the disproportionate adverse effect of this phenomenon on low-income students and students of color.

Minneapolis Public Schools, Special School District No. 1

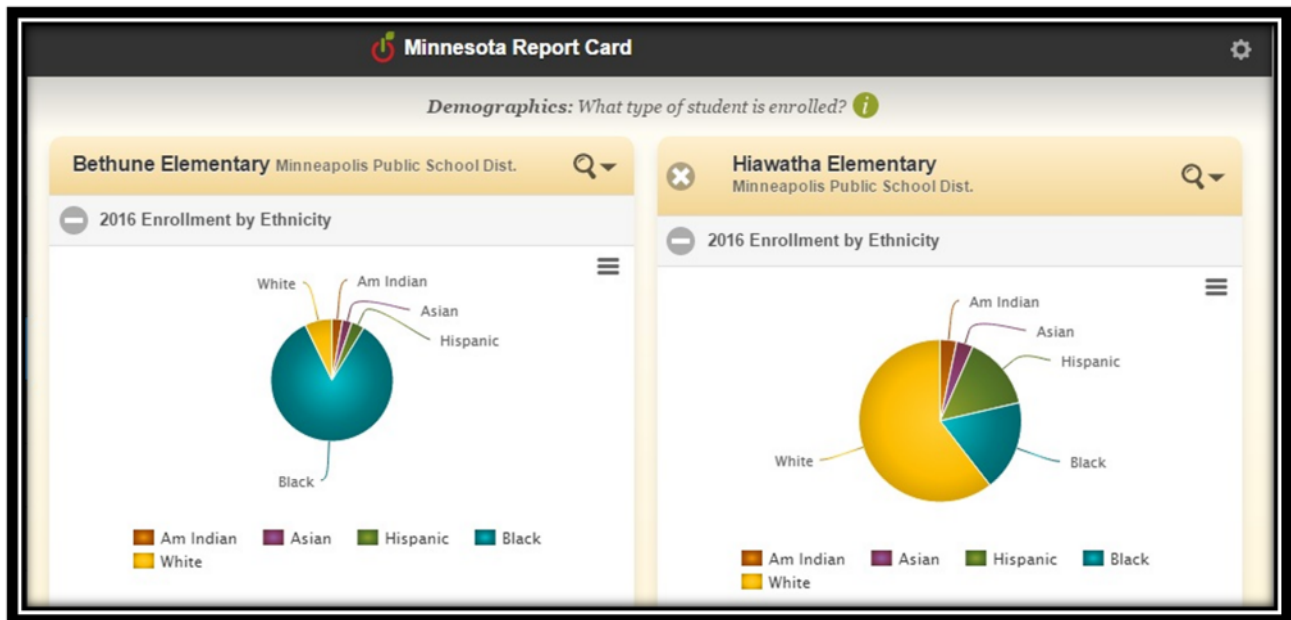
112. In January 2015 the Minneapolis *Star Tribune* reported that thirteen of fourteen Minneapolis schools with the largest concentrations of ineffective teachers served student populations in which 65 percent or more qualified for free and reduced-price lunch. In one vivid example, Bethune Elementary—where 97 percent of students are eligible to receive FRL, and 93 percent identify as students of color—had the lowest average teacher effectiveness ratings across the district. In turn, Bethune’s MCA results are among the worst in Minneapolis, with just 16 percent of students demonstrating proficiency in math (compared to a district average of 45 percent, and a state average of 60 percent), and 13 percent demonstrating proficiency in reading (compared to a district average of 43 percent and a statewide average of 60 percent).

113. The situation is very different for students attending schools where more children come from affluent backgrounds, and fewer children identify as students of color. The same *Star*

Tribune report found that 80 percent of Minneapolis schools with the largest concentration of high performing teachers were located in wealthier neighborhoods.

114. In contrast to Bethune, Hiawatha Elementary serves a student population that is only 40 percent FRL (below the district average of 63 percent), and 61 percent white (far exceeding the district average of 36 percent). Teachers at Hiawatha are far more likely to have earned an advanced degree than teachers at Bethune, and Hiawatha has some of the highest teacher effectiveness scores in the district. In turn, Hiawatha reports MCA results comparable to district averages: 44 percent of Hiawatha’s students demonstrate proficiency in math, and 40 percent demonstrate proficiency in reading.

Figure 1: Bethune Elementary & Hiawatha Elementary, Demographics²⁰



²⁰ All graphics and data available at the MDOE’s Minnesota Report Card, <http://rc.education.state.mn.us/#>.

Figure 2: Bethune Elementary & Hiawatha Elementary, Math Results

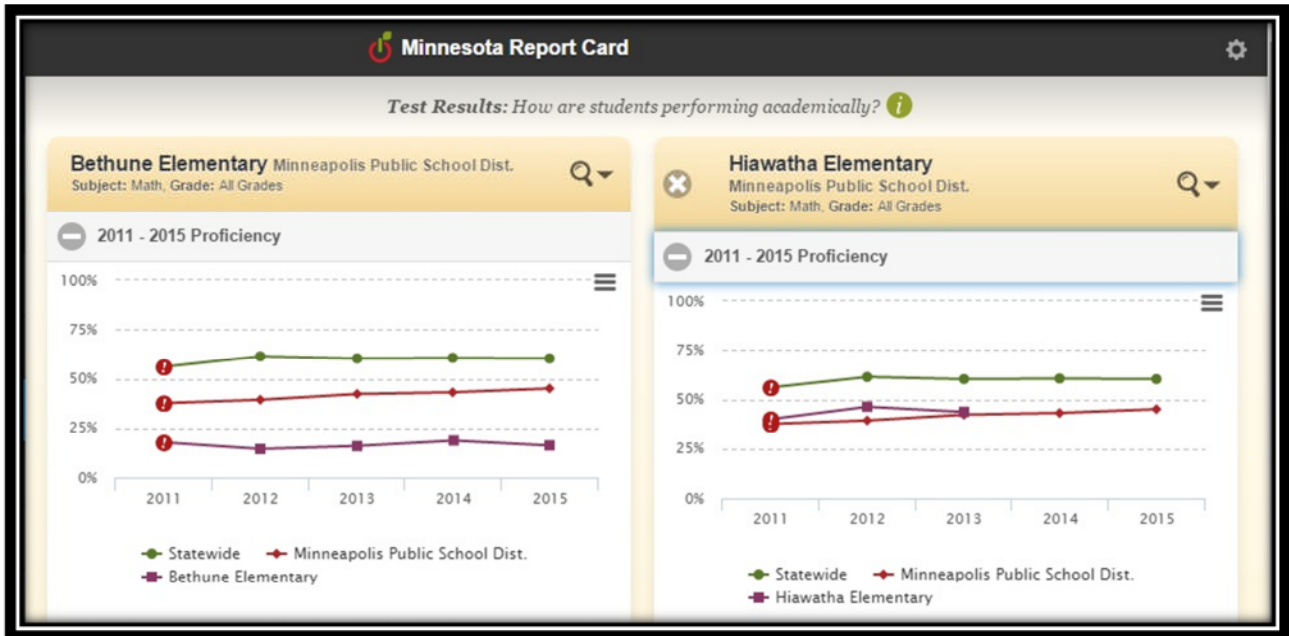
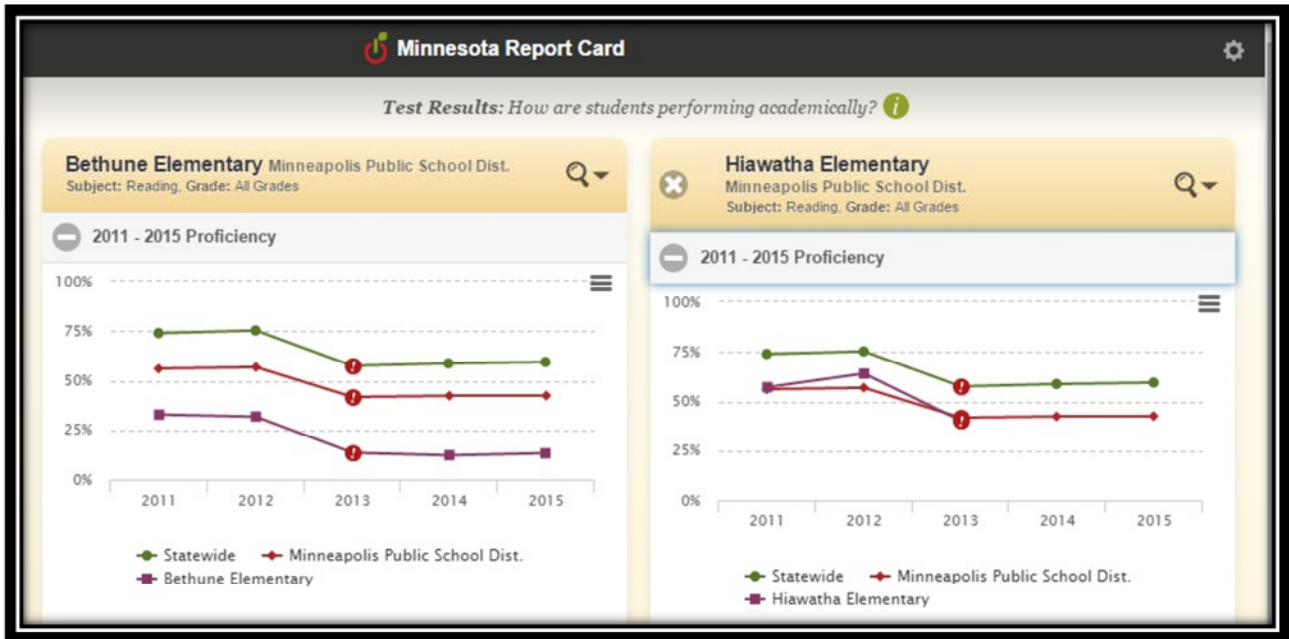


Figure 3: Bethune Elementary & Hiawatha Elementary, Reading Results



115. Despite receiving low marks for effectiveness, teachers at Bethune have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

116. Upon information and belief, many of the low-performing teachers concentrated in schools serving Minneapolis's low-income students and students of color have spent more than three years in the classroom and, thus, are protected from dismissal by the Tenure and Dismissal Provisions.

117. The result is that Minneapolis's low-income students and students of color are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

St. Paul Public Schools, ISD 625

118. A January 2016 report by the St. Paul *Pioneer Press* revealed similar disparities in the St. Paul Public Schools. As in Minneapolis, St. Paul public schools with the largest concentrations of low-income students and students of color have less-qualified and lower-performing teachers than public schools serving mostly affluent and/or white students.

119. A comparison of Barack and Michelle Obama Elementary (f/k/a Webster Elementary) and the Horace Mann School is illustrative. At Obama Elementary 95 percent of students qualify for FRL and nearly all identify as students of color. Obama Elementary's students are three times more likely than students attending majority-white schools to be taught core subjects by teachers that are not fully qualified, and Obama Elementary's students score well-below their peers on the MCAs: Only 27 percent demonstrate proficiency in math (compared to a district average of 37 percent) and 23 percent demonstrate proficiency in reading (compared to a district average of nearly 38 percent).

120. On the other end of the spectrum, Horace Mann serves a student population that is only 25 percent FRL (well-below the district average of 72 percent), and 69 percent white (the highest percentage in the district, well-exceeding the district average of 23 percent). Horace Mann's students out-perform nearly all other St. Paul public elementary schools on the MCAs:

78 percent of students demonstrate proficiency in math; 79 percent demonstrate proficiency in reading. Horace Mann’s teachers are among the most highly qualified in the district, with more than 70 percent having obtained an advanced degree.

Figure 4: Obama Elementary & Horace Mann School, Demographics

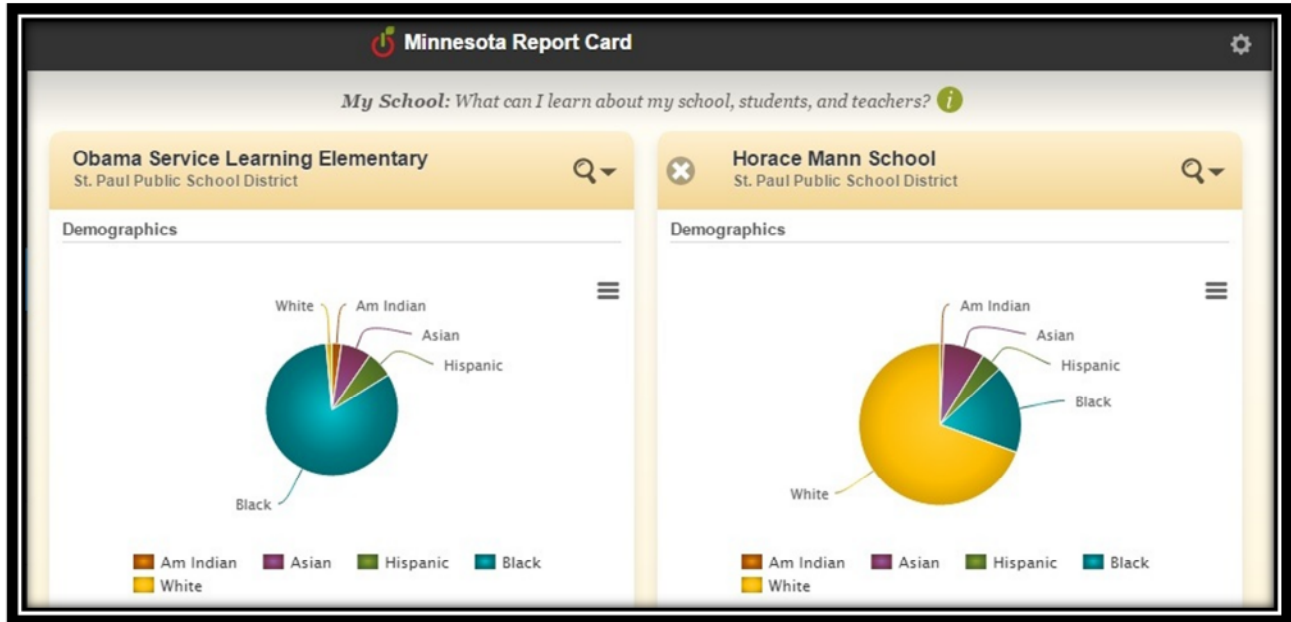


Figure 5: Obama Elementary & Horace Mann School, Math Results

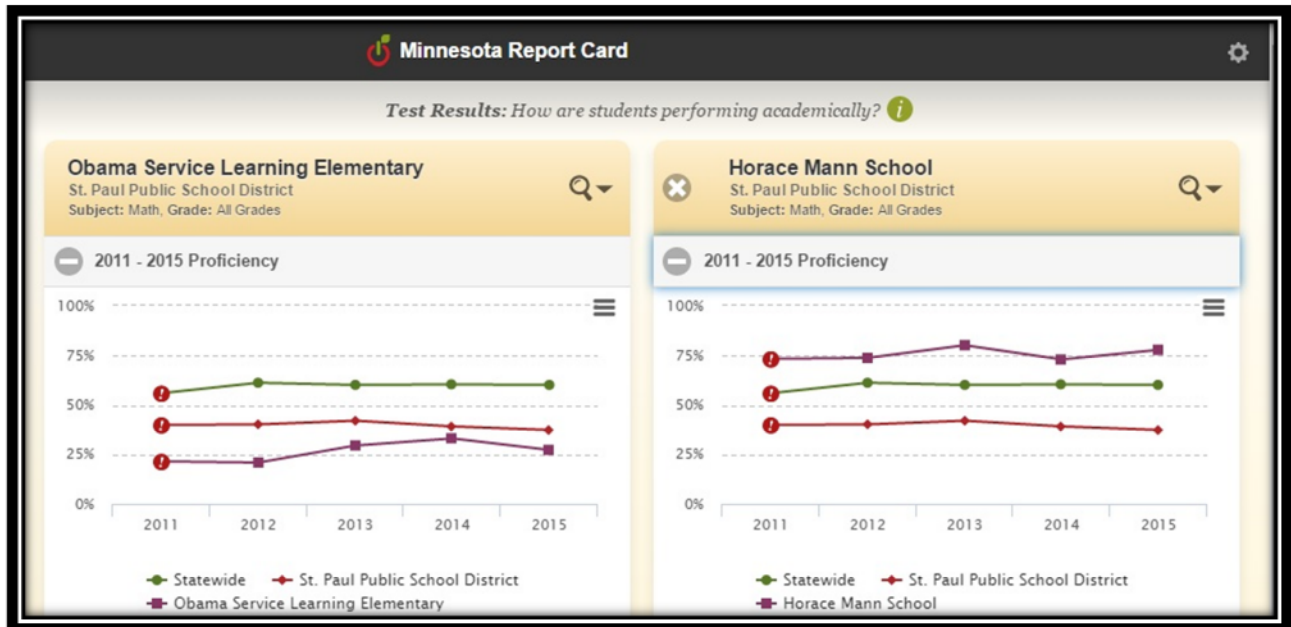
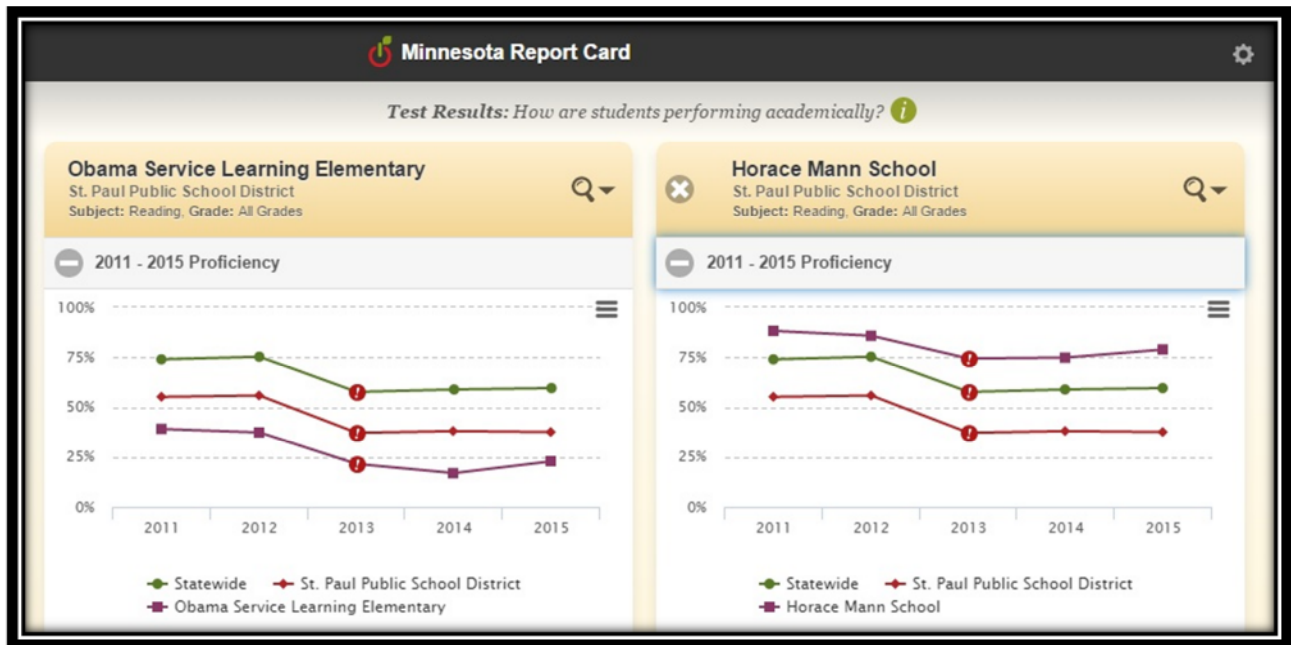


Figure 6: Obama Elementary & Horace Mann School, Reading Results



121. Despite being under-qualified and unable to match district averages on student assessments, teachers at Obama Elementary have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

122. Upon information and belief, as in Minneapolis, St. Paul's lowest performing teachers are concentrated in schools serving the highest percentages of low-income students and students of color.

123. Upon further information and belief the same low-performing teachers have, on average, spent more than three years in the classroom and, thus, are protected from termination by the Tenure and Dismissal Provisions.

124. The result is that St. Paul's low-income students and students of color are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

Duluth Public Schools, ISD 709

125. Low-income students and students of color in public schools across the state of Minnesota face the same obstacles to success as do low-income students and students of color attending public schools in the Twin Cities.

126. Within the Duluth Public Schools, a comparison of Myers-Wilkins Elementary and Congdon Elementary is illustrative. Seventy-nine percent of students at Myers-Wilkins qualify for FRL, and more than half identify as students of color (far exceeding the district average). Myers-Wilkins' teachers are, on average, among the least qualified in the district, and its students perform below their peers on the MCAs: Only 52 percent demonstrate proficiency in math (compared to a district average of 58 percent); 54 percent demonstrate proficiency in reading (compared to a district average of 60 percent).

127. Conversely, Congdon Elementary serves a student population that is just 22 percent FRL and 81 percent white. Congdon's teachers are among the most qualified in the district, and its students far exceed district averages on the MCAs, with 85 percent demonstrating proficiency in math, and 84 percent demonstrating proficiency in reading.

Figure 7: Myers-Wilkins Elementary & Congdon Elementary, Demographics

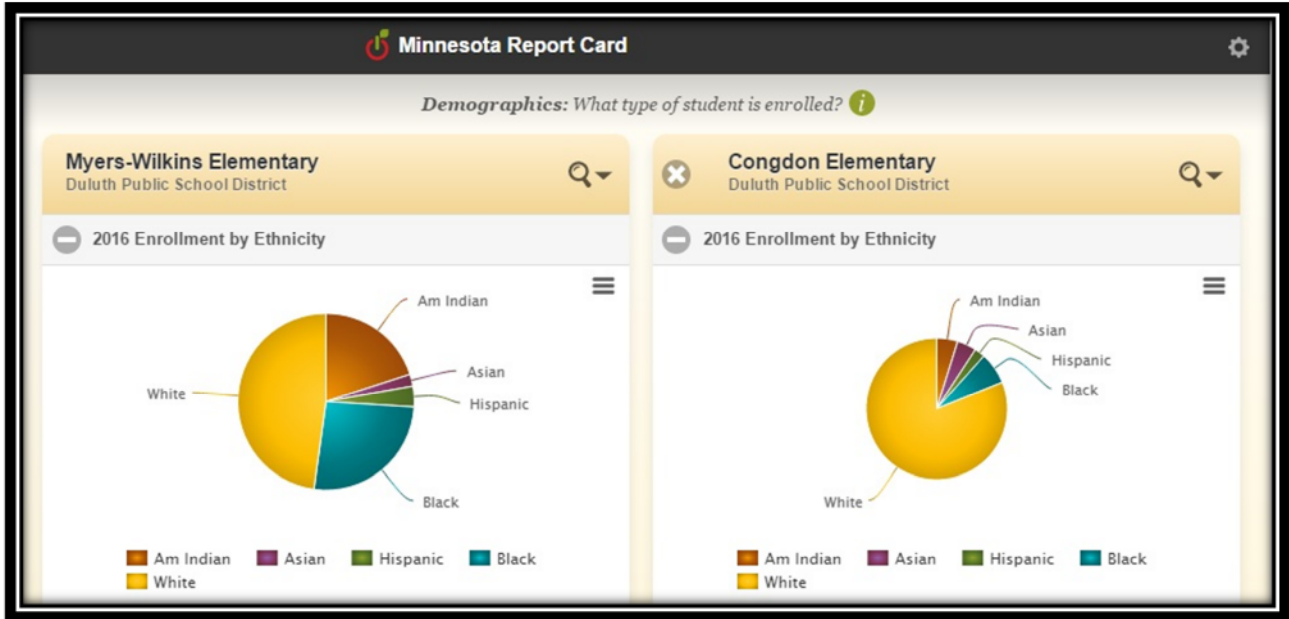


Figure 8: Myers-Wilkins Elementary & Congdon Elementary, Math Results

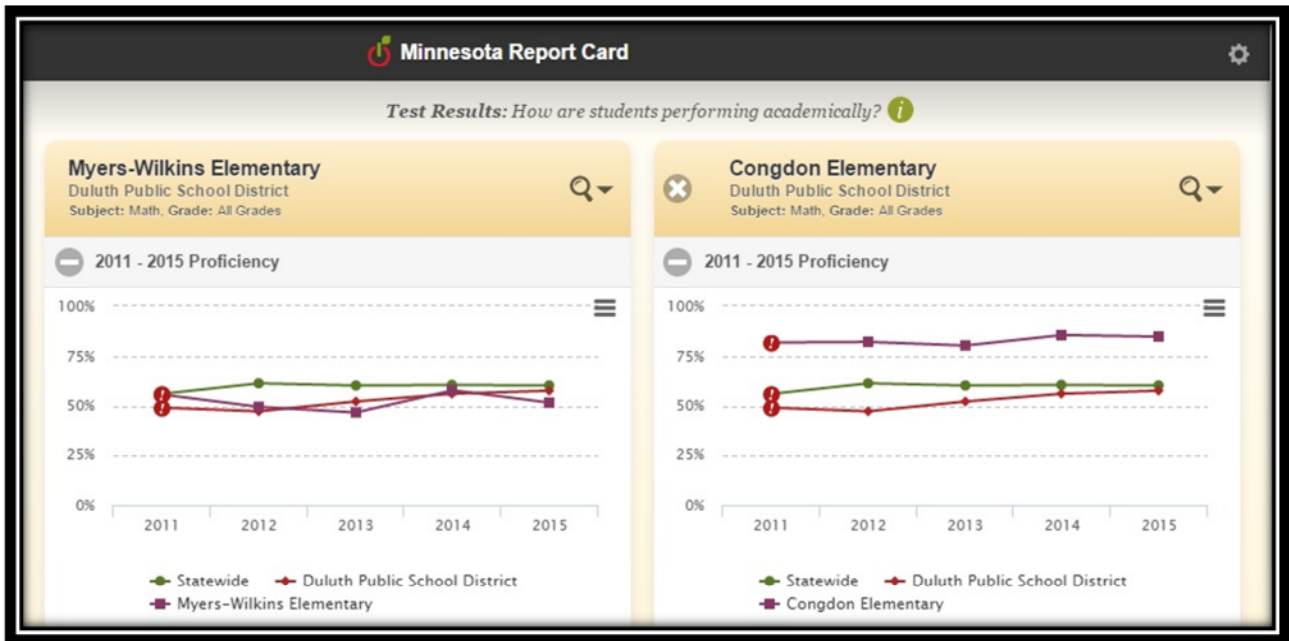
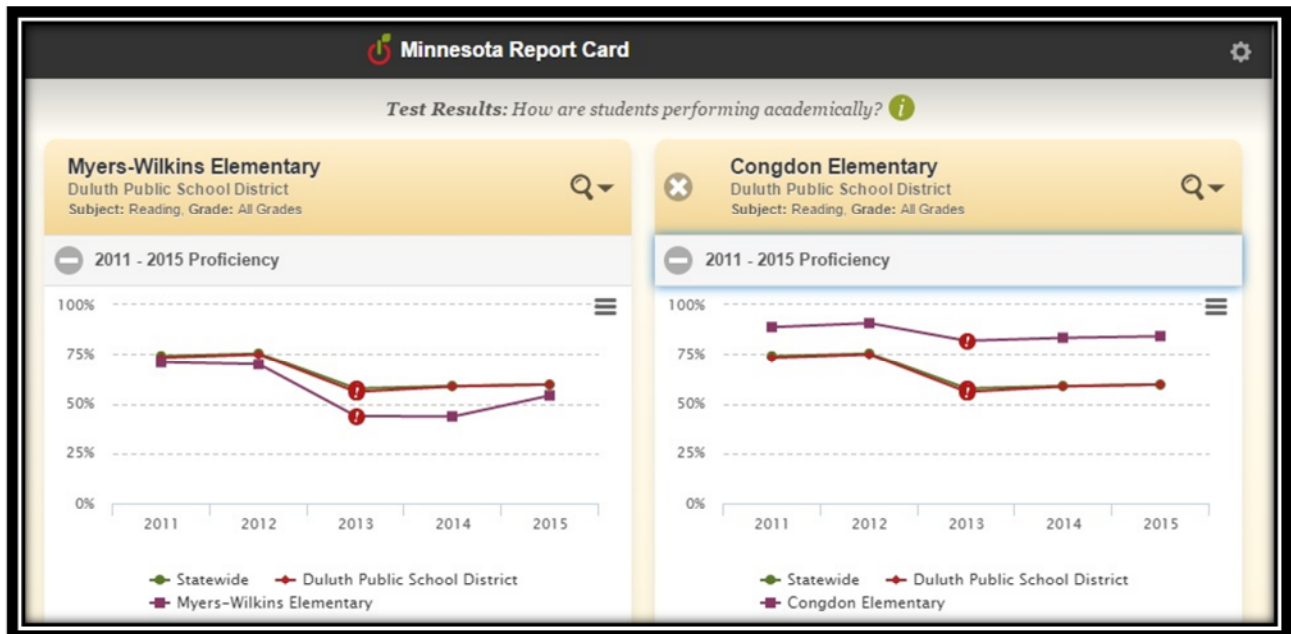


Figure 9: Myers-Wilkins Elementary & Congdon Elementary, Reading Results



128. Despite being less-qualified and unable to match district averages on student assessments, teachers at Myers-Wilkins have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

129. Upon information and belief, Duluth’s lowest performing teachers are concentrated in schools serving the highest percentages of low-income students and students of color.

130. Upon further information and belief the same low-performing teachers have, on average, spent more than three years in the classroom and, thus, are protected from termination by the Tenure and Dismissal Provisions.

131. The result is that Duluth’s low-income students and students of color are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

Anoka-Hennepin School District 11

132. Similar disparities exist in Minnesota’s suburban schools. Evergreen Park Elementary is located in Brooklyn Center, and is among the schools in the Anoka-Hennepin School District. More than 75 percent of Evergreen Park’s students qualify for FRL, and 88 percent identify as students of color. On average, Evergreen Park’s teachers are among the least qualified in the district, and just 46 percent of Evergreen Park’s students are proficient in math (compared to a district average of 66 percent); 41 percent are proficient in reading (compared to a district average of 63 percent).

133. At Andover Elementary, in Andover, just 17 percent of students qualify for FRL, and fewer than 12 percent identify as students of color. Andover’s teachers are among the most qualified in the district, and students perform well-above district averages on the MCAs, with 84 percent demonstrating proficiency in math, and 86 percent demonstrating proficiency in reading.

Figure 10: Evergreen Park Elementary & Andover Elementary, Demographics

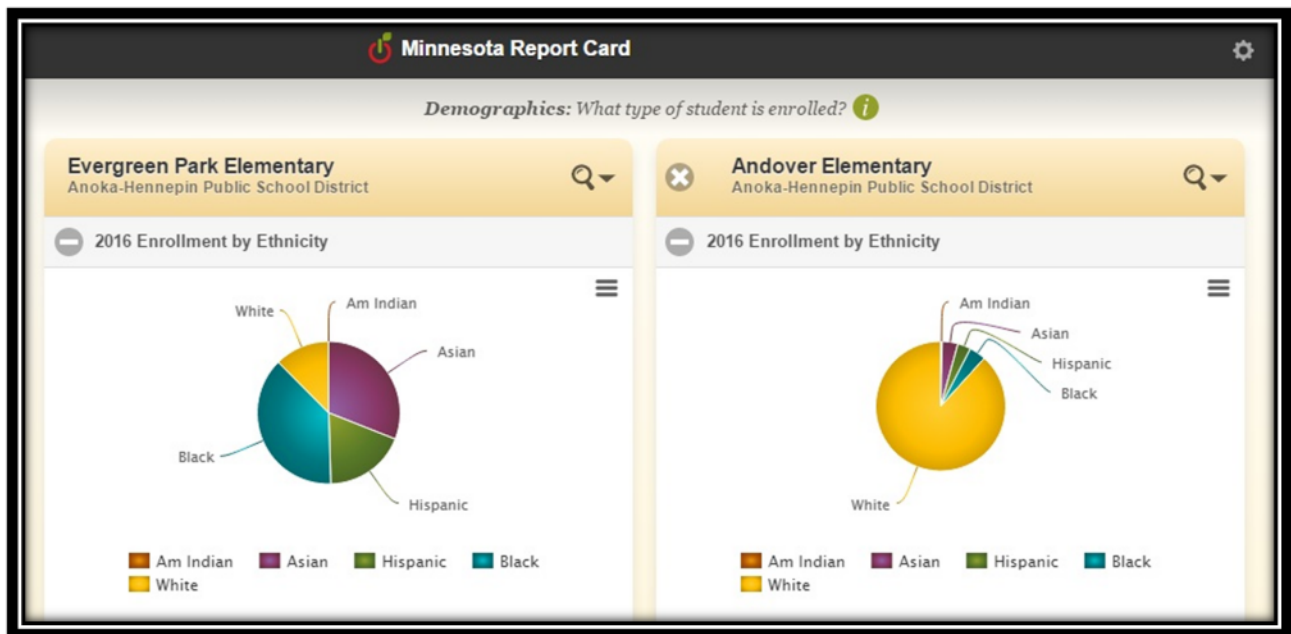


Figure 11: Evergreen Park Elementary & Andover Elementary, Math Results

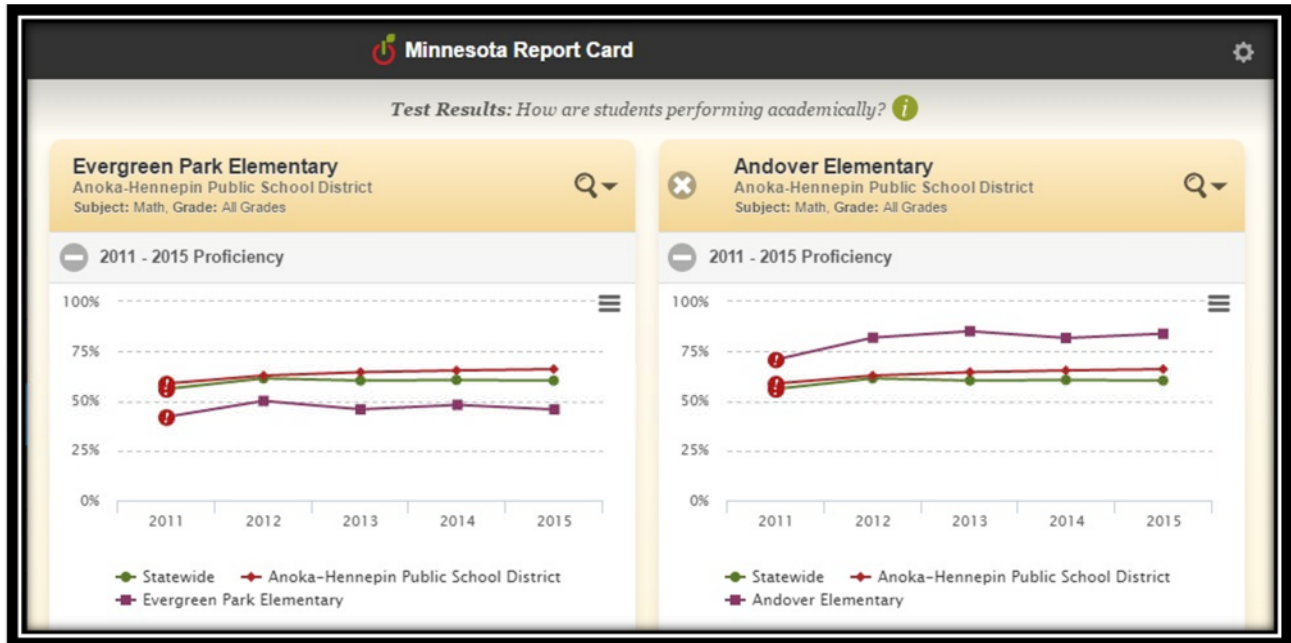
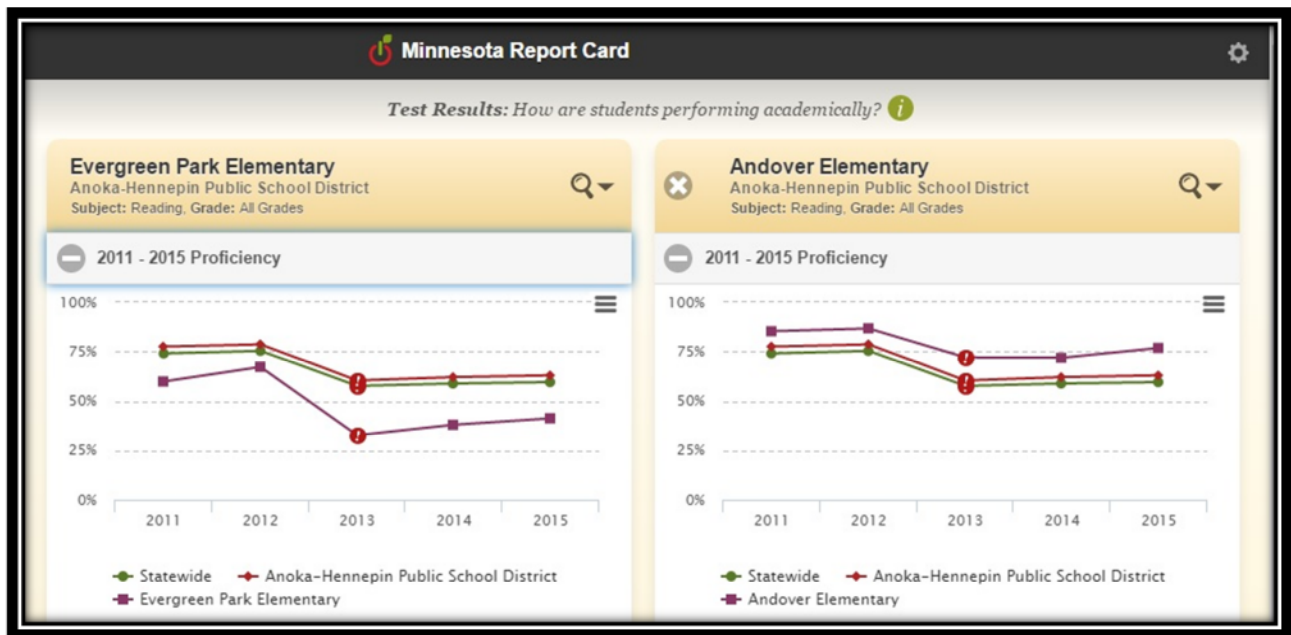


Figure 12: Evergreen Park Elementary & Andover Elementary, Reading Results



134. Despite being less-qualified and unable to match district averages on student assessments, teachers at Evergreen Park have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

135. Upon information and belief, the Anoka-Hennepin School District's lowest performing teachers are concentrated in schools serving the highest percentages of low-income students and students of color.

136. Upon further information and belief the same low-performing teachers have, on average, spent more than three years in the classroom and, thus, are protected from termination by the Tenure and Dismissal Provisions.

137. The result is that low-income students and students of color in the Anoka-Hennepin School District are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

West St. Paul-Mendota Heights-Eagan Area Schools, ISD 197

138. The same pattern holds in the West St. Paul-Mendota Heights-Eagan Area Schools district. At Moreland Arts & Health Sciences Magnet School, in West Saint Paul, 68 percent of students qualify for FRL, and nearly the same amount identify as students of color. Moreland's teachers are, on average, among the least qualified in the district. Only 55 percent of Moreland's students are proficient in math (compared to a district average of 59 percent); 49 percent are proficient in reading (compared to a district average of 60 percent).

139. Mendota Elementary is located in Mendota Heights, on the opposite side of Interstate 35E. Just 17 percent of Mendota's students qualify for FRL; only 19 percent identify as students of color. Mendota's teachers are among the most qualified in the district, and Mendota students perform well-above district averages on the MCAs, with 89 percent demonstrating proficiency in math, and 74 percent demonstrating proficiency in reading.

Figure 13: Moreland Arts & Health Sciences Magnet School & Mendota Elementary, Demographics

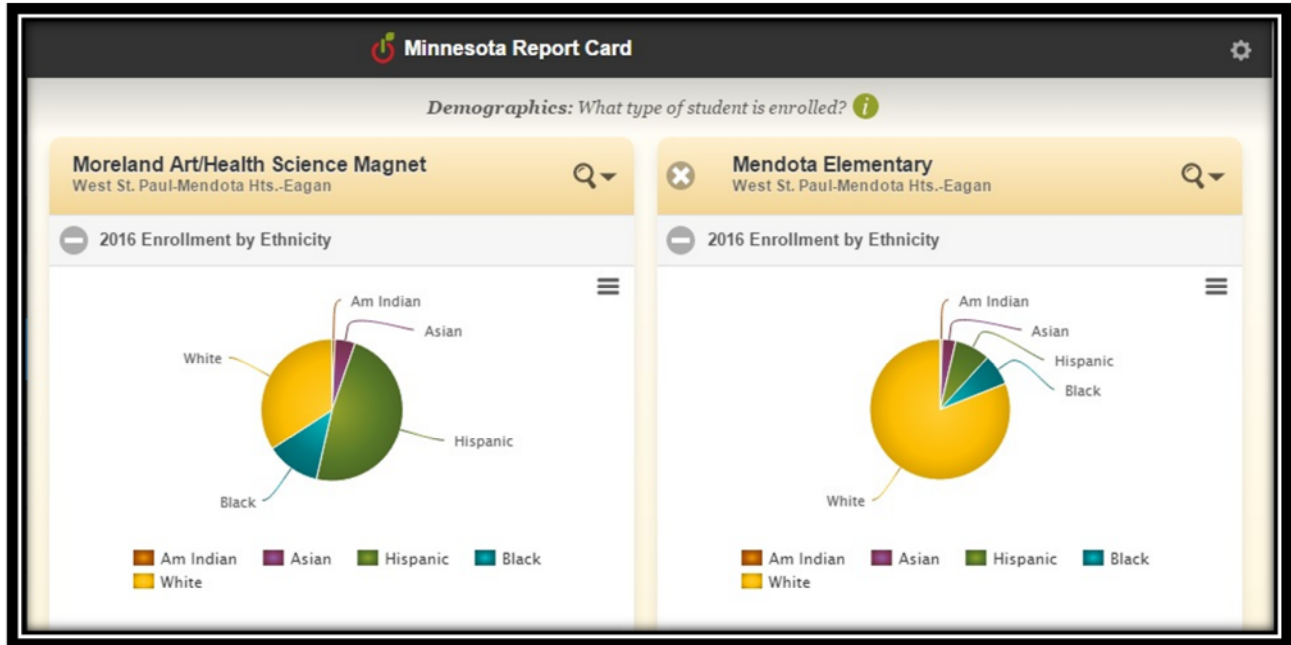


Figure 14: Moreland Arts & Health Sciences Magnet School & Mendota Elementary, Math Results

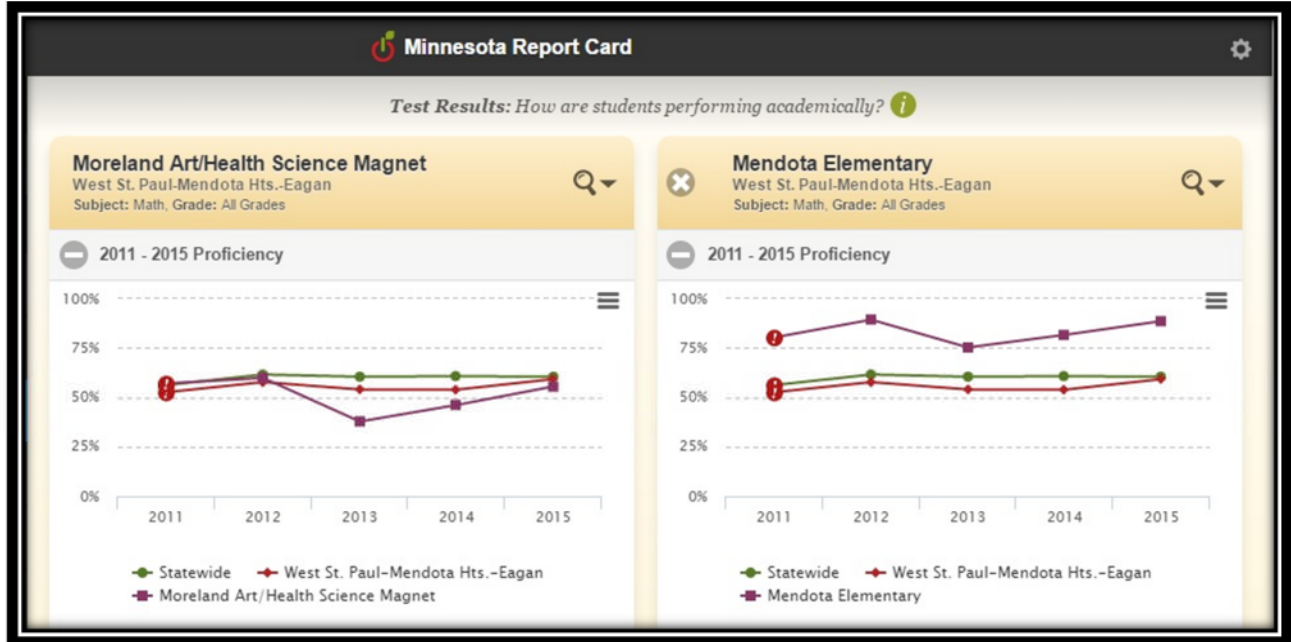
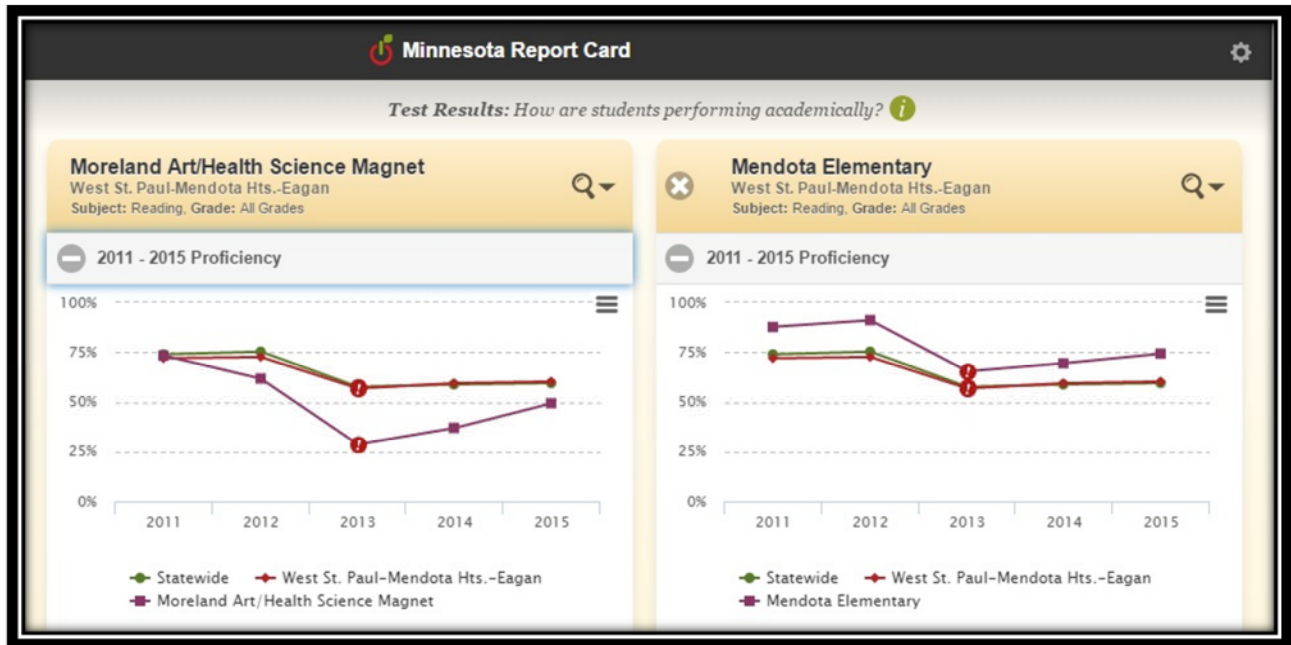


Figure 15: Moreland Arts & Health Sciences Magnet School & Mendota Elementary, Reading Results



140. Despite being less-qualified and unable to match district averages on student assessments, teachers at Moreland have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

141. Upon information and belief, the West St. Paul-Mendota Heights-Eagan Area Schools' lowest performing teachers are concentrated in schools serving the highest percentages of low-income students and students of color.

142. Upon further information and belief the same low-performing teachers have, on average, spent more than three years in the classroom and, thus, are protected from termination by the Tenure and Dismissal Provisions.

143. The result is that low-income students and students of color in the West St. Paul-Mendota Heights-Eagan Area Schools are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

Bemidji Area Schools, ISD 31

144. These disparities extend to Minnesota’s rural districts as well. For example, Central Elementary and Horace May Elementary are each located in the Bemidji Area Schools district. At Central, 70 percent of students qualify for FRL, 30 percent of students are Native American, and an additional 10 percent identify as members of other ethnic minority groups. Central’s teachers are, on average, among the least qualified in the district. Only 55 percent of Central’s students are proficient in math (compared to a district average of 63 percent); just 52 percent are proficient in reading (compared to a district average of 61 percent).

145. Horace May Elementary sits four miles south on Washington Avenue. Just 38 percent of Horace May’s students qualify for FRL; 84 percent of students are white. Horace May’s teachers are among the more qualified teachers in the district, and Horace May’s students exceed district averages on the MCAs, with 65 percent demonstrating proficiency in math, and 71 percent demonstrating proficiency in reading.

Figure 16: Central Elementary & Horace May Elementary, Demographics

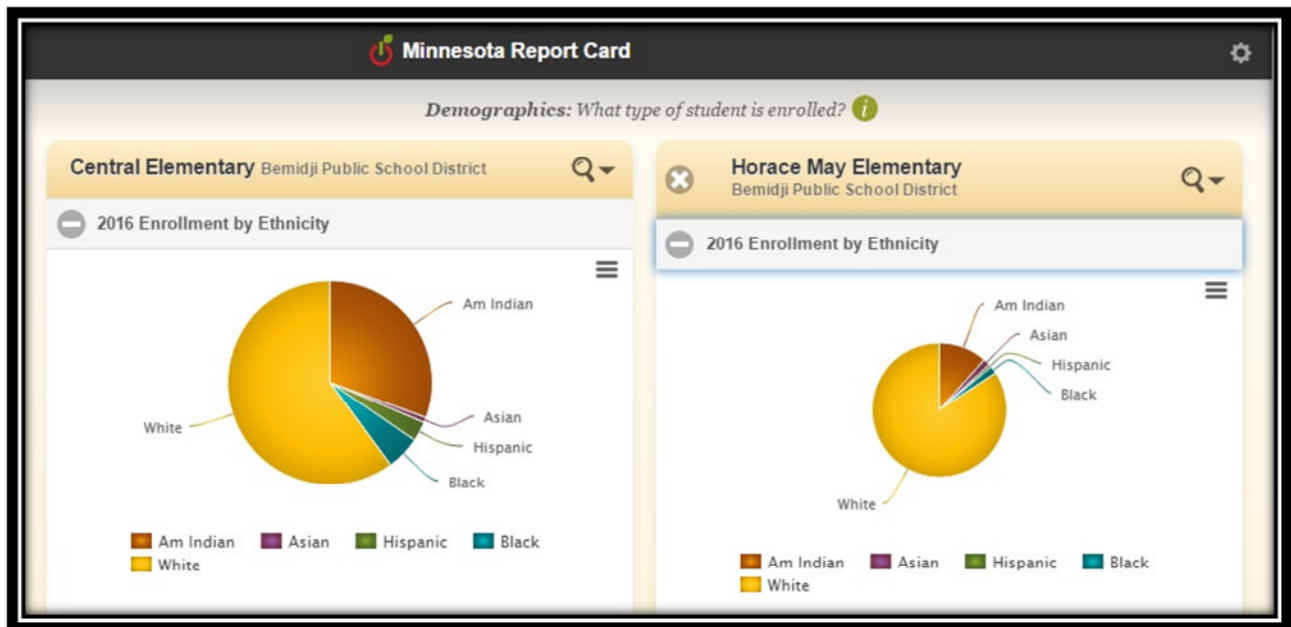


Figure 17: Central Elementary & Horace May Elementary, Math Results

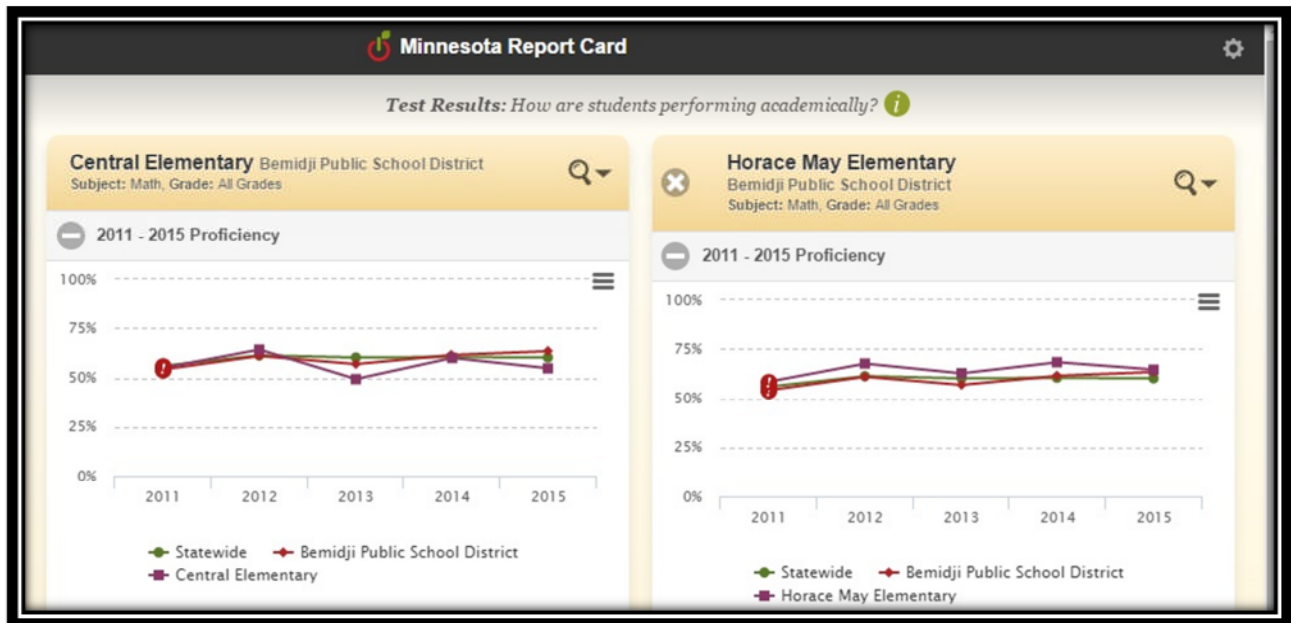
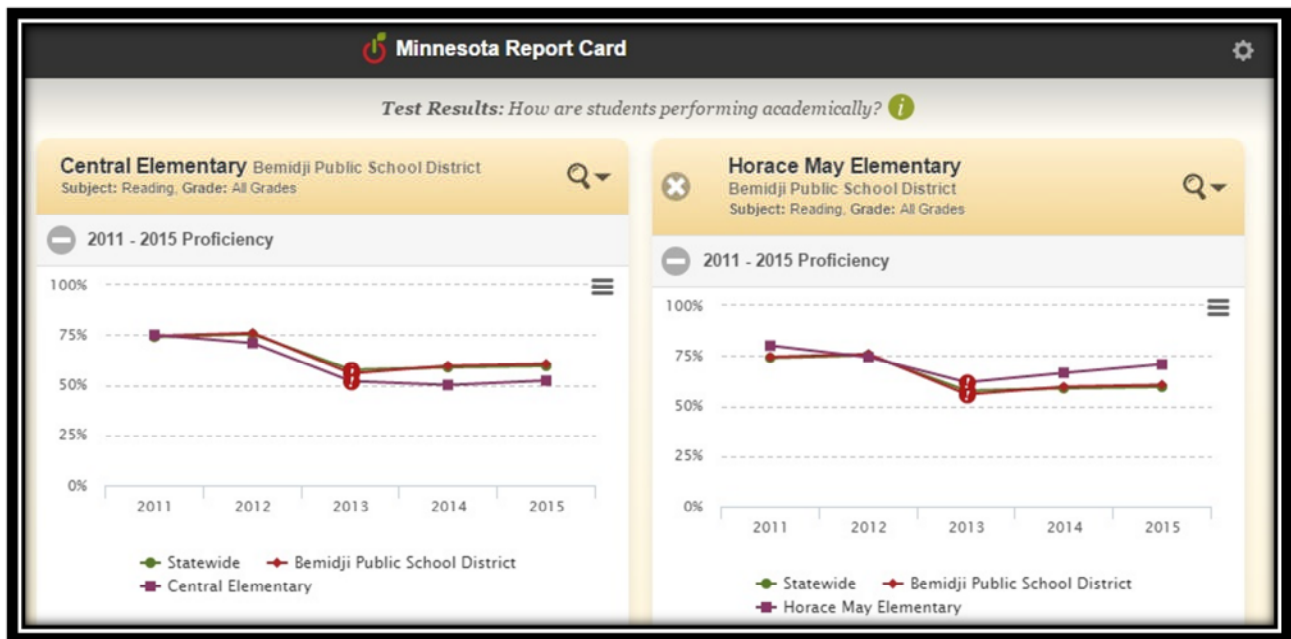


Figure 18: Central Elementary & Horace May Elementary, Reading Results



146. Despite being less-qualified and unable to match district averages on student assessments, teachers at Central have, on average, taught for three years or more and are therefore protected from dismissal by the Tenure and Dismissal Provisions.

147. Upon information and belief, the Bemidji Area Schools' lowest performing teachers are concentrated in schools serving the highest percentages of low-income students and students of color.

148. Upon further information and belief the same low-performing teachers have, on average, spent more than three years in the classroom and, thus, are protected from termination by the Tenure and Dismissal Provisions.

149. The result is that Bemidji's low-income students and students of color are disproportionately deprived of their rightful uniform and thorough education compared to students attending schools serving more affluent and/or majority-white student bodies.

Statewide trends reflect the disproportionate adverse impact of the Tenure Provisions and the Dismissal Provisions on low-income students and students of color

150. These same patterns are repeated in the St. Cloud Public Schools, ISD 742; the Rochester Public Schools, ISD 535; and the Osseo Area Schools, ISD 279, to name a few.

151. In short, the story is the same across the State of Minnesota, in urban, suburban, and rural school districts alike: Ineffective teachers permanently employed as a result of the Tenure and Dismissal Provisions are disproportionately assigned to educate students in schools that serve the largest percentages of low-income students and students of color, with the result that Minnesota's low-income students and students of color are disproportionately deprived of their rightful uniform and thorough education and, in the aggregate, lag behind their peers on academic benchmarks despite being of substantially the same age, aptitude, motivation, and ability.

152. The resulting real and appreciable harm to Minnesota's low-income students and students of color is predictable and well-documented: Although 70 percent of all Minnesota

fourth-graders are proficient in math (as measured by the 2015 MCAs), and 83 percent of non-FRL students are proficient, just 52 percent of FRL students are proficient.

153. Likewise, although 58 percent of all Minnesota fourth graders are proficient in reading, and 71 percent of non-FRL students are proficient, just 39 percent of FRL students are proficient.

Figure 19: Minnesota Fourth Grade Students Demonstrating Proficiency by Socioeconomic Status

	All Students	Non-FRL	FRL
Math	70%	83%	52%
Reading	58%	71%	39%

154. Similar cleavages appear along racial and ethnic lines: Although 79 percent of Minnesota’s white fourth-graders are proficient at math, only 43 percent of African American fourth-graders, 49 percent of Latino and Hispanic fourth-graders, 49 percent of Native American fourth-graders, and 67 percent of Asian American fourth-graders are proficient.

155. Similarly, while 66 percent of white fourth-graders are proficient at reading, only 34 percent of African American fourth-graders, 36 percent of Latino and Hispanic fourth-graders, 38 percent of Native American fourth-graders, and 51 percent of Asian American fourth-graders are proficient.

Figure 20: Minnesota Fourth Grade Students Demonstrating Proficiency by Race/Ethnicity

All Students	White, not of Hispanic Origin	Black, not of Hispanic Origin	Latino/Hispanic	American Indian/Alaska Native	Asian/Pacific Islander
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Math	70%	79%	43%	49%	49%	67%
Reading	58%	66%	34%	36%	38%	51%

156. Recent results show that the majority of Minnesota’s public school districts—including those that serve the largest concentrations of low-income students and students of color—are making little to no progress closing the gaps in educational outcomes that exist among low-income students and their more affluent peers, and/or students of color and their white peers.

157. As noted by Dr. Kent Pekel, President of the Minneapolis-based Search Institute, (a nonprofit organization dedicated to improving student education and development): “The vast majority of kids on the wrong side of the achievement gap are not in the schools that are making progress.”

2) The LIFO Provisions have a disproportionate adverse impact on low-income students and students of color

158. Minnesota’s low-income students and students of color are more likely to be taught by ineffective teachers protected from dismissal by the Tenure and Dismissal provisions than students attending schools serving more affluent and/or majority-white student bodies.

159. At the same time, low-income students and students of color are also more likely to be impacted by Minnesota’s LIFO provisions in the event of a district-wide quality blind layoff.

160. Annual teacher turnover rates are higher in schools serving predominately low-income students and students of color than they are in schools serving wealthier and/or majority-white student populations.

161. Consequently, staffing profiles at schools serving predominantly low-income students and/or students of color are less senior than at schools serving wealthier and/or majority-white populations.

162. The result is greater exposure to LIFO quality-blind layoffs.

163. Consequently, when LIFO quality-blind layoffs are implemented, low-income students and students of color are more likely to lose their teachers—including their best teachers (because seniority alone is not an accurate predictor of teacher effectiveness)—than students attending schools with more affluent and/or majority-white student bodies.

164. A comparison of the same schools surveyed above reveals the disparity of exposure to LIFO quality-blind layoffs.

Minneapolis Public Schools, Special School District No. 1

165. To recall, 97 percent of students at Bethune Elementary are eligible to receive FRL, 93 percent identify as students of color. Bethune’s teachers average 8 years of classroom experience, with 19 percent having taught for fewer than three years.

166. Conversely, at Hiawatha Elementary, where only 40 percent of students qualify for FRL and 61 percent of students are white, teachers average 19 years of experience, with just 6 percent having taught fewer than three years.

167. Thus, on average, children attending Bethune are more likely to lose their teachers—and possibly their best teachers—than are their peers at Hiawatha should the Minneapolis Public Schools implement layoffs pursuant to the LIFO Provisions.

Figure 21: Bethune Elementary & Hiawatha Elementary, Teacher Experience



168. The same general pattern plays out across the Minneapolis Public Schools, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

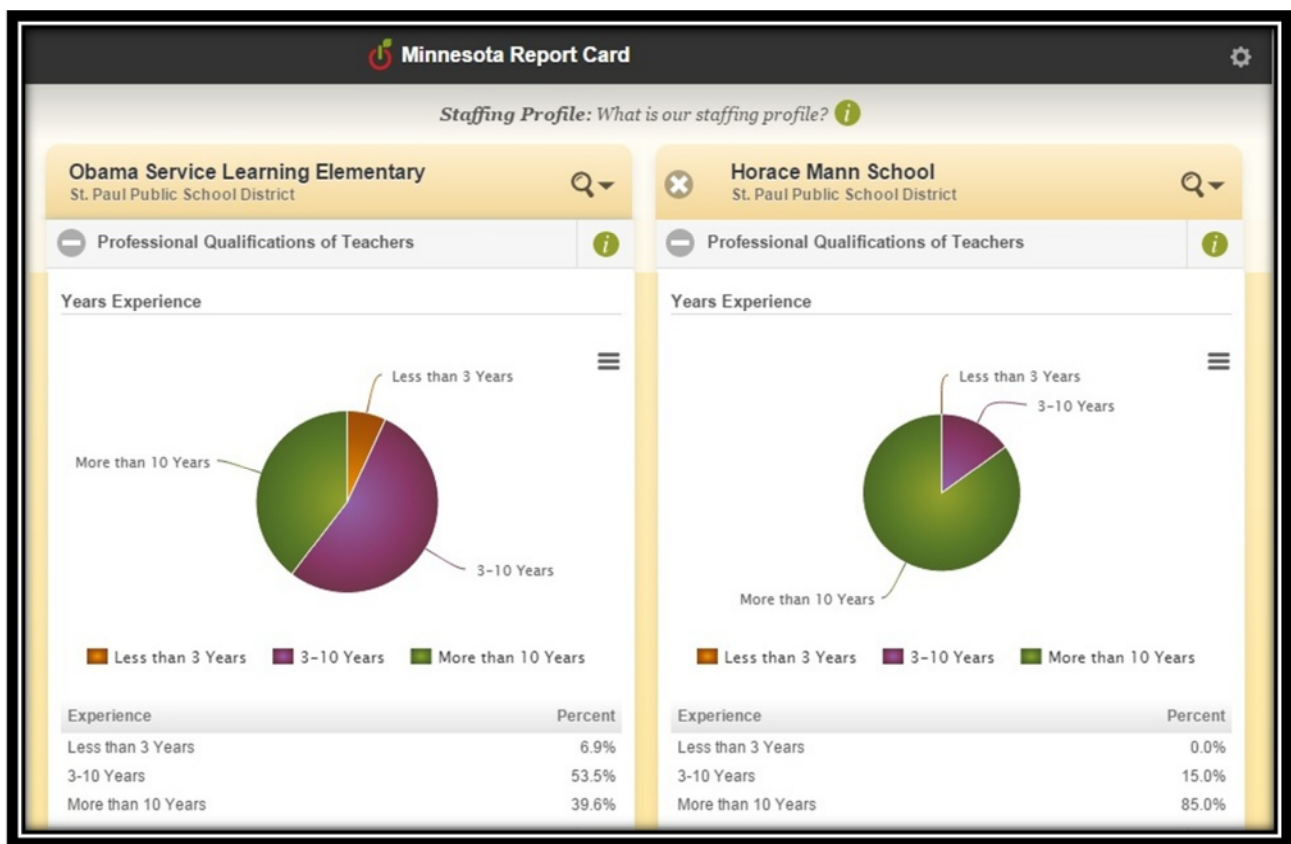
St. Paul Public Schools, ISD 625

169. The story repeats itself in St. Paul. At Obama Elementary—where 95 percent of students qualify for FRL and 99 percent identify as students of color—teachers average just 8 years classroom experience, the lowest among the St. Paul Public Schools. Seven percent of Obama Elementary’s teachers have taught fewer than three years.

170. Conversely, at Horace Mann Elementary, where only 25 percent of students receive FRL and 69 percent are white, teachers average 19 years of experience and no teachers have taught fewer than three years.

171. Thus, children attending Obama Elementary are more likely to lose their teachers—and possibly their best teachers—than are their peers at Horace Mann should the St. Paul Public Schools implement layoffs pursuant to the LIFO Provisions.

Figure 22: Obama Elementary & Horace Mann School, Teacher Experience



172. The same general pattern plays out across the St. Paul Public Schools, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

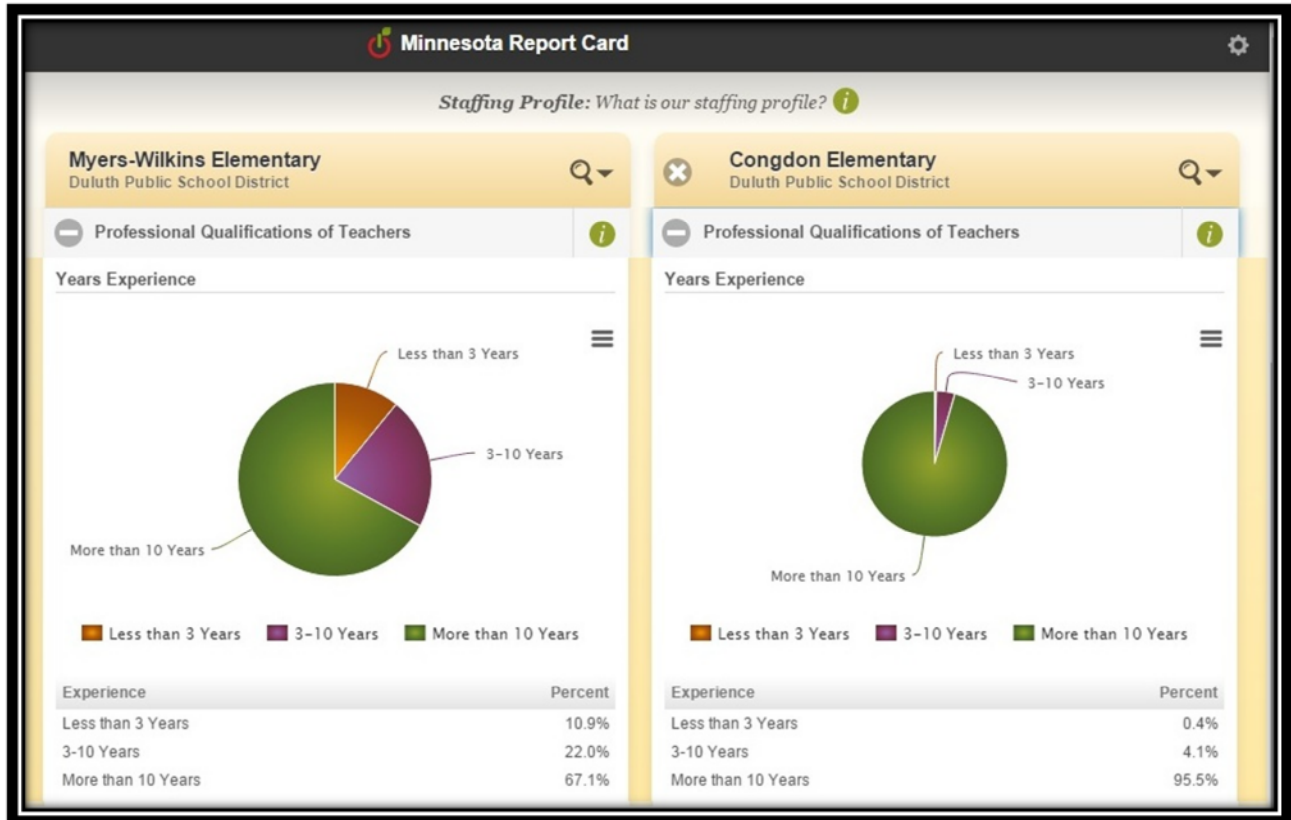
Duluth Public Schools, ISD 709

173. And, again, in Duluth: At Myers-Wilkins Elementary, 79 percent of students receive FRL and 52 percent identify as students of color. Teachers at Myers-Wilkins average 15 years classroom experience, with 11 percent having taught for fewer than three years.

174. At Congdon Elementary, where just 22 percent of students qualify for FRL and 81 percent of students are white, teachers average 25 years of classroom experience, with less than one percent having taught for fewer than three years.

175. Thus, again, children attending Myers-Wilkins are more likely to lose their teachers—and possibly their best teachers—than are their peers at Congdon should the Duluth Public Schools implement layoffs pursuant to the LIFO Provisions.

Figure 23: Myers-Wilkins Elementary & Congdon Elementary, Teacher Experience



176. The same general pattern plays out across the Duluth Public Schools district, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

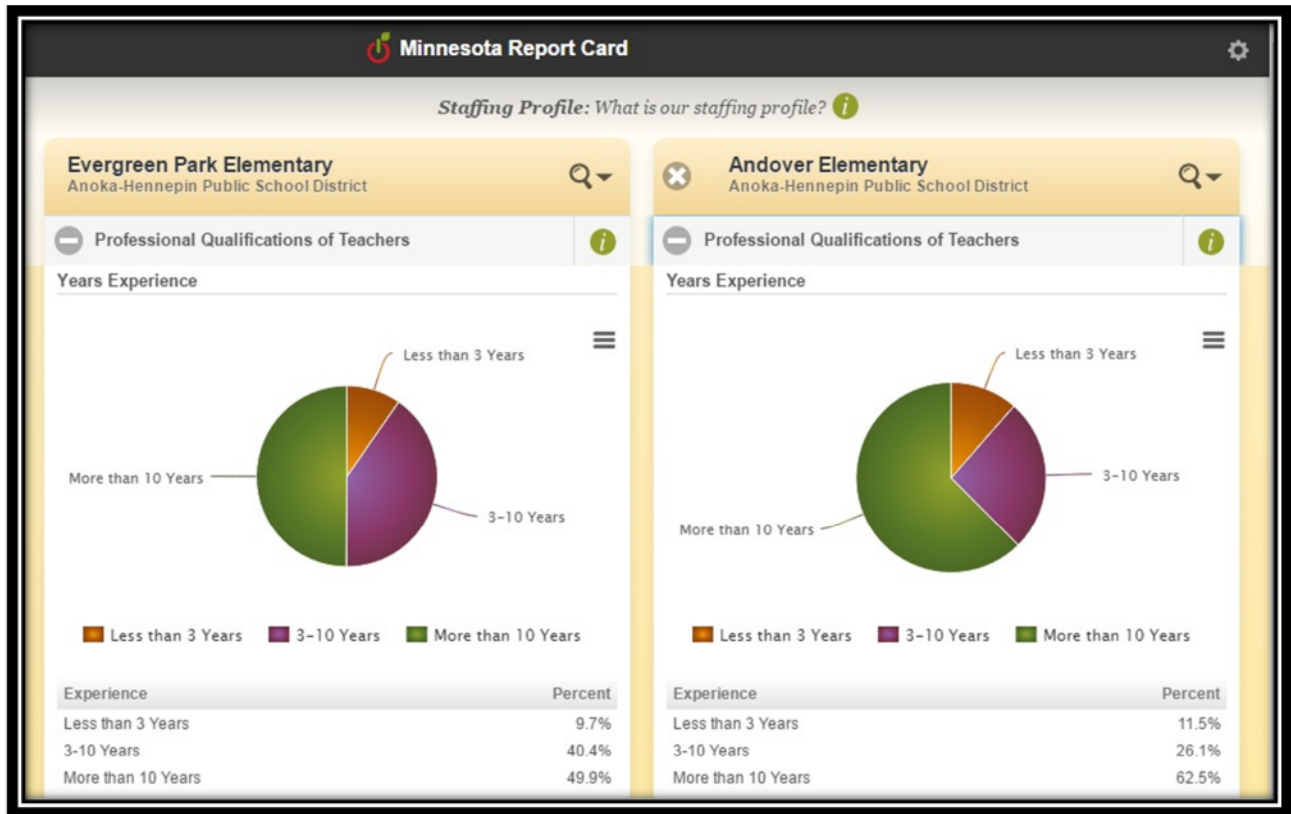
Anoka-Hennepin School District 11

177. In the Anoka-Hennepin School District, teachers at Evergreen Park Elementary average 10 years classroom experience, with 10 percent having taught fewer than three years. More than 75 percent of Evergreen Park's students qualify for FRL; 88 percent identify as students of color.

178. At Andover Elementary, where just 17 percent of students receive FRL and nearly 90 percent are white, teachers average 15 years of classroom experience, with 12 percent having taught fewer than three years.

179. Thus, on average, students attending Evergreen Park are more likely to lose their teachers—and possibly their best teachers—than are their peers at Andover should the Anoka-Hennepin School District implement layoffs pursuant to the LIFO Provisions.

Figure 24: Evergreen Park Elementary & Andover Elementary, Teacher Experience



180. The same general pattern plays out across the Anoka-Hennepin School District, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

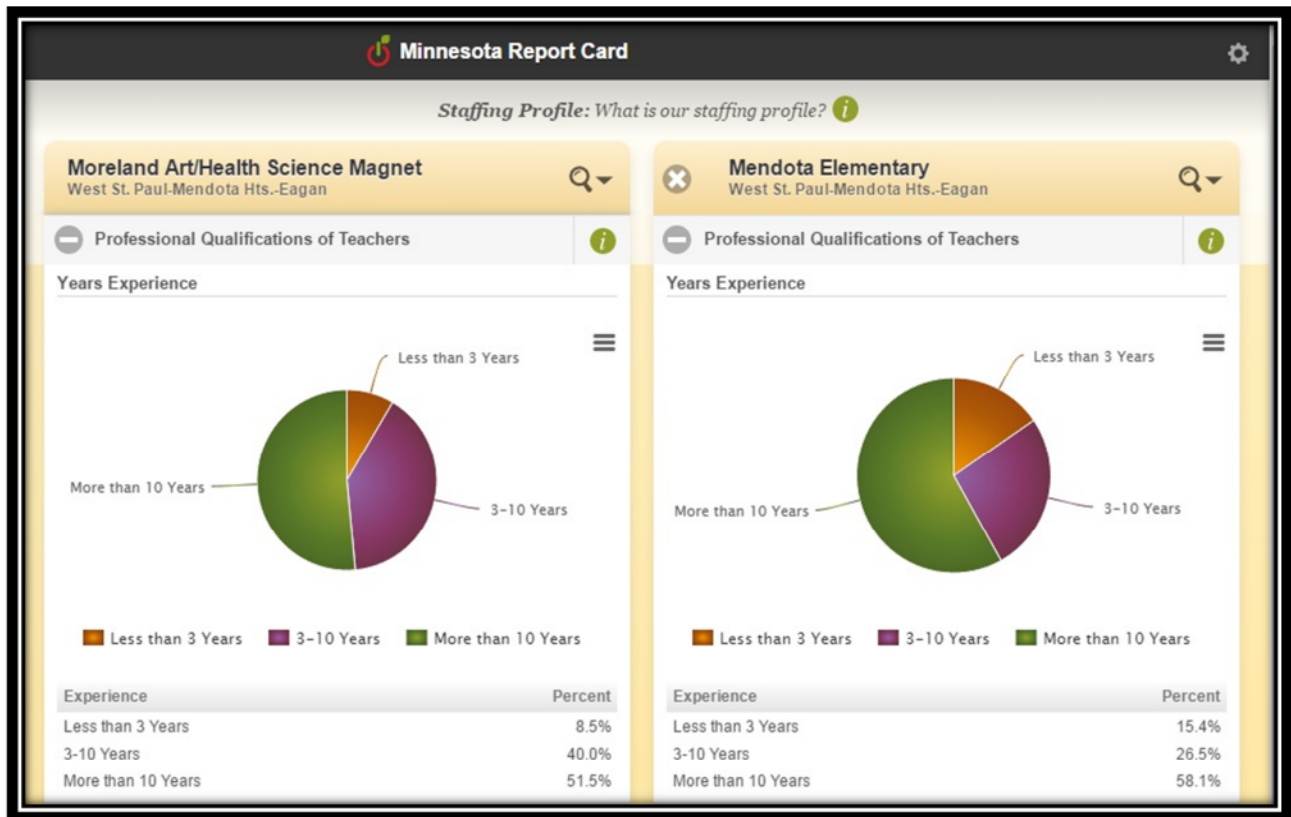
West St. Paul-Mendota Heights-Eagan Area Schools, ISD 197

181. The pattern repeats in the West St. Paul-Mendota Heights-Eagan Area Schools. At Moreland Arts & Health Sciences Magnet School, where 68 percent of students qualify for FRL and nearly as many identify as students of color, teachers average 13 years classroom experience, with 9 percent having taught fewer than three years.

182. At Mendota Elementary, where just 17 percent of students qualify for FRL and more than 80 percent are white, teachers average 15 years of classroom experience, with 15 percent having taught fewer than three years.

183. Again, the numbers suggest that Moreland’s students are more likely to lose their teachers—and possibly their best teachers—than are their peers at Mendota should the West St. Paul-Mendota Heights-Eagan Area Schools implement layoffs pursuant to the LIFO Provisions.

Figure 25: Moreland Arts & Health Sciences Magnet School & Mendota Elementary, Teacher Experience



184. The same general pattern plays out across the West St. Paul-Mendota Heights-Eagan Area Schools, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

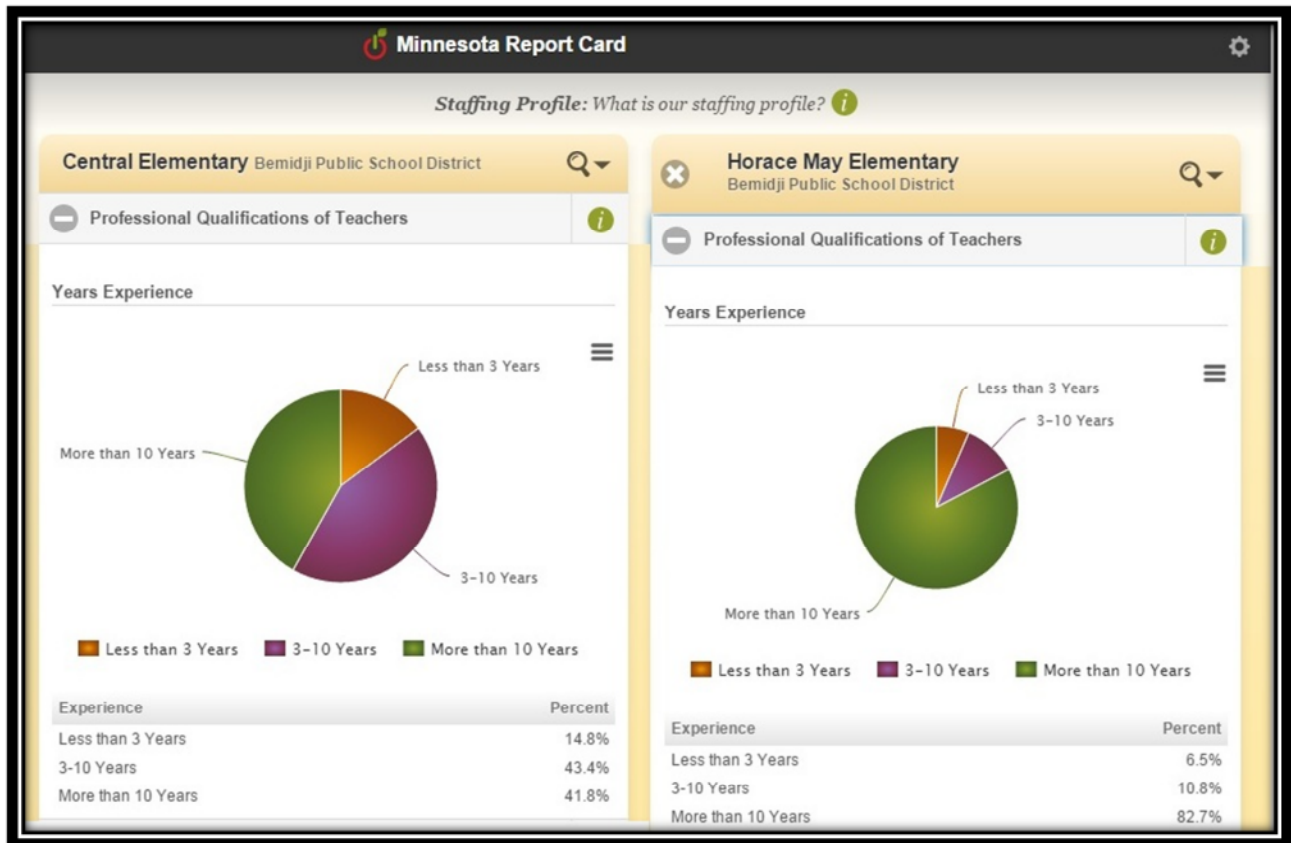
Bemidji Area Schools, ISD 31

185. And, finally, the Bemidji Area Schools: At Central Elementary, where 70 percent of students qualify for FRL, and 40 percent identify as students of color, teachers average 12 years classroom experience, with 15 percent having taught fewer than three years.

186. At Horace May Elementary, just 38 percent of students receive FRL and 84 percent are white. Horace May’s teachers average 19 years of classroom experience, with 7 percent having taught fewer than three years.

187. Children attending Central are, thus, more likely to lose their teachers—and possibly their best teachers—than are their peers at Horace May should the Bemidji Area Schools implement layoffs pursuant to the LIFO Provisions.

Figure 26: Central Elementary & Horace May Elementary, Teacher Experience



188. The same general pattern plays out across the Bemidji Area Schools district, with the consequence that low-income students and students of color are more likely to be affected by LIFO quality-blind layoffs than students attending schools serving more affluent and/or majority-white student populations.

189. In sum, the LIFO Provisions, like the Tenure and Dismissal Provisions, disproportionately impact low-income students and students of color, with the consequence that low-income students and students of color are disproportionately impacted in the event of district-wide quality-blind layoffs.

3) Past instances of disparate treatment under education laws and policies support an inference that the Challenged Statutes are disparately employed to the disadvantage of low-income students and students of color

190. Various judicial and administrative determinations have uncovered prior instances of bias in the administration of Minnesota’s education laws and policies.

191. Documented instances of systemic disparate treatment in the Minnesota public schools include:

- In 1984, following allegations that the St. Paul Public Schools provided unequal opportunities to Latino and Hispanic students, a U.S. federal district court entered a consent decree requiring the district to improve instructional opportunities for Latino and Hispanic students;
- In 1998, the Minnesota Department of Children, Families, and Learning issued a report concluding that “racism,” “poverty,” lack of teacher preparation, and schools’ inability “to provide effective instruction” contributed “to disproportional special education placement rates” among Native American and African American students;
- In 2011, the Owatonna Public Schools settled a federal complaint alleging that the district “meted out disproportionate discipline” to students of color;
- In 2014, following a determination that African American students were “significantly overrepresented in the district’s disciplinary actions,” the Minneapolis Public Schools entered an agreement with the U.S. Department of Education’s Office of Civil Rights (“OCR”) requiring the district to comprehensively re-assess disciplinary policies; and

- In 2015, an OCR investigation revealed similar disciplinary trends in the Rochester Public Schools, prompting the district to enter a settlement requiring that it submit to ongoing monitoring of its student discipline practices.

192. These past instances of disparate treatment under Minnesota’s education laws and policies support an inference that despite being neutral on their face, the Challenged Statutes are disparately employed to the disadvantage of low-income students and students of color.

E. The Challenged Statutes, individually and collectively, violate Minnesota students’ right to a uniform and thorough education, and to equal protection of law

193. As a direct result of the Challenged Statutes, both individually and collectively, ineffective teachers obtain permanent employment within the Minnesota public school system, retain employment despite ineffective performance, and avoid district-wide layoffs provided that they have obtained more seniority than effective teachers.

194. In the absence of the Challenged Statutes, school leaders would have more flexibility to avoid awarding near permanent employment to ineffective teachers, and to dismiss ineffective teachers based on ineffective classroom performance.

195. In addition, in the absence of the Challenged Statutes, school leaders would have the ability to attract teachers of superior performance to Minnesota’s public schools, retain high-performing teachers even during financially-driven layoffs, and provide incentives to encourage teachers to become or remain high performers.

196. The system created by the Challenged Statutes has a real and appreciably negative impact on the education that Minnesota public school students receive because, as a direct result of the Challenged Statutes, both individually and collectively, a subset of students of substantially the same age, aptitude, motivation, and ability as students receiving their rightful uniform and thorough education from effective teachers do *not* receive their rightful uniform and

thorough education because they have been, and will continue to be, assigned to teachers that are ineffective.

197. The students comprising the subset of students deprived of their rightful uniform and thorough education attend schools all over the State, including schools that are considered to be average or above-average in overall educational performance.

198. As demonstrated above, however, the Challenged Statutes, both individually and collectively, and the policies, contracts, and practices that flow from them, result in ineffective teachers being disproportionately assigned to schools serving the largest concentrations of low-income students and students of color. Thus, the Challenged Statutes, both individually and collectively, and the policies, contracts, and practices that flow from them have a disparate impact on low-income students and students of color, infringing their fundamental right to a uniform and thorough education to a greater degree than other students in Minnesota.

199. The Challenged Statutes therefore create an arbitrary distinction between schools that provide their students with the constitutionally required uniform and thorough education, and schools in which students are more likely to be taught by ineffective teachers.

200. Minnesota has no compelling interest in creating such arbitrary distinctions between students in different classrooms and/or schools, or in laws that create wealth-, race-, or ethnicity-based distinctions among students.

201. As such, the Challenged Statutes violate the Education and Equal Protection Clauses of the Minnesota Constitution.

202. A.D. is an example of a student suffering various constitutional deprivations as a result of the Challenged Statutes. A.D. attends (and has previously attended) a public school where the substantial majority of students receive FRL and also identify as students of color.

A.D.'s schools' performance on the MCAs lags well-behind statewide averages. On information and belief, A.D. has been assigned to, and/or is at substantial risk of being assigned to, an ineffective teacher, at the same time that students in other classrooms in the same school are assigned to effective teachers. Further, A.D. is disproportionately more likely to be assigned to ineffective teachers, and is likely to be assigned to more ineffective teachers, than students who attend schools that serve more affluent populations where fewer children identify as students of color because, on information and belief, A.D. attends (and has previously attended) a public school that has more than its proportionate share of ineffective teachers. Finally, A.D. has no mechanism by which to challenge the district's hiring and retention of ineffective teachers.

203. E.Q.'s story is similar. E.Q. currently attends (and has previously attended) a school where a significant majority of students qualify for FRL. Likewise, a substantial share of E.Q.'s classmates identify as students of color. E.Q.'s schools lag well-behind district and state performance averages on the MCAs. On information and belief, E.Q. has been assigned to, and/or is at substantial risk of being assigned to, an ineffective teacher, at the same time that students in other classrooms in the same school are assigned to effective teachers. Further, E.Q. is disproportionately more likely to be assigned to ineffective teachers, and is likely to be assigned to more ineffective teachers, than students who attend schools that serve more affluent populations where fewer children identify as students of color because, on information and belief, E.Q. attends (and has previously attended) a public school that has more than its proportionate share of such teachers. Finally, E.Q. has no mechanism by which to challenge the district's hiring and retention of ineffective teachers.

F. The Challenged Statutes, individually and collectively, violate Minnesota students' right to due process

204. Education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Minnesota Constitution. Thus, a public school student may not be deprived of her right to a uniform and thorough education without adherence to the minimum procedures required by due process.

205. At minimum, due process requires that a student facing deprivation of her fundamental right to education must be given some kind of notice and afforded some kind of hearing.

206. The Challenged Statutes—and, in particular, the Tenure and Dismissal Provisions—fail to provide *any* mechanism by which a public school student is notified that she is, will be, or has been taught by an ineffective teacher, despite the fact that the education provided by the ineffective teacher is substantially inferior compared to the education provided by an effective teacher.

207. The Challenged Statutes—and, in particular, the LIFO Provisions—fail to provide *any* mechanism by which a public school student is notified that she is, will be, or has been deprived of the opportunity to learn from an effective teacher due to a quality-blind layoff.

208. Likewise, the Challenged Statutes—and, in particular, the Tenure and Dismissal Provisions—fail to provide *any* mechanism by which a public school student may challenge her school's decision to grant tenure to an ineffective teacher, and/or continue to employ an ineffective teacher despite ineffective classroom performance.

209. Similarly, the Challenged Statutes—and, in particular, the LIFO Provisions—fail to provide *any* mechanism by which a public school student may challenge the fact that she has

been or will be deprived of the opportunity to learn from an effective teacher due to a quality-blind layoff.

210. J.C. and D.C. exemplify students suffering these injuries. Upon information and belief, the St. Paul Public Schools grant tenure to, and continue to employ ineffective teachers, including teachers directly responsible for J.C.'s and D.C.'s education. But despite the substantially inferior education delivered to J.C. and/or D.C. by ineffective teachers—which caused J.C. and D.C. to transfer to the West St. Paul-Mendota Heights-Eagan Area schools—J.C. and D.C. have never received notice that they are being taught by ineffective teachers, or been provided the opportunity to challenge a district's decision to grant tenure to or retain ineffective teachers.

211. K.F. has suffered similar injuries. Upon information and belief, the Anoka-Hennepin Public Schools grant tenure to, and continue to employ ineffective teachers, including teachers directly responsible for K.F.'s education. Upon further information and belief, the Anoka-Hennepin Public Schools have in the recent past engaged in quality-blind layoffs which have had the effect of depriving K.F. of the opportunity to learn from effective teachers. But despite the substantially inferior education delivered to K.F. by ineffective teachers, K.F. has never received notice that she is being taught by an ineffective teacher, or been provided the opportunity to challenge the Anoka-Hennepin Public Schools' decision to grant tenure to or retain ineffective teachers, *or* its decision to lay off effective teachers and spare ineffective teachers as a result of quality-blind layoffs.

VI. CLAIMS FOR RELIEF

**CLAIM ONE: EDUCATION CLAUSE
(TENURE PROVISIONS)**

212. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

213. The Tenure Provisions violate the Education Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

214. Education is a fundamental right for purposes of evaluating the constitutionality of Minnesota laws.

215. The Tenure Provisions violate the Education Clause of the Minnesota Constitution because they confer near permanent employment on ineffective teachers, thereby affecting a real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM TWO: EDUCATION CLAUSE
(DISMISSAL PROVISIONS)**

216. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

217. The Dismissal Provisions violate the Education Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

218. Education is a fundamental right for purposes of evaluating the constitutionality of Minnesota laws.

219. The Dismissal Provisions violate the Education Clause of the Minnesota Constitution because they prevent the removal of ineffective teachers and thus affect a real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM THREE: EDUCATION CLAUSE
(LIFO PROVISIONS)**

220. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

221. The LIFO Provisions violate the Education Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

222. Education is a fundamental right for purposes of evaluating the constitutionality of Minnesota laws.

223. The LIFO Provisions violate the Education Clause of the Minnesota Constitution because they result in certain effective teachers being laid off and other ineffective teachers maintaining their positions, thereby imposing a real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM FOUR: EQUAL PROTECTION CLAUSE, FUNDAMENTAL RIGHT
(TENURE PROVISIONS)**

224. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

225. The Tenure Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

226. Education is a fundamental right for purposes of evaluating statutes in light of the Minnesota Constitution's provisions guaranteeing equal protection of the law.

227. The Tenure Provisions violate the Equal Protection Clause of the Minnesota Constitution because they confer near permanent employment on ineffective teachers, thereby impinging certain students' right to a uniform and thorough education, and affecting a real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of substantially equal access to a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM FIVE: EQUAL PROTECTION CLAUSE, FUNDAMENTAL RIGHT
(DISMISSAL PROVISIONS)**

228. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

229. The Dismissal Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

230. Education is a fundamental right for purposes of evaluating statutes in light of the Minnesota Constitution's provisions guaranteeing equal protection of the law.

231. The Dismissal Provisions violate the Equal Protection Clause of the Minnesota Constitution because they prevent the removal of ineffective teachers, thereby impinging certain students' right to a uniform and thorough education, and affecting a real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of substantially equal access to a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM SIX: EQUAL PROTECTION CLAUSE, FUNDAMENTAL RIGHT
(LIFO PROVISIONS)**

232. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

233. The LIFO Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

234. Education is a fundamental right for purposes of evaluating statutes in light of the Minnesota Constitution's provisions guaranteeing equal protection of the law.

235. The LIFO Provisions violate the Equal Protection Clause of the Minnesota Constitution because they result in certain effective teachers being laid off and other ineffective teachers maintaining their positions, thereby impinging certain students' right to a uniform and thorough education, and affecting real and appreciable harm on an arbitrary subset of children of substantially equal age, aptitude, motivation, and ability, depriving them of substantially equal access to a uniform and thorough education minimally necessary to achieve academic benchmarks, compete in the marketplace, and participate in civil society, are not narrowly tailored, and do not otherwise serve any compelling government interest.

**CLAIM SEVEN: EQUAL PROTECTION CLAUSE, SUSPECT CLASSES
(TENURE PROVISIONS)**

236. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

237. The Tenure Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

238. Socioeconomic status, race, and ethnicity are suspect classes for purposes of evaluating the Tenure Provisions in light of Minnesota's Constitutional provisions guaranteeing a uniform and thorough education to all children and the equal protection of the law.

239. The Tenure Provisions, alone and in conjunction with the Dismissal Provisions and the LIFO Provisions, violate the Equal Protection Clause of the Minnesota Constitution because they result in a public schools system wherein the majority of Minnesota's non-FRL students receive their rightful uniform and thorough education whereas the majority of Minnesota's FRL students do not.

240. The Tenure Provisions, alone and in conjunction with the Dismissal Provisions and the LIFO Provisions, violate the Equal Protection Clause of the Minnesota Constitution because they result in a public schools system wherein the majority of Minnesota's white students receive their rightful uniform and thorough education whereas the majority of Minnesota's students of color do not.

241. Past instances of disparate treatment under Minnesota's education laws and policies support an inference that the Tenure Provisions, alone and in conjunction with the Dismissal Provisions and the LIFO Provisions, are disparately employed to the disadvantage of low-income students and students of color.

242. The Tenure Provisions are not narrowly tailored and the State of Minnesota has no compelling interest that would allow for the creation and maintenance of arbitrary and disparate treatment of students according to socioeconomic status, race, or ethnicity.

**CLAIM EIGHT: EQUAL PROTECTION CLAUSE, SUSPECT CLASSES
(DISMISSAL PROVISIONS)**

243. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

244. The Dismissal Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

245. Socioeconomic status, race, and ethnicity are suspect classes for purposes of evaluating the Dismissal Provisions in light of Minnesota's Constitutional provisions guaranteeing a uniform and thorough education to all children and the equal protection of the law.

246. The Dismissal Provisions, alone and in conjunction with the Tenure Provisions and the LIFO Provisions, result in a public schools system wherein the majority of Minnesota's non-FRL students receive their rightful uniform and thorough education whereas the majority of Minnesota's FRL students do not.

247. The Dismissal Provisions, alone and in conjunction with the Tenure Provisions and the LIFO Provisions, result in a public schools system wherein the majority of Minnesota's white students receive their rightful uniform and thorough education whereas the majority of Minnesota's students of color do not.

248. Past instances of disparate treatment under Minnesota's education laws and policies support an inference that the Dismissal Provisions, alone and in conjunction with the

Tenure Provisions and the LIFO Provisions, are disparately employed to the disadvantage of low-income students and students of color.

249. The Tenure Provisions are not narrowly tailored and the State of Minnesota has no compelling interest that would allow for the creation and maintenance of arbitrary and disparate treatment of students according to socioeconomic status, race, or ethnicity.

**CLAIM NINE: EQUAL PROTECTION CLAUSE, SUSPECT CLASSES
(LIFO PROVISIONS)**

250. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

251. The LIFO Provisions violate the Equal Protection Clause of the Minnesota Constitution, both on their face and as applied to Plaintiffs.

252. Socioeconomic status, race, and ethnicity are suspect classes for purposes of evaluating the LIFO Provisions in light of Minnesota's Constitutional provisions guaranteeing a uniform and thorough education to all children and the equal protection of the law.

253. The LIFO Provisions, alone and in conjunction with the Tenure Provisions and the Dismissal Provisions, result in a public schools system wherein the majority of Minnesota's non-FRL students receive their rightful uniform and thorough education whereas the majority of Minnesota's FRL students do not.

254. The LIFO Provisions, alone and in conjunction with the Tenure Provisions and the Dismissal Provisions, result in a public schools system wherein the majority of Minnesota's white students receive their rightful uniform and thorough education whereas the majority of Minnesota's students of color do not.

255. Past instances of disparate treatment under Minnesota's education laws and policies support an inference that the Tenure Provisions, alone and in conjunction with the

Tenure Provisions and the Dismissal Provisions, are disparately employed to the disadvantage of low-income students and students of color.

256. The Tenure Provisions are not narrowly tailored and the State of Minnesota has no compelling interest that would allow for the creation and maintenance of this arbitrary and disparate treatment of students according socioeconomic status, race, or ethnicity.

**CLAIM TEN: PROCEDURAL DUE PROCESS CLAUSE
(TENURE PROVISIONS)**

257. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

258. Education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Minnesota Constitution.

259. At minimum, due process requires that a student facing deprivation of her rightful uniform and thorough education must be given some kind of notice and afforded some kind of hearing.

260. The Tenure Provisions fail to provide *any* mechanism by which a public school student is notified that she is, will be, or has been taught by an ineffective teacher, despite the fact that the education provided by the ineffective teacher is substantially inferior to the education provided by an effective teacher.

261. Likewise, the Tenure Provisions fail to provide *any* mechanism by which a public school student may challenge her school's decision to grant tenure to an ineffective teacher.

262. Because the Tenure Provisions fail to provide students notice of and the opportunity to be heard regarding a school district's decision to grant tenure to an ineffective teacher, the Tenure Provisions have the effect of depriving Minnesota's school children of their

fundamental right to education without due process of law as guaranteed by the Minnesota Constitution.

**CLAIM ELEVEN: PROCEDURAL DUE PROCESS CLAUSE
(DISMISSAL PROVISIONS)**

263. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

264. Education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Minnesota Constitution.

265. At minimum, due process requires that a student facing deprivation of her rightful uniform and thorough education must be given some kind of notice and afforded some kind of hearing.

266. The Dismissal Provisions fail to provide *any* mechanism by which a public school student is notified that she is, will be, or has been taught by an ineffective teacher, despite the fact that the education provided by the ineffective teacher is substantially inferior to the education provided by an effective teacher.

267. Likewise, the Dismissal Provisions fail to provide *any* mechanism by which a public school student may challenge her school's decision to continue to employ an ineffective teacher even after years of ineffective classroom performance.

268. Because the Dismissal Provisions fail to provide students notice of and the opportunity to be heard regarding a school district's decision to retain an ineffective teacher, the Dismissal Provisions have the effect of depriving Minnesota's school children of their fundamental right to education without due process of law as guaranteed by the Minnesota Constitution.

**CLAIM TWELVE: PROCEDURAL DUE PROCESS CLAUSE
(LIFO PROVISIONS)**

269. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

270. Education is a fundamental right in Minnesota, as well as a property interest protected by the Due Process Clause of the Minnesota Constitution.

271. At minimum, due process requires that a student facing deprivation of her rightful uniform and thorough education must be given some kind of notice and afforded some kind of hearing.

272. The LIFO Provisions fail to provide *any* mechanism by which a public school student is notified that she is or will be deprived of the opportunity to learn from an effective junior teacher terminated from his position due to a quality-blind layoff. Likewise, the LIFO Provisions fail to provide *any* mechanism by which a public school student is notified that she is or will be taught by an ineffective senior teacher who retained her position during a quality-blind layoff, despite the fact that the education provided by the ineffective teacher is substantially inferior to the education provided by an effective teacher.

273. The LIFO Provisions also fail to provide *any* mechanism by which a public school student may challenge the fact that she is or will be deprived of the opportunity to learn from an effective junior teacher terminated from his position due to a quality-blind layoff. Likewise, the LIFO Provisions fail to provide *any* mechanism by which a public school student may challenge the fact that she is or will be taught by an ineffective senior teacher who retained her position during a quality-blind layoff, despite the fact that the education provided by the ineffective teacher is substantially inferior to the education provided by an effective teacher.

274. Because the LIFO Provisions fail to provide students notice of and the opportunity to be heard regarding a school district's decision to dismiss an effective teacher due to a quality-blind layoffs, and at the same time protect ineffective but more senior teachers, the LIFO Provisions deprive Minnesota's school children of their fundamental right to education without due process of law as guaranteed by the Minnesota Constitution.

**CLAIM TEN: DECLARATORY RELIEF
(ALL PROVISIONS)**

275. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

276. An actual and justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated the constitutional provisions cited herein.

277. Plaintiffs seek a declaration that the Tenure Provisions, the Dismissal Provisions, and the LIFO Provisions of the Contested Statutes (as defined herein) separately and together violate Minnesota public school students' right to a uniform and thorough education; their right to equal protection; and their right to due process, both facially and as applied to Plaintiffs.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court enter a judgment declaring that the Tenure Provisions, the Dismissal Provisions, and the LIFO Provisions of the Contested Statutes (as defined herein), separately and together, violate the Education Clause of the Minnesota Constitution.

2. Plaintiffs respectfully request that this Court enter a judgment declaring that the Tenure Provisions, the Dismissal Provisions, and the LIFO Provisions of the Contested Statutes

(as defined herein), separately and together, violate the Equal Protection Clause of the Minnesota Constitution.

3. Plaintiffs respectfully request that this Court enter a judgment declaring that the Tenure Provisions, the Dismissal Provisions, and the LIFO Provisions of the Contested Statutes (as defined herein), separately and together, violate the Due Process Clause of the Minnesota Constitution.

4. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining the enforcement, application, or implementation of the Tenure Provisions, the Dismissal Provisions, and the LIFO Provisions of the Contested Statutes (as defined herein).

5. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining Defendants from implementing at any time in the future, by law, by policy, or by contract, any system of teacher employment, retention and dismissal that is substantially similar to the framework implemented by the Challenged Statutes, in that it (1) provides ineffective teachers greater protections against dismissal than the due process rights applicable to other Minnesota state employees, or (2) prevents school leaders from meaningfully considering teacher effectiveness when making employment, retention and termination decisions.

6. Plaintiffs respectfully request that this Court retain continuing jurisdiction over this matter until such time as the Court has determined that Defendants have fully and properly complied with its Orders.

7. Plaintiffs respectfully request an award of costs, disbursements, and reasonable attorneys' fees and expenses pursuant to Minn. Stat. § 15.471–74.

FISHMAN HAYGOOD, L.L.P.

Dated: April 13, 2016

By /s/ James R. Swanson

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