STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Alejandro Cruz-Guzman, as guardian and next friend of his minor children; Me'Lea Connelly, as guardian and next friend of her minor children; Ke'Aundra Johnson, as guardian and next friend of her minor child; Izreal Muhammad, as guardian and next friend of his minor children; Roxxanne O'Brien, as guardian and next friend of her minor children; Diwin O'Neal Daley, as guardian and next friend of his minor children; Lawrence Lee, as guardian and next friend of his minor child; and One Family One Community, a Minnesota non-profit corporation,

Plaintiffs,

v.

State of Minnesota; Mark Dayton, Governor, State of Minnesota; Minnesota Department of Education; Dr. Brenda Casselius, Commissioner, Minnesota Department of Education; Minnesota Senate; Sandra L. Pappas, President of the Minnesota Senate; Minnesota House of Representatives; Kurt Daudt, Speaker of the Minnesota House of Representatives,

Defendants,

and

Higher Ground Academy; Mohamed Abdilli; Friendship Academy of the Arts; Sharmaine Russell; Paladin Career and Technical High School; Rochelle LaVanier

Defendants-Intervenors.

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AS MODIFIED

Judge Susan M. Robiner
Court File No. 27-CV-15-19117

The above-entitled matter came on for hearing on October 9, 2018 before the Honorable Susan M. Robiner, Judge of District Court, upon Plaintiffs' motion to certify a class. James Cook,

Esq. and Daniel R. Shulman, Esq. appeared on behalf of Plaintiffs. Karen D. Olson, Esq. and Kathryn M. Woodruff, Esq. appeared on behalf of Defendants. Jack Y. Perry, Esq. appeared on behalf of Defendants-Intervenors. Based upon the arguments of counsel and all the files, records, and proceedings herein, the Court rules as set forth below:

KEY FACTS ACCEPTED AS TRUE[1]

1. The Plaintiffs who are seeking to serve as class representatives are described herein.[2]
   a. Alejandro Cruz-Guzman resides in St. Paul, Minnesota with three school-aged children. One attends Central High School. Two children attend Groveland Elementary School. Cruz-Guzman has known former Plaintiffs' counsel John Shulman and Jeanne-Marie Almonor for approximately 20 years and provided services for their firm for a period of time.
   b. Me'Lea Connelly resides in Minneapolis, Minnesota with three school-aged children. One child has attended Anthony Middle School and now attends Anwatin Middle School. Two children attend Armatage Elementary School.
   c. Ke'Aundra Johnson resides in Minneapolis, Minnesota with one school-aged child. Her child attends a charter school, Mastery School, and previously attended a charter school, Best Academy. Plaintiffs concede that Johnson lacks standing because her child has not been attending schools in the Minneapolis or St. Paul Public School Districts. Plaintiffs' Reply Memo. at 7.
   d. Izreal Muhammad resides in Minneapolis, Minnesota with his twin school-aged children who attend Franklin Middle School in Minneapolis, Minnesota.

[1] Facts from the Complaint are accepted as true. *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d 929, 942 (D. Minn. 2018). Facts germane to this motion are summarized here.
[2] Unless otherwise noted, Plaintiffs are proceeding as guardians for their minor children.

e. Roxxanne O'Brien resides in Minneapolis, Minnesota with three school-aged children. One child attends Franklin Middle School. Two children attend Southside Family Charter School.

f. Diwin O'Neal Daley resides in Minneapolis, Minnesota and shares legal and physical custody of his two school-aged children with their mother. Both children attend Seward Montessori School.

g. Lawrence Lee resides in Minneapolis, Minnesota. He does not have legal or physical custody of the children that are the subject of this lawsuit and they do not reside with him. The children do not attend school in either the Minneapolis or St. Paul Public School Districts. Plaintiffs concede that Lee lacks standing because his children have not been attending schools in the Minneapolis or St. Paul Public School Districts. Plaintiffs' Reply Memo. at 7.

h. One Family One Community ("OFOC") is a Minnesota non-profit corporation located in the City of Minneapolis. Its primary purpose is to "provide services for homeless and disadvantaged persons in the Minneapolis-St. Paul metro area in areas of 'budgeting, credit repair, savings strategies, housekeeping, healthcare and HIV issues, GED and job readiness training.'" Olson Aff., Ex. 11. According to its Executive Director, its dual mission is organizing African-American people and fighting for housing justice. Plaintiffs' Reply Memo. at 9. It does not have members.

2. Plaintiffs allege that Defendants have violated the Education Clause of the Minnesota Constitution, the Equal Protection Clause of the Minnesota Constitution, and the Due Process Clause of the Minnesota Constitution, as well as the Minnesota Human Rights Act,[3] by failing

[3] The Minnesota Human Rights Act claim was dismissed by Order dated July 7, 2016.

to provide an adequate education due to practices and policies that create racially and socio-economically segregated[4] public schools in the Minneapolis and St. Paul School Districts.

3. Plaintiffs seek injunctive relief, specifically a judicial determination that Defendants have violated the constitutional rights of the Plaintiff class guaranteed under the Education Clause, the Equal Protection Clause, and the Due Process Clause of the Minnesota Constitution, and to enjoin Defendants from further violations.

4. Plaintiffs seek to certify a class defined as follows: All children enrolled during the pendency of this action in the Minneapolis Public Schools, Special School District No. 1, and the St. Paul Public Schools, Independent School District 625.

5. Despite previously defining the class to include students enrolled in charter schools in the Minneapolis and St. Paul Public School systems, Plaintiffs have narrowed their class definition to exclude students enrolled in charter schools.

CONCLUSIONS OF LAW

I. Introduction

Plaintiffs are seeking class certification pursuant to Minn. R. Civ. P. 23.01 and 23.02(b).[5] Minn. R. Civ. P. 23.01 states:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if
> (a) the class is so numerous that joinder of all members is impracticable;
> (b) there are questions of law or fact common to the class;
> (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

[4] The Court will use the term "segregated" when referring to Plaintiffs' allegations in order to accurately describe what is being alleged. It will use the term "imbalanced" otherwise, recognizing that the word "segregated" often connotes an intentional policy of separating races, or other protected classes, which policy has not been established.

[5] A class action may be brought under Minn. R. Civ. P. 23.02(b) where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." In a footnote in their Reply brief, Plaintiffs also asked the Court to certify the class pursuant to Minn. R. Civ. P. 23.02(a)(1). The request was not properly made and will not be addressed.

(d) the representative parties will fairly and adequately protect the interests of the class.

Minn. R. Civ. P. 23.01

Plaintiffs must establish that all factors are satisfied. The court should accept the substantive allegations contained in the complaint but should also look beyond the pleadings to ensure the factors have been met. *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d 929, 942 (D. Minn. 2018) (court accepts substantive allegations as true in determining if proposed class is acceptable); *In re Teflon Prod. Liab. Litig.*, 254 F.R.D. 354, 360 (S.D. Iowa 2008).

Additionally, Plaintiffs must satisfy two "implicit" requirements: 1) that the class is adequately defined and objectively ascertainable; and 2) that the proposed class representatives have standing to act as class representatives. *Brown v. Wells Fargo & Co.*, 284 F.R.D. 432, 444 (D. Minn. 2012); *Portz*, 297 F. Supp. 3d at 941, citing *Sandusky Wellness Ctr. v. Medtox Scientific, Inc.*, 821 F.3d 992, 996 (8th Cir. 2016). These implicit requirements are addressed first.

II. Implicit Requirements: Clearly-Defined Class and Standing

A. Class Definition

A class definition must be adequately defined and objectively ascertainable. In short, one should be able to determine without difficulty who is in the class. *Gardner v. Equifax Info. Servs., LLC,* 2007 WL 2261688, at *3 (D. Minn. Aug. 6, 2007).

If a proposed class definition is fatally overbroad or cannot be ascertained, a court may redefine the class to maintain class action status. *Portz*, 297 F. Supp. 3d at 942 (court may redefine class to accommodate certification).

Here, Defendants appear to pose two challenges to the class definition. First, they assert that the class is not ascertainable because it will include future students who become enrolled over the course of the lawsuit but are not enrolled now; and conversely, students who are enrolled now

but who will graduate or otherwise leave the districts and therefore fall out of the class definition. Second, they assert that the class definition is too broad in that it includes persons not injured by the alleged wrong – i.e. students who attend schools that are racially and socio-economically balanced and students who perform sufficiently well on achievement tests to not suffer from the achievement gap effect. As discussed below, neither argument defeats the class definition.

Here, the Court concludes that the class is objectively ascertainable. Put simply, one can objectively determine who is enrolled in the Minneapolis and St. Paul Public School Districts at any given time.[6] The fact that the enrollees vary over time (due to students entering and leaving the districts) does not make class membership less ascertainable. Class membership does not have to be static to be ascertainable. *See, e.g., Portz*, 297 F. Supp. 3d at 943 (including future students does not render class unascertainable).

Defendants raise a legitimate point in their overbreadth argument – i.e. the proposed class definition captures persons who may not be injured by the alleged segregation because they do not actually attend school in a racially or socio-economically imbalanced school. However, this point is better addressed in the context of analyzing standing since it is essentially an argument that the class includes persons without standing.

B. Standing of Plaintiffs as Class Representatives

Defendants raise three arguments to challenge Plaintiffs' standing: 1) that certain named Plaintiffs do not fit within the proposed class definition; 2) that generally, the class definition is broad enough to include students who attend schools that are not imbalanced and therefore they

[6] In this way, the proposed definition here is very different from those found in *White v. Williams*, 208 F.R.D. 123, 129 (D.N.J. 2002) and *Adashunas v. Negley*, 626 F.2d 600, 601 (7th Cir. 1980). Those cases involved extremely untenable proposed class definitions, which were either grossly overbroad or which posed serious difficulties in even identifying who would belong to the class.

cannot show injury in fact – a prerequisite to standing; and 3) that certain class representatives are inappropriate due to their lack of knowledge or understanding of the issues in suit.

First, with regard to specific potential class representatives, Defendants argue that Johnson, Lee, and OFOC do not fit into the proposed definition. Plaintiffs concede that neither Lee nor Johnson have standing and they will not be permitted to proceed as class representatives.

Regarding OFOC, Plaintiffs assert that it has associational standing. They rely on the affidavit and deposition testimony of Executive Director Kimmons who testified to the organization's mission and commitment to quality public education for persons of color and economically disadvantaged persons.

An association has standing to sue on behalf of its members where "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (U.S. 1977); *see also State by Humphrey v. Phillip Morris Inc.*, 551 N.W.2d, 490, 498 (Minn. 1996) (adopting *Hunt* associational standing analysis). On the other hand, merely having "an organizational interest in the problem" does not confer standing on an organization regardless of the depth and sincerity of its interest. *Sierra Club v. Morton*, 405 U.S. 727, 738-39 (1972).

Based on the record before the Court, OFOC lacks standing. It has no members. Its interest is purely ideological. Such an interest, despite its depth and sincerity, does not confer standing. *Sierra Club*, 405 U.S. at 739.

Second, Defendants assert that proposed class representatives lack standing because in certain instances, the children attend schools that are not imbalanced and therefore they cannot

show injury in fact – a prerequisite to standing. Similarly, they argue that certain children cannot establish injury in fact because they have not pled academic injury.

The Complaint alleges injury in the form of segregated school settings, and academic achievements gaps adversely affecting non-white and economically disadvantaged students that are allegedly caused by the segregated school settings. Yet, by proposing to define the class to include *all* students in the public schools, one necessarily includes students enrolled at schools that are not imbalanced; one necessarily includes students at all levels of academic performance; and one necessarily includes students of all races and socio-economic classes. Consequently, the proposed class definition necessarily includes students who are not injured.

To support their broad class definition, Plaintiffs point out that the "first lawsuit brought to challenge segregation in the Minneapolis Public Schools," *Booker v. Special School Dist. No. 1 Minneapolis, Minn.*, 351 F. Supp. 799 (D. Minn. 1972), was brought on behalf of a class defined to include "all school children residing in Minneapolis, Minnesota." Plaintiffs' Reply Memo. at 23. But the Court is not persuaded by the mere observation that the 1972 federal case defined the class to include all students in the Minneapolis Public Schools. Plaintiffs refer to no analysis to support that class certification and the cited case contains no analysis.

Plaintiffs also argue that only one plaintiff need have class standing and there is more than one plaintiff who falls within the proposed class without dispute. This is true. There are plaintiffs who have children enrolled in imbalanced schools and they could function as class representatives. But this response misses the point. Here, there is the very real possibility that there are students in the proposed class definition that are not injured: i.e. students currently enrolled in balanced schools. Hence, the definition is overbroad because it includes students who may not suffer injury in fact.

Yet, this overbreadth is not fatal to class certification. The *Portz* court faced this same overbreadth issue. There, Plaintiffs were female student athletes and members of the varsity women's tennis and Nordic skiing teams. They alleged that MNSCU's policies regarding allocation of athlete participation benefits, financial allocations, and allocation of benefits for athletes violated Title IX. They sought class certification on behalf of "[a]ll present and future St. Cloud State University female students who participate, seek to participate, or have been deterred from participating in intercollegiate athletics at St. Cloud State University." *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d at 942. Defendants argued that the proposed class was too broad because it included female student athletes who were effectively accommodated and therefore suffered no injury. The Court agreed that not all members of the class as proposed by Plaintiffs could claim injury in fact. It remedied this problem by redefining the class as "All present, prospective, and future female students at St. Cloud State University who are harmed by and want to end St. Cloud State University's sex discrimination in: (1) the allocation of athletic participation opportunities; (2) the allocation of athletic financial assistance; and (3) the allocation of benefits provided to varsity athletes." *Id.* at 943.

Here, like *Portz*, the class definition should be modified to include and only include persons who experience the alleged injury. The Court adopts the following redefined class definition: "All children who are enrolled during the pendency of this action in a school in the Minneapolis Public Schools, Special School District No. 1, or the St. Paul Public Schools, Independent School District 625, that is racially or socio-economically imbalanced as defined herein: a school with less than 20% or more than 60% minority students or students eligible for free-or-reduced price meals.[7]

[7] The Court is adopting the definition of an unconstitutionally segregated school put forth by Plaintiffs. *See* Plaintiffs' Response to Defendants' Request for Admission Nos. 4 and 5. In doing so, the Court expresses no opinion as to whether, as a matter of law, any particular percentage of minority or socio-economically disadvantaged students is constitutionally suspect.

Third, Defendants argue that certain class representatives are inappropriate due to their lack of knowledge or understanding of the issues in suit. This argument relates to the adequacy of Plaintiffs' representation and is addressed *infra* at 12.

For the reasons set forth above, the Court concludes that Plaintiffs have met the implicit requirements for class certification.

III. Rule 23.01 Requirements: Numerosity, Commonality, Typicality, and Adequacy of Representation

A. Numerosity

Numerosity is conceded.

B. Commonality

A class action is proper where the case is dominated by common issues of law and fact that are capable of class-wide resolution. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

Here, Plaintiffs assert that commonality is established because the question is common to all class members: are students in the Minneapolis and St. Paul Public School Districts being denied an adequate education by virtue of Defendants' policies, which serve to create and sustain a segregated educational environment?

Defendants argue that there is no commonality because Plaintiffs improperly focus on the common question (have Plaintiffs been denied an adequate education?) and fail to recognize that they lack common answers. Defendants' Response Memo. at 21. In Defendants' view, "resolution of Plaintiffs'/Class representatives' chosen claims will involve a number of individualized inquiries" into whether students chose their schools, or how each student performed in school. Defendants' Response Memo. at 21. According to Defendants, these individualized inquiries defeat commonality.

However, Defendants have reframed Plaintiffs' theory of the case to reach this conclusion. If one accepts Plaintiffs' allegations, as the Court must, they have articulated a common solution "capable of class-wide resolution." They allege that various policies enacted by Defendants have resulted in *de facto* segregation - a condition that itself represents an inadequate education and further that desegregation contributes to an achievement gap for some students which constitutes another facet of the claimed inadequate education.[8] The proposed class-wide resolution is to order Defendants to desegregate their schools.[9]

With the class defined as students enrolled in racially and/or socio-economically imbalanced schools, Plaintiffs share common questions of law posed by the Complaint. And while the specific policies challenged by Plaintiffs, (e.g. school attendance boundary decisions, open enrollment policies, creation of charter schools), affect different Plaintiffs differently and to varying degrees, the class-wide resolution proposed by the Complaint (i.e. desegregation), would allegedly provide relief for all class members. *Portz*, 297 F. Supp. 3d at 945 (what matters is "the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation"). The commonality requirement is met.

C. Typicality

The typicality requirement is met where the dominant claims of class representatives are typical of the class claims. The factor overlaps with the commonality standard, *see Dukes,* 564 U.S. at 349 n. 5 ("[t]he commonality and typicality requirements of Rule 23(a) tend to merge"),

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[8] Put another way, poor academic performance is not a required element of injury under Plaintiffs' theory of liability. It is an injury Plaintiffs associate with segregated school environments but it is not the sole wrong. Plaintiffs allege that a segregated school environment itself, without more, is a wrong. They do so relying on settled law that *de jure* segregated schooling violates equal protection. *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 495 (1954) ("Separate educational facilities are inherently unequal" and violate the Equal Protection Clause). Of course, the parties dispute the applicability of this precedent and the elements necessary to find Defendants liable for this *de facto* segregation. But that issue is not in front of the Court on this motion.

[9] *See* Complaint, at 38 (Prayer for Relief includes ordering Defendants to provide Plaintiffs with a desegregated education).

but is intended to assure that class representatives will be sufficiently motivated to protect class interests due to the class claims being typical of their own claims. *Newberg on Class Actions* § 3:28 (5th ed. 2011) ("[T]ypicality insists that the class representative be a member of the class and have claims similar to those of other class members, and the requirement rests upon the belief that such a representative, pursuing her own interests, will pursue the class's as well").

Typicality is a fairly easy standard. *Portz*, 297 F. Supp. 3d at 946 ("burden of typicality is 'fairly easily met so long as other class members have claims similar to the named plaintiff'"). It is satisfied when the claims of the named plaintiffs "emanate from the same event or are based on the same legal theory as the claims of the class members." *Lockwood Motors, Inc. v. Gen. Motors Corp.*, 162 F.R.D. 569, 576 (D. Minn. 1995) (internal quotations omitted). Factual variation among plaintiffs, as is present here, will not defeat typicality especially where there is a strong legal theory binding class members. Additionally, plaintiffs who believe they are not injured do not defeat typicality. *See Wilder v. Bernstein*, 499 F. Supp. 980, 993 (S.D.N.Y. 1980); *United States v. Fidelity & Guar. Co. v. Lord*, 585 F.2d 860, 873 (8th Cir. 1978) (Plaintiff personally satisfied with status quo "simply not dispositive" of typicality or adequacy). For these reasons, and on this record, the Court concludes that the typicality requirement has been met.

D. Adequacy of Representation

The adequacy of representation requirement has two components: one focuses on the adequacy of class counsel; the other focuses on the adequacy of the class representatives. *Ario v. Metro. Airports Comm'n*, 367 N.W.2d 509, 513 (Minn. 1985).

Here, Defendants concede that Plaintiffs' counsel is adequate. The Court agrees. Class counsel are strongly suited to representing this class given their professional qualifications, and depth of experience in precisely this type of class action.

Defendants do challenge whether Plaintiffs are adequate class representatives raising arguments raised elsewhere: they are ill-informed and have "abdicated" responsibility; there is no information about their children's academic performance, race, or whether they fall into any "suspect class" for purposes of an Equal Protection analysis; and certain Plaintiff students do not attend a school that fits Plaintiffs' definition of being unconstitutionally segregated. *See supra* at 9, n. 7.

The Court has already addressed certain of these concerns. Specifically, the lack of information about academic performance or racial or socio-economic status is not fatal given Plaintiffs' theory of the case. *See supra* at 10-11. And the class has been redefined by the Court to include only students who are enrolled at racially and/or socio-economically imbalanced schools. Moreover, the failure to allege suspect class membership is not fatal to Plaintiffs' Equal Protection count since Plaintiffs are proceeding on a fundamental right theory.

Defendants rely on one case to support their claim that Plaintiffs have abdicated responsibility. Response Memo. at 29-30, citing *Berger v. Compaq Computer Corp.*, 257 F.3d 475, (5th Cir. 2001). Yet, *Berger* was a securities fraud action under the Private Securities Litigation Reform Act (PSLRA) which contains an express requirement that "securities class actions be managed by active, able class representatives." *Berger*, 257 F.3d at 483. Outside the PSLRA context, the adequacy factor primarily "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Here, none appears to exist.[10] Finally, the Court notes that Plaintiffs have advanced their interests for over two years, during which time most of their claims survived a motion to dismiss that was appealed all the way to the Minnesota Supreme Court. Given this record and procedural

[10] Court will not address the claim that Guzman's relationship with John Shulman and Jeanne-Marie Almonor constitutes a conflict as both counsel have withdrawn.

history, Plaintiffs have demonstrated sufficient commitment and knowledge to be considered adequate to the task of representing the class.

IV. Notice to Class Members

In their response, Defendants raised the issue of whether class notice should be required. Plaintiffs oppose class notice. Defendants support class notice.

Both parties recognize that notice is not required in a Minn. R. Civ. P. 23.02(b) class action. Consequently, the issue is not germane to the motion before the Court – i.e. class certification *vel non*.

This Court usually avoids issues that are not before it. Hence, the Court will not require notice at this time. It will permit either party to move to require class notice within the time period permitted for motion practice. Any such motion should address how the cost would be borne, and who would supervise and monitor such notice. The parties should also consider the following points:

- Publicity is not notice. They are unrelated.
- Since class members cannot opt out of the class, notice is not critical to protecting individual interests.
- Notice costs money. Both sides have alerted the Court to their limited funds.
- Both parties hint at an ulterior motive for notice – i.e. to garner support for a particular position in the litigation. This is not the purpose of class action notice.

V. Conclusion

In their class certification briefs, the parties occasionally presaged fundamental issues that will arise during this lawsuit. All such premature arguments were purposely avoided by the Court in the above analysis. And nothing in this order is intended to communicate any position regarding

those as-yet unripe and unresolved issues. *See Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 178 (1974) (court not to consider merits of plaintiff's case in determining certification motion).

ORDER

For the reasons set forth herein,

1. Plaintiffs' Motion to Certify a Class is GRANTED as modified;
2. Plaintiffs Lee, Johnson, and One Family, One Community are hereby dismissed from the action without prejudice to pursue individual claims; all other Plaintiffs are hereby appointed as class representatives;
3. The class is defined as follows:

> All children who are enrolled during the pendency of this action in a school in the Minneapolis Public Schools, Special School District No. 1, or the St. Paul Public Schools, Independent School District 625, that is racially or socio-economically imbalanced as defined herein: a school with less than 20% or more than 60% minority students or students eligible for free-or-reduced price meals.

BY THE COURT:

Dated: November 26, 2018

Susan M. Robiner
Judge of District Court