

STATE OF NEW HAMPSHIRE  
Superior Court  
Rockingham, ss.  
Case No. 215-2022-CV-00167

*Steven Rand, et al*

Plaintiffs,

v.

*The State of New Hampshire,*

Defendant.

**PLAINTIFFS' (I) RESPONSE TO THE STATE OF NEW HAMPSHIRE'S STATEMENT OF MATERIAL FACTS AND (II) STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Superior Court Civil Rule 12(g), Plaintiffs, by and through their counsel, submit the following response to the State's statement of material facts.

Response to the State's Statement of Material Facts

1. The definition of an adequate education set forth in RSA 193-E:2-a does not cover everything a school district spends money on. RSA 193-E:2-a, IV(a); Cascadden Dep. 51:17–52:8, July 14, 2023; Freeman Dep. 39:4–20.

**Plaintiffs' Response: Plaintiffs agree that the definition of an adequate education set forth in RSA 193-E:2-a does not automatically cover everything on which a school district spends money. RSA 193-E:2-a, IV(a).**

2. Not every part of New Hampshire Administrative Rule Ed PART 306 is incorporated into the definition of an adequate education set forth in RSA 193-E:2-a. RSA 193-E:2-a, IV(a); Cascadden Dep. 51:19–22, 65:3–10, 66:3–8, 67:7–12; Freeman Dep. 39:4–20.

**Plaintiffs' Response: Agreed.**

3. Only those portions of Ed 306 that correspond with the eleven learning areas listed in RSA 193-E:2-a, I, are incorporated into the definition of an adequate education. RSA 193-E:2-a, IV(a); Cascadden Dep. 51:19–22.

**Plaintiffs’ Response: Agreed, but the Plaintiffs disagree that the State may pick and choose among the sections of the corresponding rules or omit consideration of other rules incorporated by reference.**

4. At least some, if not all, school districts in New Hampshire provide an education that exceeds constitutional adequacy. Cascadden Dep. 52:8–14; Freeman Dep. 168:6–15.

**Plaintiffs’ Response: Agreed.**

5. School districts provide numerous programs that are not required under the definition of constitutional adequacy set forth in RSA 193-E:2-a. Cascadden Dep. 53:9–54:6; Freeman Dep. 138:2–9.

**Plaintiffs’ Response: Agreed.**

6. Schools that spend less per pupil than the total average per pupil spending statewide are able to provide a constitutionally adequate education. Cascadden Dep. 94:22–25; Freeman Dep. 182:24–183:3.

**Plaintiffs’ Response: Agreed that some can, but see *Claremont v. Governor*, 138 N.H. 183, 193 (1993) (“Given the complexities of our society today, the State’s constitutional duty extends beyond mere reading, writing and arithmetic. It also includes broad educational opportunities needed in today’s society to prepare citizens for their role as participants and as potential competitors in today’s marketplace of ideas.”)**

7. Using statewide average per pupil expenditures to determine the cost of an adequate education tethers that cost to local school districts’ spending decisions. Freeman Dep. 187:6–13.

**Plaintiffs’ Response: Disputed. Plaintiffs dispute that Dr. Freeman’s deposition testimony supports the proposition that using statewide average per pupil expenditures “tethers” the cost of an adequate education to local school districts’ spending decisions.**

#### Statement of Additional Material Facts

##### **I. Adequacy Aid from 2007-Present**

1. In 2008, the State allocated \$3,450 per student as adequacy aid. RSA 198:40-a (2008) (“Beginning July 1, 2009, and for every biennium thereafter, the annual cost of providing the opportunity for an adequate education as defined in RSA 193-E:2-a shall be \$3,450 per pupil attending a public school . . .”)
2. As of the filing of the Complaint, adequacy aid was \$3,786.66 per student. N.H. Dep’t of Educ., *FY 2022 Adequate Education Aid* (Apr. 1, 2022), available at

<https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/fy2022-explained.pdf> (“For FY2022 and FY2023, the base per pupil rate is \$3,786.66 per ADM.”)

3. The adequacy amount as of the filing of the Complaint reflected the mandated cost of living adjustments aid and has not been raised outside of that adjustment. *See* RSA 198:40-d.
4. Differentiated aid also remained stagnant during this time, with no increases beyond CPI adjustments. RSA 198:40-d; Defendant’s Response to Plaintiffs’ First Request for Admissions ¶ 11 (Attachment 1).
5. The State has not analyzed whether these CPI adjustments accurately reflect the changing educational needs or the cost of providing an education. Defendant’s Objections and Responses to Plaintiffs’ First Set of Interrogatories ¶ 5 (Attachment 2).
6. Effective July 1, 2023, adequacy aid increased from \$3,866 to \$4,100. RSA 198:40-a(II)(a) (2023).
7. The State increased the amount of differentiated aid as follows: (i) from \$1893.32 to \$2,300 for each student eligible for a free and reduced lunch; (ii) from \$740.87 to \$800 for each student who is an English Language Learner; and (iii) from \$2,037.11 to \$2,100 for each student receiving special education services. RSA 198:40-a(II)(b-d) (2023).
8. At the same time, the State discontinued differentiated aid for 3rd grade students who failed to reach reading proficiency. *Compare* RSA 198:40-a(II)(e) (2022) (providing \$697.77 for each student scoring below proficiency level on state literacy assessment) *with* RSA 198:40-a(II)(a-d) (2023)(including no differentiated aid for 3rd grade students who failed to reach reading proficiency).
9. No school district in the state expends less than \$14,000 a year per student. *See* Defendant’s Response to Plaintiffs’ First Request for Admissions ¶ 7 (Attachment 1); *see also* N.H. Dep’t of Educ., *Cost Per Pupil Increases By District From 2000 to 2022*, available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-increases-by-district-2000-2022.pdf>.
10. On average, school districts spent \$19,399.97 during the 2021-22 school year per pupil, not including any capital expenditures, such as building or transportation. *See* N.H. Dep’t of Educ., *Cost Per Pupil By District, 2021-2022*, available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-fy2022.pdf>.
11. No district spends an amount equal to or less than the total amount per pupil received as adequacy aid, confirming the mismatch between expenditures and available aid. Defendant’s Response to Plaintiffs’ First Request for Admissions ¶¶ 2, 3 (Attachment 1).
12. In 2019 and 2022, the State added new learning areas to RSA 193-E:2-a. *See* RSA 193-E:2-a(I) (2019), RSA 193-E:2-a(I) (2022) (including personal finance literacy and computer science as new learning areas).

13. The State has not determined the cost of complying with the new learning areas added to RSA 193-E:2-a in 2019 or 2022. *See* Defendant’s Response to Plaintiffs’ First Request for Admissions ¶ 6 (Attachment 1).
14. The State does not require school districts to report data in a manner to allow them to break down expenditures consistent with the legislative definition of an adequate education. *See* Defendant’s Response to Plaintiffs’ First Request for Admissions ¶ 13 (Attachment 1); *see also* Defendant’s Objections and Responses to Plaintiffs’ First Set of Interrogatories ¶ 2 (Attachment 2).
15. The State has never asserted in writing, outside of litigation, that school districts are offering more educational services than are required to meet the definition of constitutional adequacy. *See* Defendant’s Objections and Responses to Plaintiffs’ First Set of Interrogatories ¶ 23 (Attachment 2).

## II. Plaintiffs’ Expert Evidence

16. Plaintiffs’ expert, Dr. John Freeman, was deposed in connection with this case on July 13, 2023. *See* Freeman Deposition Transcript (Attachment 3) [hereinafter Freeman Dep. Tr.].
17. His expert report was introduced as Freeman 1 at his deposition. Freeman Dep. Tr. at 7:17–8:7; Freeman Report (Exhibit 1 to Freeman Deposition) (Attachment 4) [hereinafter Freeman Report].
18. From 2021-2022, Dr. Freeman served as the Superintendent of Schools for the Strafford School District. Prior to that, Dr. Freeman served as Superintendent of Schools for the Pittsfield School District for 12 years. In addition to his roles as a Superintendent, Dr. Freeman has also worked as a classroom teacher, a building administrator, and a principal. Freeman Resume (Exhibit A to Freeman Report) at 1–3 (Attachment 4).
19. For the purposes of his report, Dr. Freeman relied upon the State’s definition of an adequate education. Freeman Report at 1–2.
20. The State has defined an adequate education in RSA 193-E:2, which also references certain school approval standards promulgated by the New Hampshire Department of Education as Ed. 306. Freeman Report at 1.
21. Dr. Freeman concluded that the State’s adequacy aid amount is insufficient to provide an opportunity for an adequate education as defined by the State. Freeman Report at 2.
22. Dr. Freeman further concluded that the State also does not provide sufficient funding for the cost of special education services that school districts must provide to students in order to provide the opportunity for an adequate education. Freeman Report at 6–7. Even with differentiated aid supplements, the amount provided to school districts is not nearly sufficient to provide an adequate education. Freeman Report at 3.
23. In 2019, Dr. Freeman conducted an analysis (the “**Pittsfield Study**”) which attempted to reduce Pittsfield’s then \$10,302,402 budget to the \$2,690,333 in state funding for the

“Total Cost of an Adequate Education” that Pittsfield received that year. Pittsfield Study (Exhibit B to Freeman Report) at 1 [hereinafter Pittsfield Study] (Attachment 4).

24. The result of Dr. Freeman’s analysis was a non-functioning school district that failed to meet student needs, failed to meet the minimum standards as set out in Ed 306, violated both state and federal laws, and violated the terms of collective bargaining agreements. Pittsfield Study at 1.
25. Despite using a budget that was double the adequacy amount, the district would be required to cut all art, music, and physical education classes in all grades. Pittsfield Study at 1. Instruction in these courses is required by RSA 193-E:2-a. *See* RSA 193-E:2-a(I)(a)(5),(8).
26. The district would further be required to eliminate personnel required by state and federal laws, including school nurses, counselors, and medical support staff. Pittsfield Study at 1.
27. Dr. Freeman concluded that to further reduce this budget to only the State's cost of an adequate education, the district would then have to eliminate nearly half of the remaining teaching staff, leading to classroom sizes of 60 students to 1 teacher (double the legal limit) and all other resources (such as textbooks, learning materials, facilities, any non-teaching personnel). Pittsfield Study at 2–5.
28. Additionally, Dr. Freeman's report highlights that the cost of providing necessary services for children who qualified for Special Education services in the Pittsfield School District during the year he studied, on average, was \$32,031. Freeman Report at 4. The State's differentiated aid for these students defrayed \$1,995.21 of this cost per child. *Id.*, RSA 198:40-a, II(b).
29. Dr. Freeman is unaware of any school district in New Hampshire that is able to provide a constitutionally adequate education at the base adequacy amount plus the differentiate aid amounts. Freeman Report at 3.
30. Plaintiffs’ expert, Dr. Corinne Cascadden, was deposed in connection with this case on July 14, 2023. Cascadden Deposition Transcript [hereinafter Cascadden Dep. Tr.] (Attachment 5).
31. Her report was introduced as Cascadden 1 at her deposition. Cascadden Dep. Tr. 8:21–23, Cascadden Report (Exhibit 1 to Cascadden Deposition) [hereinafter Cascadden Report] (Attachment 6).
32. Dr. Cascadden has held positions as a classroom teacher aide, elementary school teacher, principal, and superintendent. She has worked in the Berlin, Littleton, and Lyme public school districts. Cascadden Report at 1.
33. As a school superintendent, she directly supervised school district business managers, special education administrators, grant managers, project managers, and others. Cascadden Report at 1.

34. For purposes of her expert report, Dr. Cascadden relied on the State's definition of an adequate education. Cascadden Report at 1–2.
35. Dr. Cascadden concluded that the State's amount of per-pupil adequacy aid at the time of the filing of this case (\$3,786.66 per year) is not sufficient to provide an opportunity for an adequate education. Cascadden Dep. Tr. 76:3–20.
36. Dr. Cascadden testified that that no school or school district in which she has worked in New Hampshire is able to provide a constitutionally adequate education at a cost of approximately \$3,786.66 per child plus the appropriate “differentiated aid” amount for children who qualify for such aid. Cascadden Report at 3.
37. Dr. Cascadden is not aware of any New Hampshire school or school district that is able to provide a constitutionally adequate education at a cost of \$3,786.66 per child. Cascadden Report at 2.

### **III. The State's Expert Evidence**

38. State's expert, Dr. Jay Greene, was deposed in connection with this case on July 20, 2023. *See* Greene Deposition Transcript [hereinafter Greene Dep. Tr.] (Attachment 7).
39. Dr. Greene has never worked as a superintendent for a school. Greene Dep. Tr. 245:22–24.
40. Dr. Greene has never worked as a school administrator. Greene Dep. Tr. 245:25–246:2.
41. Dr. Greene has never worked on a school budget. Greene Dep. Tr. 246:3–6.
42. Dr. Greene has never worked as a kindergarten through twelfth grade (“K-12”) teacher. Greene Dep. Tr. 246:7–9.
43. Dr. Greene has never offered an opinion or done any research on whether a certain amount of funding is sufficient to provide an adequate education. Greene Dep. Tr. 246:10–20.
44. Dr. Greene is not offering an opinion on what amount of spending is required for adequacy. Greene Dep. Tr. 107:13–18.
45. Dr. Greene is not offering an opinion on whether the current amount of State spending on adequacy is sufficient. Greene Dep. Tr. 82:22–83:4.
46. Dr. Greene is not offering an opinion as to the sufficiency of the State's definition of adequacy. Greene Dep. Tr. 242:5–8.
47. Dr. Greene is not offering an opinion on what minimum school standards fall within the definition of adequacy. Greene Dep. Tr. 242:9–12.

48. Dr. Greene testified that the Joint Legislative Oversight Committee, in its 2008 report on costing an adequate education, reasonably relied upon actual, existing expenditures in its analysis. Greene Dep. Tr. 175:10–18; *see also* Greene Dep. Tr. 182:3–14.
49. State’s expert, Dr. James Shuls, was deposed in connection with this case on August 2, 2023. *See* Shuls Deposition Transcript [hereinafter Shuls. Dep. Tr.] (Attachment 8).
50. Dr. Shuls is not offering an opinion on whether the State’s level of adequacy funding was sufficient to provide an adequate education (as defined by the State). Shuls Dep. Tr. 193:23–194:4.
51. Dr. Shuls is not offering an opinion on the State’s definition of adequacy. Shuls Dep. Tr. 193:8–10.
52. Dr. Shuls is not offering any opinions as to what minimum school standards fall within the scope of adequacy. Shuls Dep. Tr. 193:11–14.
53. Dr. Shuls is not offering any opinion as to what the cost components of providing an adequate education under the State’s definition of adequacy are. Shuls Dep. Tr. 193:15–18.
54. Given New Hampshire’s funding model, to the extent adequacy aid is insufficient to fund an adequate education, it results in differing local taxes to raise the same level of funding. Shuls Dep. Tr. 115:9–116:5.
55. The State has not produced any other evidence justifying its defined cost of adequacy.

Dated: Concord, New Hampshire  
August 28, 2023

Respectfully submitted,

/s/ Natalie Laflamme

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### CERTIFICATE OF SERVICE

I hereby certify that a copy of this Statement of Facts has been served via the court's electronic filing system to all parties of record on this 28<sup>th</sup> day of August, 2023.

/s/ Natalie Laflamme  
Natalie Laflamme