

**THE SCHOOL *IN* PRISON PIPELINE: HOW SOUTH CAROLINA’S
DEPARTMENT OF JUVENILE JUSTICE VIOLATES ITS CONSTITUTIONAL
MANDATE TO PROVIDE A MINIMALLY ADEQUATE EDUCATION**

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I. INTRODUCTION

“If we can’t give anything else to the youth in the [South Carolina Department of Juvenile Justice] system, we can give them an education.”¹

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That's what South Carolina Department of Juvenile Justice ("SCDJJ") Director Eden Hendrick said during an interview with the *South Carolina Daily Gazette* in June 2024. But is this bold and hopeful statement backed up by the education actually being provided to youth in SCDJJ custody? And does that education meet South Carolina's constitutionally mandated minimum standard?² This Note examines the ways in which SCDJJ has failed in its constitutional duty to provide education to some of our state's most vulnerable children. It also examines the ways that SCDJJ has moved toward constitutional compliance, and what work still needs to be done. Part II of this Note provides both legal and factual background information, detailing relevant South Carolina constitutional provisions and the case law that interprets them. It describes why courts have a role in monitoring school district compliance and why children in SCDJJ custody are still entitled to the same level of educational adequacy as other children in the state. It then details the structure of SCDJJ's educational model. Part III of this Note analyzes SCDJJ's model in terms of its inputs and outputs using the framework set up in South Carolina case law. Using this analysis, Part IV of this Note reaches the conclusion that SCDJJ does not provide an education that rises to the level of minimally adequate.

II. BACKGROUND

The United States Constitution enshrines many rights and freedoms for the American people, yet it never explicitly mentions education. In fact, the Supreme Court determined in *San Antonio Independent School District v. Rodriguez* that education is not a fundamental right protected by the U.S. Constitution.³ Despite the federal Constitution's silence on the right to education, courts for decades have understood and described the importance of education in American life, and various constitutional mechanisms, like the Fourteenth Amendment, have been used to protect certain aspects of

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1. Skylar Laird, *DJJ's School District Aims to Give SC Youth Offenders More Opportunities*, *Officials Say*, SOUTH CAROLINA DAILY GAZETTE (June 7, 2024, 4:07 PM), <https://scdailygazette.com/2024/06/07/djjs-school-district-aims-to-give-sc-youth-offenders-more-opportunities-officials-say/> [<https://perma.cc/T7SR-2TMY>].

2. See S.C. CONST. art. XI, § 3.

3. 411 U.S. 1, 35 (1973).

education.⁴ In the absence of explicit protection for education in the federal Constitution, individual states can still provide protection by including the right to education in their own state constitutions.⁵ That right looks different from state to state. In the South Carolina State Constitution, Article XI, Section Three simply requires the state to provide a “system of free public schools” open to each child in the State.⁶ Although the South Carolina Constitution itself provides no detail about what such a system might look like, in *Abbeville I*, the Supreme Court of South Carolina read into that clause a qualitative standard of minimal adequacy.⁷ Subsequently, in *Abbeville II*, the Supreme Court established guideposts to help lower courts analyze whether a district provides its children with a minimally adequate education.⁸ Those guideposts provide the mechanism for this Note's analysis and are thus described in depth below.

A. *Legal Background*

1. *What Abbeville I and Abbeville II taught us about a minimally adequate education*

In *Abbeville I*, the Abbeville County School District, along with thirty-nine other school districts, sued the State of South Carolina.⁹ They alleged, *inter alia*, that the State's funding mechanisms violated the education clause (Article XI, Section Three) of the South Carolina Constitution.¹⁰ That clause reads as follows:

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support

4. See, e.g., *Plyer v. Doe*, 457 U.S. 202, 215, 230 (1982) (holding that a state cannot deny a free public education to undocumented students when guaranteeing that same education to other students).

5. DEREK BLACK, *EDUCATION LAW: EQUALITY, FAIRNESS, AND REFORM* 1 (3d ed. 2021).

6. S.C. CONST. art. XI, § 3.

7. *Abbeville Cnty. Sch. Dist. v. State (Abbeville I)*, 335 S.C. 58, 67, 515 S.E.2d 535, 539–40 (1999).

8. See *Abbeville Cnty. Sch. Dist. v. State (Abbeville II)*, 410 S.C. 619, 634–50, 767 S.E.2d 157, 164–73 (2014) (analyzing whether the school districts provided a minimally adequate education using educational “inputs” and “outputs,” while also looking at other relevant factors).

9. *Abbeville I*, 335 S.C. at 63, 515 S.E.2d at 538.

10. *Id.*

such other public institutions of learning, as may be desirable.¹¹

Although the school districts at issue in this suit actually received *more* money from the State than other wealthier districts, they alleged that they were still being underfunded, that the underfunding had resulted in an inadequate education, and that the State was therefore breaching its duty under the State Constitution.¹² The lower court decided that the education clause did not include a qualitative component and that, as long as a free system of public schools existed in the State, there was no constitutional right to any specific level of education.¹³ The South Carolina Supreme Court disagreed, citing other cases where other state supreme courts interpreted a mandatory clause such as this one to implicate a qualitative standard and reiterating that constitutional interpretation is a task for which the judiciary is squarely responsible.¹⁴

Without explanation, the South Carolina Supreme Court declared that the qualitative standard in this case would be a “minimally adequate education,” and then proceeded to define such an education, under what it termed “deliberately broad parameters:”

We define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire:

- 1) The ability to read, write, and speak the English language, and knowledge of mathematics and physical science;
- 2) A fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and
- 3) academic and vocational skills.¹⁵

Finally, the court emphasized that it is the responsibility of the legislature to comply with the Constitution’s educational mandate and remanded the case

11. S.C. CONST. art. XI, § 3.

12. *Abbeville I*, 335 S.C. at 64, 515 S.E.2d at 538.

13. *Id.* at 67, 515 S.E.2d at 540.

14. *Id.* at 67–68, 515 S.E.2d at 539–40.

15. *Id.* at 68, 515 S.E.2d at 540.

to the lower court to reconsider the facts in light of the newly announced qualitative requirements.¹⁶

The case went back up to the South Carolina Supreme Court fifteen years later in *Abbeville II*, where the court considered whether actions taken by the State after remand brought the school districts into compliance with the “minimally adequate” standard announced in *Abbeville I*.¹⁷ The court ultimately determined that the State had not done enough to achieve minimal adequacy.¹⁸ Its determination relied on an analysis of what the court called “inputs” and “outputs.”¹⁹ “Inputs” refers to the resources available to a given district, and “outputs” refers to the performance of the district and its students.²⁰ The inputs and outputs analysis had been used in the lower court upon remand.²¹ There, the plaintiffs argued that the inputs given to their districts did not translate to outputs and were thus insufficient.²² The State, on the other hand, argued that the inputs provided were sufficient, and that the real problem lay with the districts and students, who had failed to take advantage of those inputs.²³ The South Carolina Supreme Court determined that its role was to review the findings of the lower court and to only disturb such findings if they were found to be “without reasonable evidentiary support.”²⁴ The court used the same inputs and outputs model as the lower court to determine whether children in the plaintiff districts had been denied a minimally adequate education according to the guidelines set down in *Abbeville I*.²⁵ The specific inputs considered by the court in this analysis were the funding, curriculum, teachers, and programming provided.²⁶ The specific outputs were test scores, state report cards, and graduation rates.²⁷ The court considered each input and output in turn, while also identifying several other important factors that the lower court had failed to consider.

a. Inputs

The lower court determined that the “facilities in the plaintiff districts were safe and adequate[,]” which the Supreme Court of South Carolina did

16. *Id.* at 69, 515 S.E.2d at 541.

17. *See Abbeville II*, 410 S.C. 619, 624–27, 767 S.E.2d 157, 159–61 (2014).

18. *Id.* at 651, 767 S.E.2d at 173.

19. *Id.* at 651, 767 S.E.2d at 164.

20. *Id.* at 627, 767 S.E.2d at 161.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 629, 767 S.E.2d at 162.

25. *See id.* at 633–34, 767 S.E.2d at 164.

26. *Id.* at 634, 767 S.E.2d at 164.

27. *Id.* at 639–42, 767 S.E.2d at 167–69.

not further discuss.²⁸ Therefore, the Supreme Court offered no guidance on how to analyze the issue of what constitutes a safe and adequate educational facility. The lower court also decided that the curriculum standards, teacher licensure, programming, and funding all satisfied the constitutional standard for inputs.²⁹ The South Carolina Supreme Court undertook its own analysis of those inputs and reached the same conclusion as the lower court: the inputs set up by the State of South Carolina provided evidence of a “comprehensive” plan consistent with a minimally adequate standard of education.³⁰

b. Outputs

The court did not stop its analysis there but moved on to what it called the “troubling” outputs of the plaintiff districts, considering test scores on state standardized tests, state report cards, and graduation rates.³¹ Ultimately, the court determined that, although the inputs established a comprehensive plan, the evidence of disconnect between inputs and outputs was enough to render the State’s actions unconstitutional in denying the opportunity for children in the plaintiff districts to receive a minimally adequate education.³²

c. Other factors

The court in *Abbeville II* reprimanded both the plaintiff districts and the State for failing to take into account local legislation and school district size as part of their arguments.³³ Since school districts don’t fit perfectly into electoral districts, the court questioned whether across-district legislation may frustrate “admirable” initiatives.³⁴ It also opined that smaller school districts may have unduly burdensome administrative costs in comparison to larger ones.³⁵ Both of these issues were termed by the court as “overarching dilemmas emanating from the organizational structure of public education.”³⁶ But what is unclear from the court’s recital of these issues is how either the State or the districts should have considered them. The court asked the State

28. *Id.* at 627, 767 S.E.2d at 161.

29. *See id.* An exception was funding for early childhood education programs. *Id.* Since those are not at issue in SCDJJ because of the age of children held there, this factor is not relevant to this Note’s analysis.

30. *Id.* at 638, 767 S.E.2d at 166–67.

31. *Id.* at 639–42, 767 S.E.2d at 167–69.

32. *See id.* at 638–39, 767 S.E.2d at 167.

33. *Id.* at 647–50, 767 S.E.2d at 172–73.

34. *Id.* at 648–49, 767 S.E.2d at 172.

35. *Id.* at 649, 767 S.E.2d at 172–73.

36. *Id.* at 650, 767 S.E.2d at 173.

and districts to take these additional factors into account but provided little in the way of guidance on how to do so.³⁷

Even without considering arguments on the impact of local legislation and school district size, the court was able to reach a decision.³⁸ After considering each input and output in turn, the court ruled that the constitutionally required opportunity was not being provided to the students of the plaintiff districts because there was a “disconnect” between the inputs and outputs.³⁹ It then called upon the State to determine how to fix the problem.⁴⁰ Thus, while *Abbeville I* created a broad definition and outline for courts to utilize, *Abbeville II* provided a step-by-step analysis of specific factors that a court could walk through to determine the constitutionality of a given educational system. These factors will be used to analyze the facts related to the SCDJJ school district in the Analysis section below.

2. *Why courts can properly analyze whether a school district is in compliance with the education provision of the South Carolina Constitution*

Given the heavy involvement of the court in defining the contours of a constitutionally adequate education in our State, some wonder whether the court overstepped its bounds—perhaps even “act[ing] as a ‘super-legislature.’”⁴¹ Aware of these concerns, the opinions in both *Abbeville I* and *Abbeville II* explained why the court’s foray into definitions was within its power and did not violate established norms around separation of powers, judicial restraint, or the political question doctrine.⁴² *Abbeville I* summarily dismisses these concerns by stating, “[i]t is the duty of this Court to interpret and declare the meaning of the Constitution. . . . Accordingly, the circuit court erred in using judicial restraint, separation of powers, and the political question doctrine as the bases for declining to decide the meaning of the education clause.”⁴³ Later in the opinion, the court states that it is not its intent

37. *Abbeville II* also considered transportation as a factor; specifically, the impact of extended time spent in buses on the way to and from school, as well as the educational time lost due to bus delays. *See id.* at 642–44, 767 S.E.2d at 169. These concerns are less relevant in the context of a secure facility, where children attend school inside the facility, so this Note does not address that factor.

38. Because the court did not provide an in-depth analysis of these “other factors,” and because it was still able to reach a decision on the issue of minimal adequacy without them, this Note does not address such factors.

39. *See Abbeville II*, 410 S.C. at 639, 651, 767 S.E.2d at 167, 173.

40. *Id.* at 653, 767 S.E.2d at 175.

41. *See id.* at 663, 767 S.E.2d at 180 (Kittredge, J., dissenting).

42. *Abbeville I*, 335 S.C. 58, 66–67, 515 S.E.2d 535, 539 (1999); *see Abbeville II*, 410 S.C. at 661–62, 767 S.E.2d at 179.

43. *Abbeville I*, 335 S.C. at 67, 515 S.E.2d at 539 (citation omitted).

to “usurp” the authority of the Legislature or “dictate” the programs used.⁴⁴ Yet, the dissent in *Abbeville I*, written by Justice Moore, alleges that it does just that, referring to the qualitative decisions made by the majority as “judicial embellishment on our constitution.”⁴⁵

The court in *Abbeville II* provides a more robust explanation of its reasoning, reaching back to the text of *Brown v. Board of Education*⁴⁶ for its justification, and famously stating, “we can recognize a constitutional violation when we see one.”⁴⁷ In the court’s view, the definitions it created and the analysis that it undertook were simply mechanisms to help root out constitutional violations, not engage in policy making.⁴⁸ In fact, it goes so far as to say that it “refuse[s] to provide the General Assembly with a specific solution to the constitutional violation” (and then promptly cites two cases from other states that it thinks the General Assembly would find “instructive”).⁴⁹ Justice Kittredge, following in the footsteps of Justice Moore, wrote a dissent based on the separation of powers and warning against the creation of rights and duties out of “thin air,” relegating the court’s decisions to “policy preference[s]” that have been accorded “constitutional status.”⁵⁰ Nevertheless, the majority decided it was within the court’s bounds to define the contours of a minimally adequate education.⁵¹

3. *Why a minimally adequate education still applies to children in SCDJJ custody*

One might perhaps wonder if the “minimally adequate” standard still applies to children in SCDJJ custody or if these children have somehow given up this right through their actions. Termed “forfeiture theory,” some argue that implicit in the constitutional education framework is the idea that a child can “forfeit” their right to education through bad behavior.⁵² Massachusetts and Wyoming use this reasoning to avoid difficult questions related to school discipline, alternative education, and whether the right to an adequate education is violated when students are denied access to regular school.⁵³

44. *Id.* at 69, 515 S.E.2d at 540–41.

45. *See id.* at 72, 515 S.E.2d at 542 (Moore, J., dissenting).

46. 347 U.S. 483 (1954).

47. *Abbeville II*, 410 S.C. at 651–53, 767 S.E.2d at 173–75.

48. *See id.* at 652–53, 767 S.E.2d at 175 (“This Court cannot suggest methods of fixing the problem, but we can recognize a constitutional violation when we see one.”).

49. *Id.* at 656, 767 S.E.2d at 176–77.

50. *Id.* at 663–64, 767 S.E.2d at 180–81 (Kittredge, J., dissenting).

51. *See id.* at 632–33, 767 S.E.2d at 164.

52. *See* Derek W. Black, *Reforming School Discipline*, 111 NW. UNIV. L. REV. 1, 20–21 (2016) (discussing forfeiture theory in connection with a constitutional right to education).

53. *See id.* at 20.

South Carolina has not taken the forfeiture theory approach, and there are several arguments why children in SCDJJ custody are still owed the same minimally adequate education as their non-detained peers. First, the plain language of the South Carolina State Constitution (the importance of which is highlighted in *Abbeville I*), indicates that education must be provided to “all children in the State.”⁵⁴ There are no caveats in the plain language of the constitution; rather, “all children” must be provided a minimally adequate education.⁵⁵

Second, recent legal scholarship indicates that there is no meaningful difference between the education that must be constitutionally afforded to children who remain outside of SCDJJ custody and those inside.⁵⁶ In fact, because the purpose of juvenile detention is rehabilitation, education is an essential component of that purpose and must be protected as much as possible, although the importance of safe facilities must be weighed against the need for education.⁵⁷ Additionally, adult inmates are not stripped of all their constitutional rights simply because they are incarcerated; why should children be?⁵⁸

Finally, and perhaps most persuasively, the idea that children in SCDJJ custody have not forfeited their right to a minimally adequate education is bolstered by Article XII, Section Two of the South Carolina Constitution, which states the following:

The General Assembly shall establish institutions for the confinement of all persons convicted of such crimes as may be designated by law, and shall provide for the custody, maintenance, health, welfare, education, and rehabilitation of the inmates.⁵⁹

Thus, this explicit provision within the South Carolina Constitution mandates that persons confined by the State must be provided with an education. This makes clear South Carolina’s rejection of forfeiture theory and bolsters the argument that children in SCDJJ custody are entitled to the same minimally adequate education as any other child. Thus, the educational mandate of the South Carolina Constitution, as interpreted by *Abbeville I* and

54. S.C. CONST. art. XI, § 3.

55. *Id.*

56. See, e.g., Katherine Twomey, *The Right to Education in Juvenile Detention Under State Constitutions*, 94 VA. L. REV. 765, 795 (2008) (discussing how children in juvenile detention potentially enjoy the same right to education guaranteed under state constitutions as children not in detention).

57. See *id.* at 799–800.

58. *Id.* at 801.

59. S.C. CONST. art. VII, § 2.

Abbeville II, applies with equal force to all children in our state, whether in SCDJJ custody or not.

B. Factual Background

1. How SCDJJ sets up its school district

SCDJJ maintains its own school district (called the “Birchwood District”), which serves around 500 children across five different facilities: Coastal Evaluation Center (“CEC”), Midlands Evaluation Center (“MEC”), Upstate Evaluation Center (“UEC”), Broad River Road Complex (“BRRC”), and the Juvenile Detention Center (“JDC”) in Columbia.⁶⁰ SCDJJ’s long-term facility, the BRRC, has a designated school called the “Empowerment & Enrichment Academy,” which is part of SCDJJ’s school district.⁶¹ Each of the other SCDJJ facilities across the state has designated “classrooms,” but only the BRRC has an on-campus school.⁶² The district does not operate on the traditional academic calendar but rather offers classes year-round.⁶³ According to its website, the district aligns its curriculum with the South Carolina Curriculum standards promulgated by the South Carolina Department of Education and is accredited by Cognia, which accredits school districts across both the state and the country.⁶⁴ In addition to more traditional academic classes, SCDJJ offers career and technology training and vocational programs.⁶⁵ SCDJJ also maintains district partnerships with organizations like Allen University, Boeing, and Michelin.⁶⁶

60. *Birchwood School District*, S.C. DEP’T OF JUV. JUST., <https://djj.sc.gov/SCDJJ-school-district/empowerment-enrichment-academy> [<https://perma.cc/SK92-KM9V>]; *Facilities*, S.C. DEP’T OF JUV. JUST., <https://djj.sc.gov/facilities> [<https://perma.cc/F85L-FN3X>]; *DJJ School District*, S.C. DEP’T OF JUV. JUST., <https://djj.sc.gov/SCDJJ-school-district> [<https://perma.cc/2SYA-WVK2>].

61. First Amended Complaint for Declaratory and Injunctive Relief at ¶ 147, S.C. State Conf. of NAACP v. S.C. Dep’t of Juv. Just., No. 0:22-CV-01338-MGL-PJG (D.S.C. Sept. 28, 2023).

62. *Id.*

63. *DJJ School District*, *supra* note 60.

64. *Birchwood School District*, *supra* note 60; see *Accreditation*, COGNIA, <https://www.cognia.org/accreditation/> [<https://perma.cc/2VTW-B697>].

65. *Career and Technology Education (CATE)*, S.C. DEP’T OF JUV. JUST., <https://djj.sc.gov/SCDJJ-school-district/CATE> [<https://perma.cc/K3XN-PYA5>].

66. *Direct Partnerships*, S.C. DEP’T OF JUV. JUST., <https://djj.sc.gov/SCDJJ-school-district/district-partnerships> [<https://perma.cc/U228-JFAU>].

III. ANALYSIS

A. *How SCDJJ fails to provide the requisite inputs for a minimally adequate education*1. *Funding*

SCDJJ receives money from the State of South Carolina just like any other public school district.⁶⁷ The South Carolina State education funding mechanism is a mix of specific legislation, including the Education Finance Act and the Education Improvement Act, which were in place when the *Abbeville II* court ruled that the state's funding legislation constituted a “comprehensive education regime” and was at least minimally adequate.⁶⁸ The State funding system relies on a determination of what it costs, at minimum, to educate the “base” student.⁶⁹ This is called the Base Student Cost (“BSC”).⁷⁰ It then assigns weightings to each student based on need, with the “base student” receiving a weighting of 1, and students with additional needs (like English Language Learners and students with disabilities) receiving a weighting higher than 1.⁷¹ Once all students have received a weighting, the total minimum cost of educating the State’s students can be calculated by multiplying each weighting by the BSC and adding up the resulting numbers. The State also now utilizes a model called “Aid to Classrooms,” which provides funding based on a statewide average student-teacher ratio.⁷²

According to SCDJJ’s website, the district is funded entirely by State and federal dollars and does not receive any local money.⁷³ However, according to the South Carolina General Assembly’s General Appropriations Bill for Fiscal Year 2023-2024, SCDJJ is entitled to receive funds from each juvenile’s local district.⁷⁴ Section 67.12 provides the following:

Upon commitment or confinement to a Department of Juvenile Justice facility, the school district in which that child resides shall pay an amount equivalent to the statewide average of the local base student cost (thirty percent), multiplied by the appropriate pupil

67. *See DJJ School District*, *supra* note 60.

68. *Abbeville II*, 410 S.C. 619, 634–38, 767 S.E.2d 157, 164–67 (2014).

69. *See id.* at 635, 767 S.E.2d at 165.

70. *Id.*

71. *See* S.C. CODE ANN. § 59-20-40(c) (2020).

72. *Education Funding Dashboard*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/education-funding-dashboard> [<https://perma.cc/F6ST-EKM9>] (click the “Aid to Classrooms” dropdown).

73. *DJJ School District*, *supra* note 60.

74. H.R. 4300 Part 1B, 125th Gen. Assemb., Reg. Sess., at § 67.12 (S.C. 2023).

weighting set forth in Section 59-20-40, for instructional services provided to out-of-district students to the Department of Juvenile Justice for the time period in which the child is committed or confined to a department facility.⁷⁵

The SCDJJ Special School District FY24 Approved General Fund Budget indicates that total general fund revenue from state, federal and “other” sources for the year is \$9,786,288.00.⁷⁶ Presumably, this “other” category includes the local revenues provided for in Section 67.12, although the SCDJJ budget does not specify what exactly is included. According to Proviso 1.3 of the FY 2024-25 Appropriations Act, the estimated average daily membership of the SCDJJ school district for the year is 428 students.⁷⁷ Dividing the total revenue by the average student daily attendance, SCDJJ’s per-pupil revenue (the amount of funding they receive per student) is about \$22,865.00. By comparison, the per-pupil revenue generated in Richland 2 School District is projected to be about \$18,426.00, and in Richland 1 School District is projected to be about \$24,133.00.⁷⁸ The average revenue per pupil across the state is \$18,842.00, which means that the per-pupil revenue in SCDJJ is actually higher than both Richland 2 and the statewide average, and almost on par with Richland 1.⁷⁹

However, educating children in a secure facility presents challenges (and expenses) that educating children in the general public does not, and more money is likely required for SCDJJ to provide a minimally adequate education to its students. Yet the weighting options don’t provide specific options for incarcerated students.⁸⁰ So, even if the state provides the SCDJJ school district with enough funding according to the current weighting model, it would still be difficult to tell whether this is actually an adequate amount, since the unique concerns and costs associated with educating incarcerated children have not been contemplated by statute.⁸¹ There are certain weightings that could apply, like the weightings for students with disabilities, students in poverty, or students utilizing career and technology education.⁸² However,

75. *Id.*

76. *DJJ School District*, *supra* note 60 (click the link titled “Proviso 1.3 – School Budget” under the “Proviso 1.3 – School Budget” subheading).

77. *Revenue Per Pupil Report and 135-Day ADM Report*, S.C. REVENUE & FISCAL AFFS. OFF., <https://rfa.sc.gov/data-research/education/education-finance-projections> [<https://perma.cc/3MMR-FN4Y>] (click the link titled “ADM Report by School District”).

78. *Id.* [<https://perma.cc/5UWH-XPW5>] (click the link titled “FY 2024-25 Revenue Per Pupil Report by District”).

79. *Id.*

80. *See* S.C. CODE ANN. § 59-20-40(c) (2020).

81. *See id.*

82. *Id.*

none of these weightings could possibly account for the intersection of issues facing a child who is being educated in detention.

Further, SCDJJ does not keep (or at least does not make public) records indicating how many of their students are in all of these categories. For example, although the SCDJJ website claims partnerships with companies and schools that provide career and technology education, the SC Report Card for the school district says that data on the number of students involved in such programming is unavailable.⁸³ The SC Report Card Poverty Index does indicate that SCDJJ has a 2024 poverty index of 85.7.⁸⁴ However, this number may not be particularly accurate because it is calculated to include all students actively enrolled as of Day 135 of school.⁸⁵ Because of the varying sentences and lengths of stay for children in SCDJJ, this number could be higher or lower depending on the seemingly arbitrary 135th day of school rule.⁸⁶ In fact, other data from the 2024 SC Report Card indicates that this number may be higher—of fifty-two high school test-takers in math and English language arts (“ELA”), forty-nine of them are listed as in poverty, and of the nine middle school test-takers, eight are in poverty.⁸⁷ The SCDJJ district itself, according to Freedom of Information Act (“FOIA”) response communications with their legal team, does not track the percentage of their students who qualify for free or reduced lunch under federal guidelines, which would perhaps be a more reliable (or at least more standardized) measure of students in poverty.⁸⁸

Regardless of the specifics of the weighting system discussed above, the court in *Abbeville II* seemed to treat higher district per-pupil spending as persuasive evidence of fulfilling the General Assembly’s constitutional duty.⁸⁹ The estimated per-pupil expenditure for the 2024-2025 school year at

83. *Direct Partnerships*, *supra* note 66; *College and Career Readiness*, Department of Juvenile Justice 2023-2024, SC SCH. REP. CARDS, <https://screportcards.com/overview/academics/college-career-readiness/?q=eT0yMDI0JnQ9SCZzaWQ9NTIwODAwMQ> [https://perma.cc/L96D-FKPM] [hereinafter SCDJJ 2023-2024 CAREER READINESS REPORT CARD].

84. SC SCH. REP. CARDS, <https://screportcards.com/files/2024//data-files/> [https://perma.cc/N384-NX25] (click the link titled “2024 Report Card Poverty Index”).

85. *Id.*

86. See S.C. DEP’T OF JUV. JUST., 2018 DATA RES. GUIDE 10 (2018), <https://djj.sc.gov/sites/djj/files/Documents/Resource%20Guide%202018-Final%20Draft.pdf> [https://perma.cc/C67N-K6FG].

87. SC SCH. REP. CARDS, <https://screportcards.com/files/2024//data-files/> [https://perma.cc/CPM9-HJEB] (click the link titled “ESSA Achievement Index 2024 Subgroups”).

88. Response to FOIA Request from Shana Evans, Senior Paralegal, S.C. Dep’t of Juv. Just., to author (Nov. 13, 2024) (on file with author).

89. See *Abbeville II*, 410 S.C. 619, 638, 767 S.E.2d 157, 167 (2014) (“[M]onetary inputs into each of the Plaintiff Districts appeared to fulfill the General Assembly’s constitutional duty. For example, seven of the eight Plaintiff Districts’ per pupil expenditures exceeded the state average at the time of trial, and all eight districts received a significant increase in state funding between 1999 and 2002.”).

SCDJJ is \$25,907.00.⁹⁰ In the 2021-2022 school year, the average per-pupil expenditure across the State of South Carolina was \$16,500.00, and it may be even less now.⁹¹ In this case, the available data seems to indicate that the per-pupil spending at SCDJJ is significantly higher than the state average. Does this mean that the funding input meets the minimally adequate standard? Perhaps. The more likely story is that high levels of poverty, intersection with other factors (some of which are not represented among the current weighting options), and lack of transparency in full reporting mask the true cost of educating incarcerated children and make it difficult, if not impossible, to accurately determine how much money is minimally adequate.

2. Facilities

Although the adequacy of the funding input seems unclear due to reporting and intersectionality issues, the problems with the facilities input are much clearer. *Abbeville I* requires that the State provide “adequate and safe facilities” for education.⁹² Of course, providing safe educational facilities poses a special challenge within the context of a secure facility. The South Carolina General Assembly commissioned reviews of SCDJJ by the Legislative Audit Council in 2017 and 2021.⁹³ Two of the specific 2017 audit objectives were to “[e]valuate how DJJ is maintaining a safe and secure environment for staff and juveniles” and to “[r]eview how DJJ monitors its delivery of rehabilitative treatment and educational programs for the juveniles to determine whether the agency is meeting its mission.”⁹⁴ The 2017 report created by the Council identified seventy-four recommendations for SCDJJ to implement.⁹⁵ The 2021 report served as a follow-up to determine if SCDJJ had complied with the recommendations, and although SCDJJ claimed it had

90. *Proviso 1.3 – School Budget*, *supra* note 76.

91. *Public School Expenditures*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/programs/coe/indicator/cmb/public-school-expenditure> [<https://perma.cc/GV6Q-MKPU>]; *U.S. Public Education Spending Statistics*, EDUC. DATA INITIATIVE (July 14, 2024), <https://educationdata.org/public-education-spending-statistics#south-carolina> [<https://perma.cc/3SRV-T3ZC>].

92. *Abbeville I*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999).

93. LEGIS. AUDIT COUNS., S.C. GEN. ASSEMBLY, A LIMITED REVIEW OF THE S.C. DEPARTMENT OF JUVENILE JUSTICE (2017), <https://lac.sc.gov/reports/reports-agency-a-k/djj-2017> [<https://perma.cc/ZT4F-7ABD>] (click the link titled “Report (PDF)”); LEGIS. AUDIT COUNS., S.C. GEN. ASSEMBLY, A LIMITED REVIEW OF THE S.C. DEPARTMENT OF JUVENILE JUSTICE AND FOLLOW UP TO OUR JANUARY 2017 AUDIT (2021), <https://lac.sc.gov/reports/reports-agency-a-k/djj-2021> [<https://perma.cc/KQ4B-PHAM>] [hereinafter DJJ 2021 AUDIT] (click the link titled “Report (PDF)”).

94. DJJ 2021 AUDIT, *supra* note 93, at 1.

95. *See id.* at 11–80 (listing the identified seventy-four recommendations).

fully implemented 97% of the recommendations, the reality is that it had only fully implemented around 50% of the recommendations.⁹⁶

Also in 2017, the U.S. Department of Justice (“DOJ”) began investigating the BRRC, which is SCDJJ’s long-term facility.⁹⁷ In 2022, SCDJJ entered into a settlement agreement to conclude this investigation, agreeing to key measures targeting violence and excessive isolation within the facility.⁹⁸ In 2024, the compliance team issued a monitoring report to assess compliance with the settlement agreement.⁹⁹ The report detailed seventy-nine different areas, rating each as either non-compliant, partially compliant, or substantially compliant.¹⁰⁰ Of these, only twenty-five were substantially compliant.¹⁰¹ Although each subpart of the “Physical Plant” section of this report was rated as substantially compliant, that section focused only on the adequate coverage of surveillance cameras, not on the state of the facilities themselves.¹⁰²

A federal complaint (“NAACP Complaint”) filed in 2023 by the National Association for the Advancement of Colored People (“NAACP”) and others, including the American Civil Liberties Union (“ACLU”) of South Carolina, provides better details on the state of the facilities themselves.¹⁰³ The complaint alleges a variety of health and safety violations within SCDJJ facilities, including violence, excessive use of isolation, and inhumane living conditions.¹⁰⁴ The complaint includes photographs taken inside the JDC facility in Columbia, showing walls covered in graffiti, mold, and a defective toilet full of excrement covered by a sheet in an attempt to reduce the stench.¹⁰⁵ The complaint also details stories of children struggling to sleep because cockroaches crawl over them at night, and references “threadbare” blankets and thin mattresses.¹⁰⁶ One allegation in the complaint says, “[t]he threat of violence at DJJ facilities is now so great that children are afraid to

96. DJJ 2021 AUDIT, *supra* note 93, at 123; First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 61, ¶ 42.

97. See *Justice Department Secures Civil Rights Settlement Agreement Against South Carolina Department of Juvenile Justice*, U.S. DEP’T OF JUST. OFF. OF PUB. AFFS. (Apr. 14, 2022), <https://www.justice.gov/opa/pr/justice-department-secures-civil-rights-settlement-agreement-against-south-carolina> [https://perma.cc/6UXJ-PRCY].

98. See *id.*

99. SUSAN BURKE ET AL., MONITORING REPORT 1 (Apr. 2024), <https://djj.sc.gov/sites/djj/files/Documents/April%202024%20Monitoring%20Report%20FINAL%205.3.24.pdf> [https://perma.cc/F5RM-YU79].

100. See *id.* at 2–5.

101. *Id.*

102. See *id.* at 3, 23–30.

103. See generally First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 61.

104. See *id.* ¶ 2.

105. *Id.* ¶¶ 176–77.

106. *Id.* ¶ 184.

leave their cells or to sleep.”¹⁰⁷ Due to the violence in the dorm areas in the BRRC, there are often not enough security personnel to safely escort students to school, meaning that students cannot receive an education.¹⁰⁸ A lack of teacher phones in the classrooms, coupled with often reduced security staff, contribute to a reduced sense of safety in school, which means that students have to pay more attention to their own safety than to their education.¹⁰⁹

These issues point to a systemic problem within SCDJJ facilities that extends to both the dormitories and the classrooms. For example, the Birchwood School on BRRC’s campus has been the site of a series of riots. In 2016, students gained roof access to the school building during a riot and threw rocks at staff.¹¹⁰ More recently, in 2022, a “disturbance” originated in the Birchwood School when students assaulted a staff member and damaged school property with hammers.¹¹¹

Even if the classroom facilities *were* safe and adequate, the documented danger posed by the living facilities is enough on its own to undermine the education provided to children in SCDJJ custody. Social science studies show that a reduced ability to sleep correlates with poor academic performance.¹¹² Children afraid of violence or subject to squalid living conditions are more likely to suffer from a lack of sleep, and therefore more likely to exhibit poor academic performance. Studies also show that the lack of opportunities for physical activity can reduce math and reading scores.¹¹³ Children too afraid to leave their cells, as well as children kept in isolation, will have reduced opportunity for physical activity. Therefore, the poor conditions of the living facilities, coupled with the unsafe environment of the school facilities themselves, combine to demonstrate that SCDJJ is not providing the “adequate and safe facilities” mandated by the court in *Abbeville I*.

107. *Id.* ¶ 84.

108. *See id.* ¶ 3.

109. *See id.* ¶¶ 153–54.

110. *See* Jamie Self, *Riots Gain Focus in SC Juvenile Justice Guard Reports*, THE STATE (May 3, 2016, 10:37 PM), <https://www.thestate.com/news/politics-government/politics-columns-blogs/the-buzz/article75473397.html> [<https://perma.cc/QSW8-WUWJ>].

111. WLTX, *DJJ: Disturbance Led to Youth Damaging Cars, Property with Hammers*, NEWS 19 (Oct. 18, 2022, 6:15 PM), <https://www.wltx.com/article/news/crime/south-carolina-department-of-juvenile-justice-worker-hurt/101-2b7d0c76-fdb4-4d94-bb34-67613e283314> [<https://perma.cc/L7V9-4SMB>].

112. *E.g.*, Anna S. Urrila et al., *Sleep Habits, Academic Performance, and the Adolescent Brain Structure*, SCI. REPS., Feb. 9, 2017, at 1, 1 <https://pubmed.ncbi.nlm.nih.gov/28181512/> [<https://perma.cc/MGM5-TWHW>] (“[B]oth short sleep and late sleeping hours have been shown to correlate with poor school performance.”).

113. *See, e.g.*, COMM. ON PHYSICAL ACTIVITY & PHYSICAL EDUC. IN THE SCH. ENV’T, INST. OF MED., EDUCATING THE STUDENT BODY 161 (Harold W. Kohl III & Heather D. Cook eds., 2013), https://www.ncbi.nlm.nih.gov/books/NBK201500/pdf/Bookshelf_NBK201500.pdf [<https://perma.cc/Q5SJ-4TPP>] (“Available evidence suggests that mathematics and reading are the academic topics that are most influenced by physical activity.”).

3. *Curriculum and teachers*

SCDJJ follows the same curriculum standards as the rest of the districts in the State, promulgated by the South Carolina Department of Education.¹¹⁴ During the 2022-2023 school year, 82.8% of SCDJJ teachers had advanced degrees, and 100% of teachers were on continuing contracts with the district, both considerations that seemed to weigh heavily in the *Abbeville II* analysis of teacher quality.¹¹⁵ SCDJJ employed zero inexperienced teachers during the 2022-2023 school year and only 9.5% were teaching out-of-field.¹¹⁶ The student-teacher ratio for that same year was 9.6:1, which is well below the state regulatory limit for high schools of 35:1.¹¹⁷ According to SCDJJ's listing of their employee salaries, certified and classroom teachers make between \$60,000-\$100,000.¹¹⁸ All of these factors paint a picture of a school district with experienced, qualified teachers, mostly teaching within their own field, with a student-teacher ratio well below the state limit.

However, the SCDJJ school district fails to track some of the other measures that the court considered important in *Abbeville II*. For example, teacher lesson plans, even for state-tested courses, are “[n]ot maintained by the district.”¹¹⁹ This raises several questions about the potential quality of the curriculum, such as, who *does* maintain the lesson plans? What type of curricular oversight are teachers subject to? Are they even required to produce lesson plans at all? Moreover, the district apparently “does not track” the percentage of teachers with different types of teacher certifications and fails to maintain records of the undergraduate and graduate institutions from which their teachers graduated.¹²⁰

Despite these issues, the *Abbeville II* court seemed to find the curriculum and teachers to be minimally adequate when they were held to “nationally recognized certification and professional development standards,” as they are here.¹²¹ Thus, despite the inadequacies in the district's data collection outlined above, it is likely that the inputs of curriculum and teachers satisfy the minimal adequacy standard.

114. *Birchwood School District*, *supra* note 60.

115. *Classroom Environment*, Department of Juvenile Justice 2023-2024, SC SCH. REP. CARDS, <https://screportcards.com/overview/school-environment/class-environment/?q=eT0yMDI0JnQ9SCZzaWQ9NTIwODAwMQ> [<https://perma.cc/HD3V-RR94>]; see *Abbeville II*, 410 S.C. 619, 643–46, 767 S.E.2d 157, 170–71 (2014).

116. *Classroom Environment*, *supra* note 115.

117. See S.C. CODE ANN. REGS. 43-205(IV)(B)(3)(a) (2011).

118. See *DJJ School District*, *supra* note 60 (click the link titled “Proviso 1.3 – School Budget” under the “Proviso 1.3 – School Budget” subheading).

119. Response to FOIA Request from Shana Evans, Senior Paralegal, S.C. Dep’t of Juv. Just., to author (Nov. 13, 2024) (on file with author).

120. *Id.*

121. See *Abbeville II*, 410 S.C. 619, 638, 767 S.E.2d 157, 167 (2014).

4. *Programming*

SCDJJ purports via its website to offer a large number of programs, including partnerships with local community colleges and opportunities for skills-based training.¹²² However, the NAACP Complaint referenced above alleges that incarcerated students only receive a few hours of education per week.¹²³ It also alleges that incarcerated students are often completely barred from access to education or only provided with worksheets to complete, often without a pencil or pen.¹²⁴ If these allegations are found to be true, it would not matter how many good educational programming options incarcerated students have. If they are only able to access them sporadically, their education cannot be minimally adequate.

There are also serious issues with the programming provided to children held in isolation. In August 2023, a whistleblower employee of SCDJJ confirmed that in the wake of a riot on BRRC's campus, a group of students in isolation were denied all rehabilitative services and only received "daily educational packets."¹²⁵

In the 2024 DOJ Monitoring Report, the compliance team authored a subsection called "Educational Services While in Isolation," which they labeled as partially compliant.¹²⁶ SCDJJ is required to comply with the following directive whenever it places a child in isolation:

Within the first school day after a youth is placed in isolation, DJJ will provide meaningful education services delivered by a teacher certified by the State or an associate teacher working under the supervision of a teacher certified by the State. If the youth has not regained enough self-control to receive in-person educational services, representatives from the multidisciplinary team should meet to discuss temporary alternatives to in-person education.¹²⁷

The body of this subsection noted that there were "no reports of youth receiving education services" in one of the BRRC isolation units from November 2023 to April 2024.¹²⁸ However, teachers were reported as

122. *See District Partnerships*, *supra* note 66.

123. First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 61.

124. *Id.* ¶ 146.

125. Chris Joseph, *Department of Juvenile Justice Whistleblower Calls Out Post-Riot Policy Choices*, WIS10 (Aug. 22, 2023, 7:39 PM), <https://www.wistv.com/2023/08/22/department-juvenile-justice-whistleblower-calls-out-post-riot-policy-choices/> [https://perma.cc/F9GG-KNAW].

126. BURKE ET AL., *supra* note 99, at 155.

127. *Id.*

128. *Id.*

“routinely” visiting students in isolation, although the time spent with each student was “minimal,” typically ranging from zero to thirty minutes.¹²⁹ The report also says that 11 students refused services, but that there were no reports of alternative plans being developed for those students, as required by the “Educational Services While in Isolation” directive referenced above.¹³⁰ This subsection of the report concluded by saying, “[w]hile progress continues, the overall data shared still does not demonstrate that youth in isolation receive meaningful education with sessions lasting 0-30 minutes and the number of youths refusing services.”¹³¹

If the factual allegations contained in the NAACP Complaint are found to be true, the programming input certainly would not reach a minimally adequate level. Even without these allegations, information from the DOJ Monitoring Report and the whistleblower indicates that some, if not all, students in isolation are not receiving enough programming to reach a minimally adequate level.¹³²

According to the totality of the analysis in the sections above, the inputs to SCDJJ are mixed, with teachers and curriculum arguably reaching the minimally adequate standard, but funding, facilities and programming likely not. However, even if some of the inputs are minimally adequate, the outputs need to be consistent in order to demonstrate that the entire educational system is minimally adequate.¹³³ The primary measures of output used by the court in *Abbeville II* were test scores, state report cards, and graduation rates.¹³⁴ Unfortunately, as shown below, SCDJJ cannot demonstrate that its outputs in terms of scores, report cards, or graduation rates are constitutionally acceptable.

B. How DJJ fails to produce the requisite outputs for a minimally adequate education

1. Test scores and report cards

South Carolina utilizes End of Course Examination Program (“EOCEP”) testing in certain high school subjects to determine whether its students are

129. *Id.*

130. *See id.* at 155–56.

131. *Id.* at 156.

132. *See id.* at 155–56; Joseph, *supra* note 125.

133. *See Abbeville II*, 410 S.C. 619, 639, 767 S.E.2d 157, 167 (2014) (“While we acknowledge that the Defendants enacted a robust education scheme designed to address the critical aspects of public education, student performance in the Plaintiff Districts demonstrates an apparent disconnect between intentions and performance.”).

134. *See id.* at 639–41, 767 S.E.2d at 167–69.

performing at a minimally satisfactory level across the State.¹³⁵ These tests are given for Algebra I, Biology, English II, and U.S. History.¹³⁶ The EOCEP score received by each child counts towards 20% of their final grade in the course.¹³⁷ The following EOCEP assessment results data is from the 2022-2023 school year:¹³⁸

	% of students in the state earning C or higher	% of students in SCDJJ earning C or higher
Algebra I	41.8	0.0
English II	64.4	1.0
Biology	40.9	0.0
U.S. History	42.1	0.0

The definition of a minimally adequate education provided by the court in *Abbeville I* requires that students be provided the opportunity to acquire the ability to read, write, and speak English, along with knowledge of math, physical science, and history, among other things.¹³⁹ Percentages of 0% or 1% passing in these areas certainly do not rise to the level of minimal adequacy.¹⁴⁰

Of course, South Carolina schools have other ways of measuring student performance in addition to the EOCEP. The Every Student Succeeds Act (“ESSA”) is a federal education law passed in 2015 that supplanted the No Child Left Behind Act of 2001.¹⁴¹ The ESSA requires that states remain accountable to high standards but allows each state flexibility in determining its own goals, although measuring those goals is primarily accomplished through different standardized tests.¹⁴² Each South Carolina district earns points in a variety of categories, which are reported in the South Carolina

135. See *End-of-Course Examination Program (EOCEP)*, S.C. DEP’T OF EDUC., <https://ed.sc.gov/tests/high/eocep/> [<https://perma.cc/L9JQ-3943>].

136. *Id.*

137. *Id.*

138. *SC Department of Juvenile Justice: 2022-2023, SC SCHOOL REPORT CARDS.*, <https://screportcards.com/overview/academics/academic-achievement/?q=eT0yMDIzJnQ9RCZzaWQ9NTIwODAwMA> [<https://perma.cc/2KZD-E98E>].

139. *Abbeville I*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999).

140. See *Abbeville II*, 410 S.C. 619, 641, 767 S.E.2d 157, 168 (2014) (“[W]e cannot completely ignore a substantive measure of student performance in assessing whether the inputs afford the students their mandated opportunity.”).

141. *Every Student Succeeds Act (ESSA)*, S.C. DEP’T OF EDUC., <https://ed.sc.gov/policy/federal-education-programs/every-student-succeeds-act-essa/> [<https://perma.cc/AU26-6PHT>].

142. See *id.*

School Report Card for that district each year.¹⁴³ SCDJJ is labeled as a “special school” under the ESSA and thus has different rating criteria than “regular” public schools.¹⁴⁴ The rating mechanism for the SCDJJ school district is based on the following criteria: Student Achievement, Student Progress, GED Success Rates, Positive Learning Environment, English Language Proficiency, and Prepared for Success.¹⁴⁵ “Regular” schools are also rated on achievement and preparation for success but are additionally scored on the criteria of College and Career Ready, Graduation Rate, and School Quality.¹⁴⁶ Regardless of “special” or “regular” school status, each criterion requires specific calculations that are then converted to points.¹⁴⁷ For example, the Student Achievement criteria for SCDJJ is calculated by averaging the average high school credits earned by students in the district with the average middle school courses passed by students in the district.¹⁴⁸ This number is then converted to points using a conversion table, and the points from each criteria are added to get the final point total for the district.¹⁴⁹ Depending on the point total, a district can receive a rating of Excellent (70 points or higher), Good (60-69), Average (50-59), Below Average (40-49), or Unsatisfactory (39 or lower).¹⁵⁰ The 2023-2024 South Carolina School Report Card for high school students in SCDJJ gives the district an overall rating of Unsatisfactory, with a total of three points.¹⁵¹ This “Unsatisfactory” rating indicates that the district has failed to “meet the criteria to ensure all students meet the Profile

143. See, e.g., CONSOLIDATED STATE PLAN 202 (2023), <https://ed.sc.gov/policy/federal-education-programs/every-student-succeeds-act-essa/essa-state-plan-amendment/> [https://perma.cc/CQG6-DPWF] (submitted by the State of South Carolina to the U.S. Department of Education under the Elementary and Secondary Education Act 1965 as amended by the Every Student Succeeds Act).

144. See *id.* at 196 (providing an appendix for scoring “Special Schools”); *id.* at 201–04 (providing criteria for scoring and the scores for SCDJJ within the special schools appendix); *id.* at 75 (providing criteria for scoring “regular” high schools in South Carolina).

145. *Id.* at 202 (providing the criteria used to score SCDJJ).

146. S.C. EDUC. OVERSIGHT COMM., GUIDE TO THE 2018 SC SCHOOL REPORT CARDS 4 (2018), <https://scsba.org/wp-content/uploads/2018/10/2018-lunchlearn-reportguide.pdf> [https://perma.cc/DPH5-7VRY]. Regular schools are also rated on English Learners’ Proficiency. This criterion for scoring is provided for SCDJJ in the Consolidated State Plan; however, SCDJJ does not receive points for this criterion because it does not meet the required threshold of having at least twenty English language learners. See CONSOLIDATED STATE PLAN, *supra* note 143, at 202.

147. See, e.g., CONSOLIDATED STATE PLAN, *supra* note 143, at 202.

148. *Id.*

149. See *id.* at 203–04.

150. *Id.* at 204.

151. *Department of Juvenile Justice 2023-2024*, SC SCH. REP. CARDS, <https://screportcards.com/overview/?q=eT0yMDI0JnQ9SCZzaWQ9NTIwODAwMQ> [https://perma.cc/2WEY-E2MT] [hereinafter 2023-2024 SCDJJ SCHOOL REPORT CARD].

of the SC Graduate.”¹⁵² However, this might not be the full story. Although the approved ESSA State Plan indicates that SCDJJ, as a “special” school, should be evaluated using the specific criteria enumerated above, the South Carolina Report Card for the district evaluates SCDJJ against the “regular” school criteria.¹⁵³ This is potentially a significant discrepancy because SCDJJ is supposed to be getting points for success on the GED as opposed to its graduation rate.¹⁵⁴ As described in the next section of this Note below, although SCDJJ has very low graduation rates, this is due in large part to the fact that many of its students are on a GED track.¹⁵⁵ Therefore, evaluating SCDJJ based on graduation rates instead of success on the GED may artificially depress its points in that category. However, the total possible number of points that a district can earn in the GED success category is twenty.¹⁵⁶ Even if SCDJJ were to get all twenty of those points, the district’s total score would only be twenty-three, which is still well within the “Unsatisfactory” category.¹⁵⁷ Therefore, even with these discrepancies within the rating system, SCDJJ would likely still fall under the Unsatisfactory rating in the South Carolina Report Card and the test score output would still not rise to the level of minimally adequate.¹⁵⁸

The definition from *Abbeville I* also requires students to attain academic and vocational skills, which can be measured by the South Carolina Career Ready Test and other standardized measures.¹⁵⁹ According to the 2023-2024 South Carolina School Report Card, 1.3% of students in the SCDJJ graduating cohort are considered “career ready,” as compared to 69.6% in the state.¹⁶⁰

152. *Id.* The Profile of the SC Graduate lists core competencies that all South Carolina high school graduates should attain, including world class knowledge, world class skills, and life and career characteristics. *About Us*, S.C. EDUC. OVERSIGHT COMM., <https://eoc.sc.gov/about-us> [<https://perma.cc/AZT8-RJQF>].

153. *See id.* (indicating that SCDJJ’s score is based on graduation rate as well as college and career readiness); CONSOLIDATED STATE PLAN, *supra* note 143, at 202 (indicating that SCDJJ is not scored in these categories).

154. CONSOLIDATED STATE PLAN, *supra* note 143, at 202 (indicating that SCDJJ’s score includes points for GED Success Rate).

155. *See infra* notes 163-170.

156. *See* CONSOLIDATED STATE PLAN, *supra* note 143, at 202 (indicating SCDJJ could score up to twenty points in the GED Success Rate category).

157. *See id.* (indicating SCDJJ could score up to twenty points in the GED Success Rate category); 2023-2024 SCDJJ SCHOOL REPORT CARD, *supra* note 151 (indicating that SCDJJ scored a three on its report card).

158. *See supra* notes 143-157; *Abbeville II*, 410 S.C. 619, 639–40, 767 S.E.2d 157, 167–68 (2014) (citing “Unsatisfactory” and “Below Average” ratings of plaintiff districts as evidence that “the institutions within these districts are largely unfit to provide students with the constitutionally mandated opportunity”).

159. *Abbeville I*, 335 S.C. 58, 68, 515 S.E.2d 535, 540 (1999); *see The South Carolina Career Ready Test*, S.C. DEP’T OF EDUC., <https://ed.sc.gov/tests/high/south-carolina-career-readiness-assessment/> [<https://perma.cc/K9T9-N3W6>].

160. *See* SCDJJ 2023-2024 CAREER READINESS REPORT CARD, *supra* note 83.

Even worse, zero students in the cohort are labeled as “college ready” (measured by AP Exams, IB exams, ACT or SAT scores, or dual enrollment).¹⁶¹ Rates of 0% and 1.3% cannot rise to the level of minimal adequacy.¹⁶²

2. Graduation rates

The on-time graduation rate for SCDJJ in 2023-2024 was 0.9%.¹⁶³ For the state, it was 85.4%.¹⁶⁴ Two students in SCDJJ graduated high school during the period from April 2022 to January 2023.¹⁶⁵ Although these statistics look incredibly dire, they do not present the entire picture. Between April 2022 and January 2023, an average of 55% of youth at BRRC were on a GED track.¹⁶⁶ Students on a GED track do not take any of the exams that students in traditional high school take, so even the most successful students on the GED track would not show up in any of the metrics discussed above.¹⁶⁷ Between April 2022 and January 2023, eight youth successfully earned their GED.¹⁶⁸ In 2018, the GED pass rate at SCDJJ was 80%, one percentage point higher than the national average for the year before.¹⁶⁹ Using GED metrics instead of graduation rates, SCDJJ seems more likely to be successful in providing a minimally adequate education. Unfortunately, taking all of the test score, report card, and graduation rate data into account, there still seems to be a clear disconnect between the resources provided by the state and the outcomes of the educational program at SCDJJ. Such a disconnect was

161. *College and Career Readiness, Department of Juvenile Justice 2023-2034*, SC SCH. REP. CARDS, <https://screportcards.com/overview/academics/college-career-readiness/details/?q=eT0yMDI0JnQ9SCZzaWQ9NTIwODAwMQ> [<https://perma.cc/CN6Y-PY6X>].

162. *See Abbeville II*, 410 S.C. at 639–41, 767 S.E.2d at 167–68 (discussing how “a substantive measure of student performance” cannot be completely ignored in “assessing whether the inputs afford the students their [constitutionally] mandated opportunity”).

163. *Graduation Rate, Department of Juvenile Justice 2023-2024*, SC SCH. REP. CARDS, <https://screportcards.com/overview/academics/graduation-rate/?q=eT0yMDI0JnQ9SCZzaWQ9NTIwODAwMQ> [<https://perma.cc/QUU3-LABY>].

164. *Id.*

165. SUSAN BURKE ET AL., MONITORING REPORT 12 (Apr. 2023), <https://djj.sc.gov/sites/djj/files/Documents/SCDJJ%20Monitoring%20Report%20-%20April%202023%20-%20FINAL.pdf> [<https://perma.cc/EXN2-KK99>].

166. *Id.*

167. *See id.* (stating that students on a GED track take classes to prepare to take the GED and participate in vocational and career programs); *supra* notes 143–157 and accompanying text.

168. SUSAN BURKE ET AL., *supra* note 165.

169. *See Ten States Where Prisons Exceed the National GED Pass Rate*, GED TESTING SERVICE (Dec. 18, 2018), <https://www.ged.com/wp-content/uploads/2018GEDTSCorrectionsPR.pdf> [<https://perma.cc/H9LK-BKDS>] (noting that the national GED pass rate in 2017 was 79%); *Fiscal Year 2018–2019 Accountability Report*, DEP’T OF SOC. SERV., <https://www.scstatehouse.gov/reports/aar2019/N120.pdf> [<https://perma.cc/76TT-RA2F>].

enough to demonstrate a constitutional violation in *Abbeville II* and would do so again here.¹⁷⁰

C. *A note on intermediate scrutiny*

The challenges of a school system operating within a secure facility are unique. Even if children are being deprived of a minimally adequate education in SCDJJ, such a violation could still be justified depending on the governmental interest at stake and the level of scrutiny applied. South Carolina courts have not determined the required level of scrutiny in this area. However, the North Carolina Supreme Court in *King v. Beaufort* established intermediate scrutiny as the appropriate standard, which strikes a balance between the right to education and deference to local decision-makers.¹⁷¹ Under intermediate scrutiny, any deprivation of education needs to be substantially related to an important government interest.¹⁷² While South Carolina has not yet adopted such a standard, it might be a useful tool to balance safety at SCDJJ against students' education rights.¹⁷³

The interest in safety is what drives the use of solitary confinement and cancels classes when not enough security personnel are around to oversee children's movements to and from the classroom.¹⁷⁴ An article by the *SC Daily Gazette* from March 26, 2024, revealed that only two-thirds of the officer positions at SCDJJ were filled.¹⁷⁵ Teachers are not safety officers, and safety staff must be provided proportionate to the number of children in facilities to keep everyone safe. The 2022 DOJ settlement agreement required a ratio of one staff member to every four children, but depending on officer availability, this doesn't always happen.¹⁷⁶ However, the State is responsible for ensuring that appropriate numbers of staff are present to keep children safe and to enable them to follow their daily schedules, including education. The State is also responsible for ensuring that isolation is only utilized as a last resort in rare circumstances and that it is limited in duration as much as

170. See *Abbeville II*, 410 S.C. 619, 634, 767 S.E.2d 157, 164 (2014).

171. See *King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.*, 704 S.E.2d 259, 265 (N.C. 2010) (holding that intermediate scrutiny should be applied when a state denies a child access to alternative education programs following a long-term suspension).

172. See *id.*

173. See *id.* (discussing safety of students and staff as an example of an important government interest).

174. See First Amended Complaint for Declaratory and Injunctive Relief, *supra* note 61, ¶¶ 2–3.

175. See Skylar Laird, *Grappling with Staff Shortages, SC's DJJ Turns to Private Sector*, SC DAILY GAZETTE (Mar. 26, 2024, 2:28 PM), <https://scdailygazette.com/2024/03/26/grappling-with-staff-shortages-scs-djj-turns-to-private-sector> [https://perma.cc/8A35-HYYL].

176. *Id.*

possible.¹⁷⁷ In fact, the 2022 DOJ settlement agreement stipulates that youth should spend no more than four hours in solitary confinement, unless an extension is approved and various compliance measures are met by security leadership.¹⁷⁸

All schools are likely to be able to articulate, at minimum, an important interest in school safety, none more so than a school within a correctional facility. The deprivation of education to prevent violence and fights from occurring in classrooms that do not have enough security staff, as well as the use of solitary confinement in an attempt to prevent future violence, are certainly substantially related to the important goal of safety.¹⁷⁹ Thus, even though the disconnect between the inputs and outputs analysis above shows that the education in the SCDJJ school district is not minimally adequate, this deprivation might survive intermediate scrutiny due to legitimate safety concerns. At the same time, because both the 2022 DOJ settlement agreement and federal law have sharply curtailed the use of solitary confinement for juveniles, utilizing safety to justify extended solitary confinement (and therefore lack of educational services) is not a valid justification.¹⁸⁰ Regardless, until South Carolina rules on the appropriate level of scrutiny to be applied to such cases, it remains an open question whether safety concerns can justify an education that is less than minimally adequate at SCDJJ.

IV. CONCLUSION

Children in the SCDJJ school district are not receiving a minimally adequate education. South Carolina's Constitution has recognized the fundamental importance of public education and enshrined the right to a system of free public education to every child in the state. *Abbeville I* provided the overarching, qualitative standard for determining the level of education implicitly required by the South Carolina Constitution when it imposed the "minimally adequate" standard. *Abbeville II* provided an analytical framework and example to follow in analyzing a given district's compliance with this standard. Because the duty of the courts is to ensure that the Constitution is correctly interpreted and faithfully followed, the court in

177. Exhibit A: Agreement Between the United States and the South Carolina Department of Juvenile Justice at 1, *United States v. S.C. Dep't of Juvenile Justice*, No. 3:22-cv-01221, 8 (D.S.C. Apr. 14, 2022), <https://www.courtlistener.com/docket/63237645/united-states-v-south-carolina-department-of-juvenile-justice/> [<https://perma.cc/TR93-WXBRs>] (click on "Download PDF" for "Attachment 1" under Document Number 4).

178. *See id.* at 9.

179. *Cf. King ex rel. Harvey-Barrow v. Beaufort Cnty. Bd. of Educ.*, 704 S.E.2d 259, 265 (N.C. 2010) (discussing protection from misbehavior that presents a threat to other students or staff as an important government purpose sufficient to satisfy intermediate scrutiny).

180. *See* 18 U.S.C. § 5043.

Abbeville I and *Abbeville II* did not overstep its bounds. Additionally, the rulings in *Abbeville I* and *Abbeville II* are still applicable to youth in SCDJJ custody because a student's right to a minimally adequate education is not abrogated by that student's misbehavior or status as a youth offender.¹⁸¹ Thus, the inputs and outputs analysis from *Abbeville II* is an appropriate tool to use in evaluating the education provided by SCDJJ.

Using that analysis, the inputs and outputs of education in SCDJJ's school district demonstrate a disconnect which is indicative of a school system that is not minimally adequate. First, the funding provided by the state, although greater than other areas, is likely not minimally adequate due to the failure of the weighting system to consider the intersection of issues facing youth in custody and the amount of money needed to address those unique issues. Second, the facilities provided for education are almost certainly not minimally adequate, as they are the subject of repeated complaints and settlement agreements with both local and federal agencies. Third, the teachers provided may be minimally adequate, although the district's failure to track certain teacher quality indicators may call this conclusion into question. Fourth, the programming provided to students *might* be minimally adequate, unless the allegations in the NAACP Complaint regarding the lack of instruction time are proved to be true. However, the programming provided to students in isolation likely does not reach the level of minimal adequacy. Thus, the inputs to the SCDJJ school district are mixed. Although some of the inputs are clearly below the minimally adequate standard, others may rise to meet it.

Unfortunately, the outputs, or results, produced by the SCDJJ school district show a clear disconnect between inputs and outputs, thus cementing the conclusion that the SCDJJ school district does not provide an education that rises to the level of minimally adequate. First, SCDJJ's test scores, whether measured through the EOCEP, the various categories of the South Carolina Report Cards, or the South Carolina Career Ready Test, are incredibly low. Second, the graduation rate at SCDJJ is far lower than the state's average, although taking GED results into consideration makes this factor more palatable. However, taking all factors together, the disconnect between inputs and outputs is clear, and evidences a constitutional violation.

Such a violation could still be justified depending on the governmental interest at stake and the level of scrutiny applied. A below-minimally adequate education might be justified under the intermediate scrutiny standard adopted in North Carolina, taking safety as the governmental interest in the deprivation. However, South Carolina has not yet determined which level of scrutiny to adopt in such cases. Until South Carolina rules on the appropriate

181. See S.C. CODE ANN. § 63-19-380 (2010) (requiring academic and vocational training provided by SCDJJ to "meet all educational standards prescribed by law").

level of scrutiny, whether a below-minimally adequate education could still be constitutionally justified remains an open question.

With the entirety of this analysis in mind, does Director Eden Hendrick's bold and hopeful statement, "If we can't give anything else to the youth in the system, we can give them an education," bear out in reality? Likely not. Ultimately, the disconnect between resources provided to the district and the results achieved by its schools demonstrates a constitutional violation and indicates that SCDJJ has failed in its constitutional duty to provide its children with a minimally adequate education.