



District
Management
Group

COMMENTARY

Responding to Unfunded and Unfavorable Mandates: Florida's Class-Size Amendment

by Dr. Ed Pratt-Dannals

Originally published in *District Management Journal*, v.10, Spring 2012

Enforcing the amendment has meant that, even as we must reduce overall spending, two-thirds of our operating budget—the portion spent on classroom teachers—is not only protected from cuts, but indeed demands more money.



Responding to Unfunded and Unfavorable Mandates: Florida's Class-Size Amendment



In the past five years, our district's revenue has plunged by 9.14% and our fixed expenses have increased by 3.6% each year. In the same period, our average class size has dropped by 2.59 students.

What gives? Did we here in the Duval County Public Schools (DCPS) find an elixir that allowed us to avert the fiscal crisis? Far from it. Florida, already a low-spending state on education, has been especially hard hit by the recession. Yet, while we have been enduring the full brunt of the downturn, we have had an additional straitjacket imposed on us. In 2002, the voters of Florida ratified a state constitutional amendment capping K-12 public education class sizes. The amendment made Florida the only state in the nation to limit class sizes by constitutional amendment.¹ For the other 34 states with a limit on class sizes, it is statutory rather than constitutional in nature.² Enforcing the amendment has meant that, even as we must reduce overall spending, two-thirds of our operating budget—the portion spent on classroom teachers—is not only protected from cuts, but indeed demands more money.

Though the amendment has been on the books for ten years, the magnitude of its ramifications did not completely hit home until the 2009-10 school year. This was the first time that we had to enforce the limit at the much more onerous level of each and every classroom. The individual classroom requirement was the culmination of a progressively more rigorous implementation schedule that mandated compliance first as a district-wide average, then as a school-wide average, and, finally, as an absolute classroom number.³

Beyond the ill-advised wisdom of putting all of our financial eggs in the class-size basket, the state has not fully funded the amendment. This leaves districts with a “Sophie’s Choice” of using dwindling operating funds intended for other purposes to fully meet the amendment. Our district has spent \$26 million beyond what the state has allocated to meet the class-size requirement. We must choose between spending an additional \$12–15 million each year or facing financial penalties for non-compliance.

A Sneak Peak into the “New Normal”

I concede that Duval’s predicament, and that of other districts in the state of Florida, represent a ▸

Duval County Public Schools Fast Facts

| | 2006-07 | 2011-12 | Percent Change |
|----------------------|----------------|----------------|-----------------------|
| Revenue | \$915,393,726 | \$830,763,813 | -9% |
| Expenditures | \$895,214,415 | \$877,827,328 | -2% |
| Surplus(Deficit) | \$20,179,311 | \$-47,063,515 | |
| Number of Teachers* | 7,747 | 7,441 | -4% |
| Number of Students** | 125,025 | 120,538 | -4% |
| Average Class Size | 20.62 | 18.03 | -13% |

*General Fund teachers only

**Excludes charter enrollment

Source: DCPS

singular set of circumstances. Yet, the uniqueness is only in the specific legal details. Will other states follow Florida in enshrining a class-size limit in the state constitution? Probably (hopefully) not! Will other states continue to burden their districts with unfunded mandates, of which Florida's class-size amendment is but a single, albeit severe, example? Almost certainly yes!

Enforcing the amendment has meant that, even as we must reduce overall spending, two-thirds of our operating budget—the portion spent on classroom teachers—is not only protected from cuts, but indeed demands more money.

My story therefore paints a more nuanced and, I think, accurate picture of the true dimensions of the “new normal.” Notwithstanding the pervasive use of the term, the new normal is not the only issue that school districts must confront. As tough as fiscal conditions themselves are, the new normal instead becomes the backdrop that informs and complicates all the other decisions that districts must make.

In this reformulation, the key challenge may not be simply to *allocate* more limited resources to what you would like to do, but rather to *reallocate* more limited resources to what you would not like, but are compelled, to do. Wrestling with the increasingly stringent class-size requirement amid a fiscal crisis has served as a reminder that, in a school district, perhaps the only constant is the dynamism of the challenge. Given this flux, it becomes critical to be able to distinguish what can be done from what should be done and to forge the best possible course of action given the constraint.

How Did We Get Here?

What is now a pressing concern of superintendents statewide is rooted in more provincial considerations. For some Floridian districts, passing a class-size amendment offered hope of breaking the age-old tradeoff between maintaining small class sizes and being able to pay teachers more money. Some of the largest districts in Southern Florida, such as Palm Beach, Broward, and Miami-Dade Counties, had encountered this tradeoff pointedly. These districts boasted the largest class sizes and, commensurately, the highest teacher salaries in the state.⁴ Framing class size as a statewide concern that warranted state funding, these districts projected, would enable them to continue to raise teacher salaries and the larger class sizes that supported them. A constitutional amendment would then make state funds available to help the districts come into compliance by paying for the necessary reductions in class size.⁵

The calculus may have been local, but the appeal was broader. Northern Floridian districts such as ours did not have especially large classes and we were concerned that the state funding that would support implementing the amendment would flow largely to the Southern Floridian districts where the problem resided. Yet even voters in districts where class size did not pose an issue liked the idea of safeguarding small sizes. The amendment passed in 2002 with 52% of the vote (now the Florida Constitution requires 60% of the vote to amend).⁶ It called for state provision to ensure that, by fall 2010, the maximum number of students in a core class would be as follows:

| Grade Group | Maximum Number |
|-------------|----------------|
| K-3 | 18 |
| 4-8 | 22 |
| 9-12 | 25 |

It cast these standards in lofty rhetoric: “to assure that children attending public schools obtain a high quality education.”⁷



A Clash of Theories of Action

How could anyone oppose such a ringing charge? Reading the text per se in the ballot box, voters may not have discerned the amendment's systemic implications. The resource limitation of the past few years has brought a clarity to the ramifications of the amendment that may have been missing in 2002.

In a world in which money were not an issue, a class-size limit could simply be one more input in what Professor Michael Kirst has called the "reform by addition" approach that prevailed until recently.⁸ In a world in which money is very much an issue, protecting small class sizes at all cost makes it the implicit theory of action for driving student outcomes.

The problem is that exalting small class sizes above all else is not the theory of action that we in Duval have adopted. We subscribe to an "aligned instruction system" theory of action. Here, district-wide curricula, high standards, frequent

Will other states continue to burden their districts with unfunded mandates, of which Florida's class-size amendment is but a single, albeit severe, example? Almost certainly yes!

assessments, excellent teachers and principals, and clear accountability ensure that all students in the district receive a similarly rigorous education.

With these tight linkages, small class sizes may be even less important here than they are in general (and even in general, the effect of small class sizes has been found at best to be mixed).⁹ ▸



Superintendent Ed Pratt-Dannals working with a student in the district

In a world in which money is very much an issue, protecting small class sizes at all cost makes it the implicit theory of action for driving student outcomes.

Certainly, small class sizes are always preferable. But other line items play a far more crucial role in advancing our theory of action. With this in mind, we had always resorted to adding a few more students per classroom as one of the most painless ways to respond to a budget shortfall. Indeed, a study released last year by the Harvard Program on Education Policy and Governance analyzed student achievement in reading and math from 4th through 8th grades and concluded that

Florida's class-size reduction had "little, if any, effect."¹⁰

Now, of course, the option of accepting somewhat larger class sizes in order to fund higher priorities has been taken off the table. Having to reallocate resources to enforce a theory of action that differs markedly from our own has been the essence of our challenge in implementing the class-size amendment.

Framing a Strategic Response

How then have we made the best of this misalignment? The following both captures the tenets of our strategic response and, hopefully, offers a blueprint that other districts can deploy when they too must redirect funds to accommodate adverse mandates.

For this kind of issue, it is key to distinguish between a short and a longer-term strategy. The short-term strategy must seek to conform to the constraint while the longer-term strategy can aim to lessen or remove the constraint.

Short-Term Strategy

- **Recognize that the world has changed**

Any sincere and rational response has to proceed from this starting point. We may not have supported the amendment. We may indeed have foreseen its grave consequences. Nonetheless, in our federalist system, a county is an agent of the state. We cannot and should not attempt to flout state law, let alone a state constitutional amendment that embodies the will of the people.

We therefore had to work in good faith to comply with the law to the fullest extent possible.

- **Know and honor your non-negotiables**

When I said we had to work in good faith to comply with the law, I inserted the caveat, "to the fullest extent possible." While adherence to the state democratic process is a vital principle, the protection of a quality education for all children is an equally weighty imperative. In cases where these demands pull in countervailing directions, we have set boundaries to how much we will let

compliance come at the expense of achievement. This stance has, technically, rendered us a district in non-compliance with the amendment. As of fall 2010, 15.92% of total district-wide classes (7,704 out of 48,388) exceeded their respective limits. For this violation, Duval incurred a fine last year of \$6.4 million, which was reduced to \$342,000 after an appeal and submission of a compliance plan.

The penalty, however, pales in comparison to the financial and academic havoc that would ensue from complete and unquestioning compliance. Consider, for example, a common scenario we confront. In the spring budget, we allocate teachers and students to bring each classroom under its applicable limit. By October, an elementary classroom with a planned enrollment of 18 students has ended up with 20 students. What do we do?

Adding another full-time teacher at that juncture, assuming a good one could even be found, would cost far more than would paying the incremental fine for non-compliance. Shifting two students to another classroom or school two months into the school year could prove an emotionally disconcerting and academically damaging experience. Our decision in such a case would therefore be to leave enrollment above the limit and to pay the associated fine. We would, in other words, sacrifice 100% compliance for the sake of respecting our dual obligations to the state and to students.

- Build responsive tools and processes

At the margin, we may opt against pursuing full conformity with the amendment if in the process we sacrifice a high-quality education, which is also a constitutional requirement for the state. Yet this decision should result from careful reflection rather

We have set boundaries to how much we will let compliance come at the expense of achievement.

than from a lack of information. We should breach the limits only after ensuring we have spent all of the class-size allocation and taken all other reasonable steps to fully comply.

Here, legislative pronouncements must translate into computer code. Our IT department developed a program that models the class-size form we must submit to the state (Exhibit 1). The program allows us, for each school, to input enrollment and staffing variables and to observe the consequent fines. Armed with this information, we can make the difficult trade-off decisions between compliance and quality education.

- Find the 10% good amid the 90% bad

Even with a compass to guide our choices and a set of tools to relay robust information, there is no denying the hardship that such stringent and blunt caps exact. We have had to raise the size of some non-core classes such as physical education classes to as many as 60 students. We have been forced to drastically reduce support staff personnel whose positions are extremely important to daily school operations. We have taken advantage of statutory relief granted by the state to classify even world language and social studies as “non-core” courses to which limits do not apply. We have placed twice as many students and twice as

EXHIBIT 1

DCPS Software to Monitor Compliance Program

| Rows | Term | Period | Course | Grade | A/B/A | CM Teachers | NC Co Teachers | A/B CM | A/B I | Rest | Class Size |
|------|-------------------------------|--------|--------|---------|-------|-------------|----------------|--------|-------|------|------------|
| 1 | 248 / 248 (PATRICK BOWEN) | 3 | 4 | 2109020 | 06 | 0 | 0 | 0 | 0 | 18 | 18 |
| 2 | 278 / 278 (JANIELA MAGNET) | 3 | 11 | 7720950 | 04 | 0 | 0 | 0 | 0 | 8 | 8 |
| 3 | 278 / 278 (JANIELA MAGNET) | 3 | 12 | 7720950 | 04 | 0 | 0 | 0 | 0 | 8 | 8 |
| 4 | 217 / 217 (JULIE ENRIE N248D) | 3 | 1 | 2100115 | 08 | 0 | 0 | 0 | 0 | 22 | 22 |
| 5 | 217 / 217 (JULIE ENRIE N248D) | 3 | 3 | 2100115 | 08 | 0 | 0 | 0 | 0 | 24 | 24 |
| 6 | 217 / 217 (JULIE ENRIE N248D) | 3 | 4 | 2100115 | 08 | 0 | 0 | 0 | 0 | 22 | 22 |
| 7 | 217 / 217 (JULIE ENRIE N248D) | 3 | 7 | 2100115 | 08 | 0 | 0 | 0 | 0 | 22 | 22 |
| 8 | 188 / 188 (JESSICA VOELKE) | 3 | 11 | 7720960 | 05 | 0 | 0 | 0 | 0 | 3 | 3 |
| 9 | 188 / 188 (JESSICA VOELKE) | 3 | 12 | 7720960 | 05 | 0 | 0 | 0 | 0 | 3 | 3 |
| 10 | 188 / 188 (JESSICA VOELKE) | 3 | 4 | 7830015 | 06 | 0 | 0 | 0 | 0 | 6 | 6 |
| 11 | 248 / 248 (DANIELA MAGNET) | 3 | 8 | 1209020 | 06 | 0 | 0 | 0 | 0 | 18 | 18 |
| 12 | 248 / 248 (DANIELA MAGNET) | 3 | 7 | 9021040 | 02 | 0 | 0 | 0 | 0 | 18 | 18 |

many teachers in the same classroom, a configuration that qualifies as two separate classrooms while obviating the need for additional facilities.

In any situation, however, it is important to find or create a silver lining. In this case, the silver lining, however slight, has been the cover the need to comply with the amendment has provided to experiment with transformative approaches that we would want to explore even in the absence of fiscal need and regulatory requirement. To its

credit, the state of Florida has recognized the opportunity the amendment poses to herald new instructional and staffing models. The Florida Department of Education has furnished a list of strategies that it recommends districts consider deploying to come into compliance with the amendment. Exhibit 2 enumerates the strategies from this list that we in Duval have adopted or are keeping under consideration. I think one will agree that many of the items on the list, such

EXHIBIT 2

Strategies Deployed to Move Toward Compliance

- > Consider hiring additional associate teachers at lower cost to the district.
- > Consider reducing elective courses with enrollment lower than class size requirements.
- > Reduce data entry issues with improved training and oversight.
- > Continue to increase enrollment in the District Virtual School (including virtual charter schools).
- > Continue to encourage students to take dual enrollment courses.
- > Continue to use methods to maximize use of instructional staff, such as changing required teaching loads and scheduling of planning periods, deploying district employees that have professional certification to the classroom, using adjunct educators, or any other method not prohibited by law.
- > Continue to use innovative methods to reduce the cost of school construction by using prototype school designs, using SMART Schools designs, participating in the School Infrastructure Thrift Program (SIT), or any other method not prohibited by law.
- > Continue to use joint-use facilities through partnerships with community colleges, state universities, and private colleges and universities. Joint-use facilities available for use as K-12 classrooms that do not meet the K-12 State Regulations for Educational Facilities in the Florida Building Code may be used at the discretion of the district school board provided that such facilities meet all other health, life, safety, and fire codes.
- > Continue to adopt alternative methods of class scheduling, such as block scheduling.
- > Continue to redraw school attendance zones to maximize use of facilities while minimizing the additional use of transportation.
- > Continue to operate schools beyond the normal operating hours to provide classes in the evening or operate more than one session of school during the day.
- > Continue to review and consider amending any collective bargaining contracts that hinder the implementation of class size reduction.
- > Use other feasible approaches not prohibited by law.

Source: DCPS

as dual enrollment courses, the efficient use of facilities, and stronger data oversight, are absolute improvements that districts should undertake in any scenario. The amendment merely accelerated the impetus.

To harness the amendment as a mandate for rethinking approaches, we added to the state's list of compliance strategies. The first two items on the list do not come from the state's body of recommendations. They reflect our own thoughts about how the need for compliance could be used to justify deeper reforms. Reducing low-enrollment electives obviously does not sound like an unconditionally positive move, but, when the low enrollment results from a lack of interest in that course rather than an instructional need for small class sizes, eliminating it can actually strengthen the continuity of the overall curriculum.

Of course, 10% pluses do not compensate for 90% negatives. And this reality leads us to the longer-term strategy with the goal of amending, ameliorating, or even abrogating the amendment.

Longer-Term Strategy

• Get good information for yourself

Entering the political realm inevitably stirs controversy. To wage legislative or legal battles, you have to have your facts straight. And this does not mean necessarily relying on the information the state gives you. It means conducting your own impact analysis.

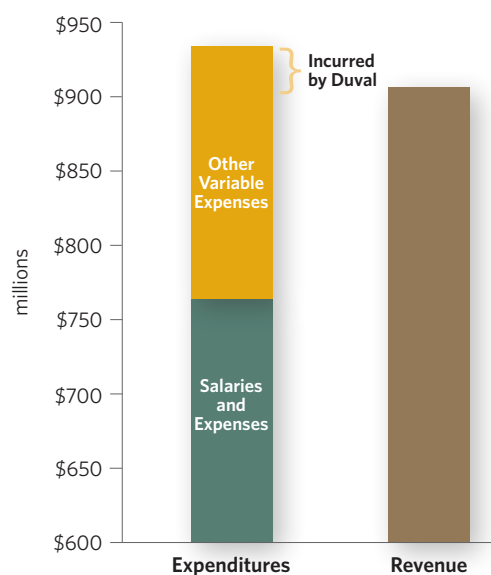
While the state claims to have covered the cost of implementation, our analysis counters this claim.

Ascertaining the unvarnished facts has been at the core of shaping our longer-term strategy. The amendment makes a deceptively simple guarantee. It pledges that the state pays for the cost of the necessary class-size reductions. What then is our issue? While the state claims to have covered the cost of implementation, our analysis counters this claim. The variable expenditures necessary to meet the class-size limits go beyond the salaries and benefits for thousands of additional teachers. They also include providing these teachers with laptops and other equipment, funding their professional development, paying for their materials and supplies, covering their absences with substitutes, and incurring additional overhead costs such as payroll processing. Because our non-core class schedules are based on our core class schedules, hiring more core teachers has meant also having to pay for additional blocks of art, music, and physical education classes at the elementary level.

To put it another way, you cannot just superimpose more teachers on the same system; the infrastructure itself must grow to accommodate them. Factoring in this more comprehensive set of expenses substantially expands the cost of compliance and significantly outstrips the money the state has given us to implement the amendment. Exhibit 3 depicts the disparity, which has amounted so far to over \$26 million. ▷

EXHIBIT 3

Actual Revenue and Expense of Class-Size Mandate, 2003/04-2011/12



Source: DCPS

- **Consider litigation but proceed with caution**

This more expansive and realistic tabulation of the costs equips us with one of many legal theories to litigate against the state. From our perspective, the state has not abided by its constitutional duty to fund the mandate. Rather than taking money away from us to punish our non-compliance, the state should be directing more funding to us to rectify its own non-compliance.

Given the wide range of points of interaction with the state, it would be unwise for us to formalize an adversarial relationship unless absolutely necessary.

Any mandate that so dictates our resource allocation and whose execution departs so fundamentally from its spirit should prompt the question of legal recourse. Litigation, however, is a game where power and safety reside in numbers. We have shared our calculation of the amendment's fully loaded cost with other districts both to convey the rationale for our concerns and to solicit their support.

At the same time, we believe it would be unwise to embrace litigation too hastily. We know the arguments that would shape our own legal claim. But, if we joined in a lawsuit with other districts that had different factual circumstances, then our case could quickly devolve into paralyzing incoherence. Given the uncertainty of litigation, this could result in an unfavorable decision.

- **Tweak and compromise wherever possible**

We and other districts may ultimately coalesce around a common line of reasoning to take to the courts.

But, while the amendment stays on the books, we also work to make it as feasible as possible. In light of the wide range of points of interaction with the state, it would be unwise for us to formalize an adversarial relationship unless absolutely necessary. We therefore seek to find common ground despite the possibility of legal action. In this way, we move the state toward a more flexible and reasonable interpretation of the amendment as it establishes penalties for non-compliance.

For example, the state has come to concede the difficulty of planning around high mobility and to acknowledge the harm and hardship that having to move students mid-year would wreak. Accordingly, it has inserted language that, if a classroom meets the limit when the first check takes place in October, it can exceed the limit by three students without triggering a fine when the next check takes place in February.



Moving Forward

Despite these challenges, the district has still launched a city-wide reading campaign coined “Read It Forward Jax!,” increased the number of career academies in our schools, provided access to accelerated programs in all of our high schools, and provided additional supports to our Turnaround schools to increase the academic success of our lower-performing students.

Perhaps the overarching lesson of Florida’s class-size amendment is that one must beware of institution-alizing reforms so rigidly and irrevocably that they stymie the natural evolution of public opinion. Last fall, we in Duval supported a proposed constitutional amendment that would have superseded the original class-size amendment. The new amendment would have converted the current limit on the size of each classroom into a limit on the average classroom size in each school. Individual classrooms would still have been bound by a maximum number of students, but this number would have been raised. Finally, the amendment would have dispelled any uncertainty about the state’s obligation to fund implementation and maintenance.

Yet, the threshold 60% vote of the electorate required to amend what is now embedded in the state constitution has thwarted the rising momentum in favor of moderating class-size reduction efforts. In the November 2010 elections, 55% of

Florida’s voters supported the modification that would have restored our ability to balance a wider array of educational priorities.¹¹ The original amendment still stands.



ED PRATT-DANNALS WAS APPOINTED AS SUPERINTENDENT OF DUVAL COUNTY PUBLIC SCHOOLS IN NOVEMBER 2007 AND IS RESPONSIBLE FOR OPERATING

THE NATION’S 21ST LARGEST SCHOOL DISTRICT, WITH 177 SCHOOLS, 125,000 STUDENTS, AND MORE THAN 14,000 EMPLOYEES.

ED IS A 36-YEAR VETERAN OF DCPS, BEGINNING HIS CAREER IN 1976 AS A MATH TEACHER AND COACH AT JOHN GORRIE JR. HIGH SCHOOL. HE ROSE THROUGH THE RANKS AS VICE PRINCIPAL AND PRINCIPAL AT VARIOUS DUVAL COUNTY PUBLIC SCHOOLS, REGIONAL SUPERINTENDENT, AND ASSOCIATE SUPERINTENDENT FOR CURRICULUM AND INSTRUCTIONAL SERVICES.

HE IS COMPLETING A DOCTORATE IN EDUCATIONAL LEADERSHIP FROM THE UNIVERSITY OF FLORIDA, WHICH HE EXPECTS TO FINISH IN 2012. HIS FOCUS IS ON LARGE, URBAN SCHOOL DISTRICT REFORM. HE HOLDS A MASTER’S DEGREE IN EDUCATION FROM THE UNIVERSITY OF NORTH FLORIDA, AND A BACHELOR’S DEGREE FROM GEORGIA STATE UNIVERSITY.

¹ Eric Kelderman, “Florida’s Big Fuss Over Small Classes,” *Stateline*, February 13, 2004, <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=15565>.

² *Education Week*, “Setting Class-Size Limits,” http://www.edweek.org/ew/section/infographics/13class_size_map.html.

³ Florida Department of Education, August 18, 2011, <http://www.fldoe.org/ClassSize/pdf/csfaqfinal.pdf>.

⁴ Dennis Maley, “For Manatee County, Florida Class Size Amendment is No Simple Issue,” *The Bradenton Times*, September 14, 2010, http://www.thebradentontimes.com/news/2010/09/14/schools_and_education/for_manatee_county_florida_class_size_amendment_is_no_simple_issue/; Stephen Hegarty, “Class Size Result May Pit District vs. District,” *St. Petersburg Times*, November 12, 2002, http://www.sptimes.com/2002/11/12/news_pf/State/Class_size_result_may.shtml.

⁵ Marcia Lane, “Class-Size Rule + Recession = Crisis,” *The St. Augustine Record*, June 26, 2010, <http://staugustine.com/news/local-news/2010-06-26/class-size-rule-recession-crisis>.

⁶ Amy Hollyfield, “Battle Breaks Out on 2002 State Class-Size Amendment,” *Tampa Bay Times*, March 24, 2009, <http://www.tampabay.com/news/politics/legislature/article986289.ece>.

⁷ Florida Department of Education.

⁸ Cited by Secretary Arne Duncan, “The New Normal: Doing More with Less,” Remarks at American Enterprise Institute, November 17, 2010, U.S. Department of Education, <http://www.ed.gov/news/speeches/new-normal-doing-more-less-secretary-arne-duncans-remarks-american-enterprise-institut>.

⁹ Grover J. “Russ” Whitehurst and Matthew M. Chingos, *Class Size: What Research Says and What It Means for State Policy*, Brown Center on Education Policy at Brookings Institution, May 11, 2011, http://www.brookings.edu/~media/Files/rc/papers/2011/0511_class_size_whitehurst_chingos/0511_class_size_whitehurst_chingos.pdf. The report summarized its survey of decades of research with the statement, “Class-size reduction has been shown to work for some students in some grades in some states and countries, but its impact has been found to be mixed or not discernable in other settings and circumstances that seem similar.”

¹⁰ Matthew M. Chingos, *The Impact of a Universal Class-Size Reduction Policy: Evidence from Florida’s Statewide Mandate*, Program on Education Policy and Governance, John F. Kennedy School of Government, Harvard University, August 2010, http://www.brookings.edu/~media/Files/rc/papers/2011/0511_class_size_whitehurst_chingos/0511_class_size_whitehurst_chingos.pdf, p. 4.

¹¹ Cara Fitzpatrick, “Class-Size Amendment Defeated,” *Palm Beach Post*, November 2, 2010, <http://www.palmbeachpost.com/news/class-size-amendment-defeated-1015766.html>.