

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' POST-TRIAL BRIEF

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INTRODUCTION

All parties agree the Constitution requires the State to “[i] define an adequate education, [ii] determine the cost, [iii] fund it with constitutional taxes, and [iv] ensure its delivery through accountability.” *Claremont Sch. Dist. v. Governor (Accountability)*, 147 N.H. 499, 505 (2002).

By statute, the State takes the position that “the annual cost of providing the opportunity for an adequate education . . . [is] \$4,100 per pupil . . . plus differentiated aid.” RSA 198:40-a, I–II. The plain language of the law is that the base adequacy grant of \$4,100 plus differentiated aid, “*shall be the cost* of an adequate education.” RSA 198:40-a, III (emphasis added).

Plaintiffs established, through public data and the testimony of witnesses with decades of direct experience in New Hampshire public education, that the cost of an adequate education is far greater than the base adequacy grant and differentiated aid (together “**Adequacy Funding**”) set out in RSA 198:40-a.

The evidence at trial established that no school district in the state of New Hampshire relies solely on Adequacy Funding, which was undisputed by the State. Auburn is the lowest spending school district in the state with an average cost per pupil of \$14,190.74, well above the base adequacy cost of \$4,100. *See* Plaintiffs’ Ex. 056-A (laying out average cost per pupil as of 2022–2023). The statewide average cost per pupil is even higher at \$20,322.52. *See id.* The special education average cost per pupil is \$25,737 as of 2021–2022, again well above the State’s differentiated aid funding of \$2,100 per pupil. *See* Plaintiffs’ Exs. 4, 15.

Plaintiffs’ witnesses dispelled the State’s position that districts simply choose to spend more than they need to. Plaintiffs’ expert Dr. John Freeman illustrated—through a detailed analysis of the Pittsfield School District—that even a highly efficient, average-spending school district cannot provide an adequate education on a budget that is *double* the State’s Adequacy Funding.

Rather, Pittsfield could only partially cover the cost of teachers for four subjects (English, Math, Science, and Social Studies), a portion of mandatory special education costs, and barebones administration and facilities costs necessary to keep schools open. It had *no* money left for resources that the State concedes are part of adequate education: teachers to teach other constitutionally mandated subjects (such as art, health education, physical education, or personal finance literacy), *any* professional development for teachers, or *any* amount of school supplies or technology. Likewise, Dr. Jennifer Dolloff explained that the State's differentiated aid funding of \$2,100 per student cannot cover the costs of services for disabled students, as it costs *at least* \$5,000 alone to evaluate and case manage a student's needs without any expenditure for placements and services required by an IEP. By failing to fully fund the costs of an adequate education the State violates Part 2, Article 83 of the New Hampshire Constitution.

Plaintiffs also established that the State's failure to meet its constitutional funding obligations forces districts to rely on local school taxes to bridge the gap. Uncontroverted public data and expert testimony proved that districts rely on local school taxes to pay for basic educational services that are part of an adequate education, and that these local education tax rates are not uniform across the state. By forcing districts to rely on local taxes to fund the provision of an adequate education, the State violates Part II, Article 5 of the New Hampshire Constitution as these local taxes are not uniform in rate.

Plaintiffs more than met their burden to prove that the State's Adequacy Funding, as set out in RSA 198:40-a, is inadequate and causes Plaintiffs to pay unconstitutional taxes. The burden thus shifted to the State to prove that the Adequacy Funding amount set out in RSA 198:40-a is necessary to a compelling government interest, and narrowly tailored to achieve that interest.

The State failed to meet its burden. The State's witnesses did not defend the current base adequacy or differentiated aid cost, nor did they offer any evidence regarding the cost of an adequate education. The State's two expert witnesses, despite being paid more than \$40,000, were not even asked to calculate the cost of adequacy using any definition. There can be only one reason for this omission: the current calculation is indefensible, and were the State's experts asked to calculate a reasonable figure, they would have to disclose it.

The State's only fact witness, Mark Manganiello, the Administrator of the Bureau of School Finance for the State's Department of Education, likewise could not testify that Adequacy Funding is sufficient to provide an adequate education. Mr. Manganiello did not know whether it is or not. Although the State has been litigating this issue for five years in both *ConVal* and *Rand*, Mr. Manganiello confirmed that his department (i) has never done *anything* to determine whether Adequacy Funding is sufficient to cover the actual cost of an adequate education; and (ii) has never asked school districts to submit financial data on what they spend to provide an adequate education. Even though the State's primary challenge to Plaintiffs' case is that districts could choose to spend less on adequacy, the State has never tried to determine whether that is actually true.¹

The State's litigation strategy in this case, including its efforts to delay the trial and its refusal to put on *any* evidence regarding the costs of an adequate education, should not be considered in a vacuum. It is part and parcel of the State's 30-year pattern of refusal to fulfill its constitutional duty to fully fund the cost of an adequate education for each student.

¹ By avoiding any effort to collect relevant data or to calculate adequacy, one might reasonably question whether the State even has a good faith basis for its challenges to the Plaintiffs' proof that Adequacy Funding is deficient.

It is important that the Court evaluate the evidence in this case and Plaintiffs' request for relief in its historical context. As detailed in Section III, *infra*, Plaintiffs seek a declaratory judgment confirming that the State fails to provide enough money to deliver an adequate education as defined in RSA 193:E-2(a) (including and in particular to students with disabilities) and as a result of the State's failure to guarantee funding sufficient to cover the cost of an adequate education, districts must rely on local school taxes to bridge the gap. These local school taxes, when deployed to fund a state responsibility, are state taxes and violate the New Hampshire Constitution because they are not uniform in rate across the state. Plaintiffs further ask that the Court enjoin the State from using its current calculated cost of an adequate education and relying on non-uniform local taxes to fund adequacy, after March 31, 2026.² Plaintiffs also ask the Court to commend, but not order, that certain matters be considered by the legislature in its recalculation of the cost of adequacy and, to build public confidence, that the legislature express its explicit reliance on its own study in crafting a new calculation. Included in the factors to be considered are the following:

- The average costs of delivering instruction, including educator compensation and professional development because districts must compete with each other to hire and retain staff;
- the cost of student support services because an adequate education must foster a positive learning environment;
- the cost of adequate curricular and instructional materials;
- the costs related to facilities and administrative services;
- the high costs of the services that are necessary for students with disabilities to access an adequate education as detailed in students' IEPs which may necessitate using an

² Plaintiffs propose this date in light of the expectation that there will be an appeal in this matter.

insurance-style funding model rather than a flat rate per capita funding model for this category of students;

- the distinct costs of services that are necessary to allow students who are eligible for a free or reduced price meal to access an adequate education;
- to the extent the State continues to fund public education using a model that combines base and differentiated aid, the State should consider that doubling the amount of Adequacy Funding (the base and differentiated aid grant) did not allow a highly efficient school district like Pittsfield to provide an adequate education to general education students, students receiving free and reduced-lunch, and students with special needs;
- to the extent the State continues to fund public education using a model that combines base and differentiated aid, the State should proportionally increase the funding provided to districts based on their student populations receiving free and reduced lunch.

ARGUMENT

I. Plaintiffs Established at Trial That the State Does Not Provide Sufficient Funding to Deliver an Adequate Education and that Districts Must Fill the Deficiency Gap with Non-Uniform Local Taxes

A. The Constitutional Standard

When governmental action impinges upon fundamental constitutional rights, “such matters are entitled to review under strict judicial scrutiny.” *Akins v. Sec’y of State*, 154 N.H. 67, 71 (2006). New Hampshire’s constitutional guarantee to a State-funded constitutionally adequate public education is a fundamental right. *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 473–74 (1997). Likewise, the right to pay constitutional taxes is a fundamental right. *See Claremont Sch. Dist. v. Governor*, 144 N.H. 590, 596 (1999) (“[P]roportional and reasonable taxation is one of the core constitutional foundations of this State.”). Accordingly, the Court should apply strict scrutiny framework to the instant case.

When asking a court to apply strict scrutiny, a plaintiff must demonstrate a deprivation of a fundamental right. *State v. Lilley*, 171 N.H. 766, 776 (2019). Once a plaintiff establishes that

government action substantially burdens a fundamental right, “the burden shifts to the State to show both that [i] the government action is necessary to achieve a compelling government interest, and [ii] it is narrowly tailored to meet that end.” *State v. Mack*, 173 N.H. 793, 815 (2020) (emphasis added) (citation omitted). The State cannot meet its burden simply by criticizing Plaintiffs’ evidence. Rather, the State must present affirmative evidence to meet both prongs of the analysis. *See Akins* 154 N.H. at 69, 73 (holding that the State failed to meet its burden under strict scrutiny where it “failed to demonstrate” that the challenged statutory scheme was necessary, and instead only “presented expert testimony that contradicted the petitioners’ expert testimony”).

B. The Evidence at Trial Proved that the State’s Adequacy Funding is Not Sufficient to Deliver an Adequate Education

Plaintiffs presented substantial and largely uncontroverted evidence at trial that the State’s Adequacy Funding is insufficient to deliver an adequate education.

1. Plaintiffs’ Expert Testimony Demonstrated that Adequacy Funding is Insufficient to Deliver an Adequate Education to any District

Plaintiffs presented the testimony of their expert, Dr. John Freeman, that the State’s Adequacy Funding is insufficient to provide students with an adequate education.

Dr. Freeman has decades of experience in public education, having worked as a teacher, consultant, principal, and superintendent in schools in and outside of New Hampshire. During his career, Dr. Freeman served as the superintendent for three New Hampshire school districts, including more than a decade as the superintendent of the Pittsfield School District. As a superintendent, he oversaw the annual drafting of the school district’s budget, hiring of teachers and other school personnel under the strictures of that budget, and the school district’s adherence to state standards regarding educational adequacy for students. During his lengthy career in public

education in New Hampshire, Dr. Freeman interacted extensively with numerous school boards and the state legislature. He served as a consultant to schools and statewide educational organizations in New Hampshire and other states on the efficient operation of districts.

Dr. Freeman testified that in his expert opinion, no district in New Hampshire can provide a constitutionally adequate education (under the State’s definition of the same) relying solely on the State’s Adequacy Funding. Dr. Freeman provided this opinion for the 2018–2019 school year and confirmed that it holds true for the present.³ Dr. Freeman based his opinion on: (1) his decades of professional experience, including years of acting as a superintendent and interacting professionally with other superintendents and educators; (2) on his review of statewide data; and (3) on a study that he performed in 2019 (the “**Pittsfield Study**”). *See* Plaintiffs’ Exhibit 002-A. In the Pittsfield Study, Dr. Freeman used the Adequacy Funding estimates for Pittsfield for the 2018–2019 school year and created a mock budget that sought to provide students with an adequate education in the RSA 193-E:2-a learning areas, relying solely on Adequacy Funds. As discussed in § I.B.4, Pittsfield is an ideal model since its spending represents the average of what districts in New Hampshire spend.

Dr. Freeman testified at length about how the Pittsfield Study demonstrated *why* the State’s Adequacy Funding is woefully insufficient.

First, the Pittsfield Study showed that the State’s Adequacy Funding could not even cover the cost of teachers for all of the subject areas required by RSA 193-E:2-a. Dr. Freeman testified that he initially tried to use only the New Hampshire Department of Education’s “Total Calculated

³ In 2018–2019, the State’s base adequacy grant for Pittsfield was \$3,636.06 per pupil. The differentiated aid amounts in that year were \$1,956.09. Ex. 069-H. The Base adequacy grant subsequently increased to \$4,100 per pupil. *See* RSA 198:40-a, II(a) (2023).

Cost of an Adequate Education,” (i.e., the State’s Adequacy Funding) which would limit the Pittsfield budget to \$2,690,333. Although Pittsfield has some of the lowest teacher salaries in the state (*see* Plaintiffs’ Ex. 079-F, Report titled “Minimum Starting Teacher Salary 2018–2019”) and despite Pittsfield efforts to maximize class sizes (including through multiple combined-grade classes), the State’s Adequacy Funding was insufficient to even cover just the compensation of teachers required by RSA 193-E:2-a.

Moreover, because the entirety of Pittsfield’s Adequacy Funding was eaten up by a subset of teacher salaries, reliance on only the State’s Adequacy Funding left no money for *any* (i) instruction in several of the RSA 193-E:2-a learning areas (including art, health education, physical education, or personal finance literacy); (ii) maintenance of safe facilities; (iii) staff other than teachers, including administration; (iv) supplies or equipment; (v) professional development; (vi) curriculum costs; (vii) transportation (including for the youngest elementary school students); (viii) implementation of services mandated by the IEPs of students with disabilities; or (ix) instruction in English for speakers of other languages. This alone is sufficient for the Court to rule in Plaintiffs’ favor because the State concedes that teachers are required for an adequate education, and that adequacy requires at least *some* resources beyond teachers.⁴

⁴ As Plaintiffs discussed in their Pre-Trial Brief, the law is clear that to deliver an adequate education, districts need teachers to teach the adequacy subject areas defined in RSA 193-E:2-a, I(a). RSA 193-E:2-a, I(b) (“**Teachers** shall use academic and applied instruction to teach the learning areas under subparagraph (a).”) (emphasis added). The State does not dispute this. Even the State’s expert, Dr. Greene, conceded on cross-examination that having teachers to instruct in all areas of adequacy is not merely “fashionable” but a fundamental requirement. The State also concedes that some amount of professional development, curriculum and technology are necessary. Brief for the Appellants at 25, 27–28, *Contoocook Valley Sch. Dist. v. New Hampshire*, No. 2024-121 (Sup. Ct. Aug. 19, 2024) [hereinafter *ConVal* State Appeal Brief].

Second, the Pittsfield study demonstrated that even taking into account other sources of funding that nearly *doubled* Pittsfield’s Adequacy Funding, did not give Pittsfield enough money to keep a bare-bones district open, provide just some special education services, and pay for general and special education teachers to teach *all* of the subject areas mandated in RSA 193-E:2-a. Specifically, Dr. Freeman increased the amount of funds he was using for his Adequacy Funding-only-budget by adding in Pittsfield’s budgeted stabilization grant (\$2,185,277), catastrophic aid (\$284,000), and Medicaid reimbursement (\$130,000) for a total of \$5,289,610 in funding. Plaintiffs’ Exhibit 002-A. This \$5.3 million budget represented approximately twice the Adequacy Funding received by Pittsfield. Dr. Freeman testified that with this budget he could only allocate enough funds to cover the salaries and benefits of teachers for four core subjects—English language arts, mathematics, science, and social studies—and some special education teachers. There were not enough funds to pay for additional teachers to teach the remaining RSA 193-E:2-a learning areas (including arts education, health and wellness, physical education, as well as some required instructors for science and foreign language courses in Pittsfield’s middle/high School). Nor did it leave *any* money for (i) legally bargained for teacher benefits, such as life insurance and health insurance; (ii) a district reading specialist; (iii) 34.5 paraprofessional positions required by student IEPs; (iv) guidance counselors and behavior support positions; (v) health services, speech therapy, occupational therapy, and vision services for students with disabilities; (vi) equipment, supplies, books, or technology; (vii) professional development; (viii) technology personnel; (ix) librarians and media center staff; (x) transportation services for regular education students; and (xi) principals for Pittsfield elementary, middle and high schools. As detailed below in § B.2, Dr.

Freeman testified that these resources are necessary to deliver an adequate education under the State's definition.⁵

Dr. Freeman further testified that in using the \$5.3 million budget, he had to reduce administrative roles to an unsustainable minimum, including a reduction of the superintendent's role to 20% of a full-time position. He cut custodial staff services required by the State-issued Ed. 306 regulations (the Minimum Standards for School Approval), which resulted in reducing daily school cleaning to a weekly schedule inconsistent with State regulations. *See* Ed. 306.09(a). Dr. Freeman emphasized that these cuts made it impossible for the district to meet its overall operational needs.

With respect to special education, Dr. Freeman explained that the reductions in the number of special education teachers and the elimination of staff and services necessary to meet a \$5.3 million budget would severely hinder the district's ability to meet the requirements of Individualized Education Programs (IEPs) for special education students. Dr. Freeman further emphasized that these cuts would particularly impact students with disabilities that need one-on-one or small-group support to access their education.

Dr. Freeman concluded that even with doubling the State's Adequacy Funding the district could not provide an adequate education and would be forced to sacrifice key programs and services essential to students' academic success and overall wellbeing. Dr. Freeman testified that his conclusions from the Pittsfield case study can be extrapolated to other school districts based

⁵ Plaintiffs also argued in their pre-trial brief that these resources are necessary as a matter of law. *See* Plaintiffs' Pre-Trial Brief, Dkt. No. 138 at 2, 11–30 (Sept. 24, 2024). Plaintiffs do not repeat this argument here but incorporate it by reference. Dr. Freeman's testimony, detailed below, proves that these inputs are necessary whether considered as a matter of law or fact.

on his review of state-wide data on education costs, such as teacher salaries and special education expenditures, and his deep experience in the efficient operation of school districts. Dr. Freeman also testified that Pittsfield has some of the lowest teacher salaries in the state, so if Pittsfield cannot cover all constitutionally mandated inputs at double its Adequacy Funding, other school districts that spend more on teacher salaries cannot either.

The State attempted to undermine Dr. Freeman's testimony with six arguments, each of them unavailing.

First, at trial, the State made an oral motion to dismiss Plaintiffs' case, arguing that Dr. Freeman's testimony is outdated because he conducted the Pittsfield study in 2019. But Dr. Freeman's opinion was not based solely on the Pittsfield Study. Moreover, as the State's witness, Mr. Manganiello conceded, Pittsfield's Adequacy Funding and other forms of state aid (including the Extraordinary Needs Grant and the Hold Harmless Grant for 2025) are close to \$5.3 million. *See* Plaintiffs' Ex. 044-A, Row 188 (showing Pittsfield projected total state grant FY 2025 is \$5,346,992.34). Dr. Freeman conclusively demonstrated through the Pittsfield study that in 2019, Pittsfield could not provide an adequate education to its students for \$5.3 million. That is even more true in 2025 because, as Dr. Freeman testified, the costs of running a school district have gone up since 2018-2019 (including because the State has increased districts' mandatory contribution to the New Hampshire retirement system for teachers from 17.36% in 2018-19 to 19.64% in 2024-25). Pittsfield's average salaries for teachers increased between the 2018–2019 school year and the 2023–2024 school year (from \$41,717.0 to \$45,686.00). *Compare* Plaintiffs' Exs. 10-F and 10-A. Likewise, Dr. Freeman explained that the general costs of operating a district (such as energy costs and HVAC costs) have also increased.

Second, the State’s expert, Dr. Jay Greene criticized Dr. Freeman’s Pittsfield analysis claiming that it was not a reasonable method for determining the cost of a constitutionally adequate education. But Dr. Freeman never claimed that the Pittsfield Study was a method for determining the cost of an adequate education. Rather, Dr. Freeman designed his study to determine if a constitutionally adequate education could be provided in Pittsfield at the stated expenditures of \$2.6 million or \$5.3 million. He determined that it could not be provided at these funding levels. Moreover, because Pittsfield was an efficient spending district that spent close to the state average cost per pupil, Dr. Freeman concluded that no district spending at the average or below average could finance an adequate education at these levels. Nor were Plaintiffs required to perform a formal costing out analysis to prove their case.⁶

Third, Dr. Greene criticized Dr. Freeman for assuming that costs and expenditures are the same. But Dr. Freeman did no such thing. Rather, Dr. Freeman testified in granular detail about why Pittsfield could not spend any less on essential educational resources than it did. This uncontroverted testimony establishes that Pittsfield’s expenditures on inputs essential to adequacy (“**Adequacy Inputs**”) do, in fact, represent the costs of Adequacy Inputs. Dr. Greene did no

⁶ As noted above, it is the State’s job to perform such an analysis, not the Plaintiffs. The last time such an analysis was conducted by the State was in 2008, over fifteen years ago. *See* Plaintiffs’ Exhibit 12 (2008 report of the Joint Legislative Oversight Committee on Costing an Adequate Education). An update is long overdue. The State’s outdated base adequacy cost has led to underfunding of education in New Hampshire. In his testimony, Dr. Freeman illustrated concrete examples of that underfunding. In the *William Penn School District v. Pennsylvania Department of Education* case discussed by Plaintiffs during State expert Dr. Shuls’ cross examination, the Court questioned the relevance of a costing out analysis performed eighteen years prior. No. 587 M.D. 2014, Memorandum Opinion at 679 (Pa. Commw. Ct. Feb. 7, 2023). The same logic is applicable here where it has been over fifteen years since such an analysis. The Pennsylvania legislature decided not to appeal the trial court’s findings and orders and, instead, crafted a new funding system to address the deficiencies found by the trial court.

analysis to counter that testimony. Dr. Freeman also testified that, based on his review of statewide data and his extensive experience in New Hampshire public education, Pittsfield was not an outlier in this regard. Indeed, Pittsfield's per-pupil spending was close to the state average and Pittsfield's teacher salaries (which were the most significant line item in the school district budget) were the second lowest in the state.

Fourth, Dr. Greene baselessly suggested that Dr. Freeman could have spent less money on teachers if he had chosen to organize his district differently. For example, Dr. Greene questioned whether Dr. Freeman used the maximum class size allowed under the regulations but failed to consider that classes must legally be divided once the maximum is exceeded by even one student. Dr. Freeman explained the length to which Pittsfield went to ensure the largest possible class sizes, including the use of three “combination classes”—classes with students from two different grade levels—in the elementary school and combined classes for specific high school subjects (e.g., Spanish) to minimize the number of teachers needed.

Fifth, Dr. Greene offered outlandish arguments that Dr. Freeman improperly assumed a variety of constraints, suggesting organizing by age and grade level were unnecessary. Greene even suggested that Pittsfield should have considered school structures prevalent in developing nations. But Dr. Greene and the State, however, did no analysis as to whether the structural changes would be legal, feasible or result in cost savings. By contrast, Dr. Freeman—who, unlike Dr. Greene, *is* an expert in operating districts efficiently—testified that Pittsfield did everything in its power to maximize class sizes within the context of State laws and regulations. Moreover, student academic achievement is not the only criterion New Hampshire currently uses to evaluate student progress. Social-emotional learning goals may require children to be engaged with their peers, regardless of how highly they achieve in a particular academic subject.

Most importantly, Dr. Freeman’s testimony clarified that Dr. Greene’s conjectures are irrelevant considering the gross inadequacy of the State’s Adequacy Funding. Dr. Freeman calculated that to comply with the State’s class size requirement alone—25 students per teacher for grades K-2 and 30 students for grades 3-12—Pittsfield would need 20 teachers for its 561 students in 2018. This calculation assumed that teachers could teach every subject area, which is highly unrealistic in practice and violates state teacher certification requirements. *See* Ed. 507. Assuming the teachers are all third-year teachers with a bachelor’s degree earning minimum benefits, Dr. Freeman testified that the total cost of their compensation would be \$1,012,265.26. In other words, complying with the law on class sizes alone would consume at least 37.6% of the total Adequacy Funding. This simply does not leave enough room in the budget to also provide certified teachers for the required subject areas, account for irregularities in student distribution across grade levels, and supply the necessary special education teachers to deliver an adequate education to students with disabilities.

Sixth, the State argued that Plaintiffs should have considered other sources of funding including extraordinary needs grants and federal funding. But the State’s other funding sources vary year to year and are not guaranteed to districts.⁷ Because these other funding sources do not fall under adequacy, the State is not obligated under the New Hampshire Constitution to provide them, meaning those grants lack protection. By contrast, inputs that are necessary for an adequate education, such as teachers, are not so variable and districts need to be able to pay for them every

⁷ For example, as Mr. Manganiello conceded in his testimony, starting in 2026 the State’s hold harmless grant that districts are currently receiving is set to decrease by 20% every two years for ten years. As Mr. Manganiello testified, there was nothing to stop the legislature from bringing the hold harmless grants down to zero.

year.⁸ Despite that, Dr. Freeman’s Pittsfield Study *did* take into account other (non-adequacy) sources of State funding, including Pittsfield’s stabilization grant, and that funding was still woefully insufficient.⁹ As to federal funding – those sources are irrelevant in this case, given that it’s the State’s obligation to fully fund an adequate education.

Plaintiffs’ second expert, Corrine Cascadden, EdD. has an extensive background in education and school finance, including over 45 years of professional experience in the field. She earned a master’s and a doctoral degree in education and education leadership, and she is certified as a school principal and as a school superintendent. After approximately 20 years in the field herself, she began teaching and mentoring principal candidates at White Mountain Community College and Granite State College.

Dr. Cascadden testified to her decades of experience as a principal and school superintendent in Berlin School District. After Dr. Cascadden retired she served as an interim school superintendent first in Littleton, then in Lyme School Districts. In 2020, Dr. Cascadden also served on the Commission to Study School Funding, a body established by the state legislature to develop an equitable school funding formula. As a member of the Commission, Dr. Cascadden reviewed financial data from every school district in the state of New Hampshire.

Dr. Cascadden’s expert opinion was that the amount of Adequacy Funding provided by the State is not sufficient to cover the cost of a constitutionally adequate education, using the State’s

⁸ If the State decided to update RSA 198:40-a to include other funding sources such as the extraordinary needs grant, thus ensuring that this funding is guaranteed to districts year by year, this would be a different case.

⁹ As Mr. Manganiello testified at trial, stabilization grants no longer exist. This, of course, underscores why such grants should not be considered as part of Adequacy Funding – as the state can cancel them or reduce them dramatically at any time.

own definition of the same. She based that opinion on (i) years of professional experience, including experience in school budget development, (ii) reviewing financial data for school districts across the state during her work on the 2020 Commission, which data confirmed her opinion that no district in New Hampshire could provide a constitutionally adequate education based solely on the State's Adequacy Funding.

Dr. Cascadden also provided examples from the Berlin school district to demonstrate why it was impossible to have cut the budget enough to operate the district on nothing more than Adequacy Funding. She testified that in FY2020, Adequacy Funds comprised 22% of Berlin's budget and at that point, Berlin had already begun eliminating many programs to cut costs. That year, Berlin schools initially proposed a \$19.9 million budget for its general fund and a separate request for a capital improvement budget of \$1.3 million. However, the school board was certain that the budget wouldn't be approved by the city, so it reduced the request for the general fund budget by approximately \$700,000 to \$19.2 million. To work within this budget, the school district's only option was to close the last remaining elementary school in the district—a drastic move that Dr. Cascadden, unfortunately, had witnessed before. To accommodate this cost-cutting measure, the district moved elementary school students into a 100-year-old building that was previously a high school and was unsuited to the needs of much younger children. The move necessitated modifications to the building because, for example, the toilets were too high and the stairs were unsafe for small children. Many renovations related to safety concerns had to wait until years later due to inadequate funds. In the interim, other grades had to shift buildings and teachers had to share classrooms. Closing the school saved the district only \$300,000. The city wanted more cuts and ultimately directed the school district to “flatline the budget,” which entailed eliminating a total of \$1.175 million from its budget.

Dr. Cascadden testified that to meet the requirements of a flatlined budget she worked with the district's business administrator and went through every single line item of the budget to eliminate whatever was nonessential. She testified that they first tried to cut things that students would not notice or would be less affected by, such as reimbursements for staff travel or certain office supplies. The district had to decide not to fill several vacant teaching positions, as it could not afford additional salary expenses. Even more drastically, administrators were advised not to hire the best, most qualified candidates who applied for teaching positions, as the district could not afford to pay teachers who had more than a few years of experience.

The first round of cuts reduced the budget by over \$220,000. Dr. Cascadden then went through additional rounds of cuts, eliminating more staff, technology supplies, funds for extracurricular activities, and foregoing a required data security audit. Eventually, Berlin was forced to eliminate costs for maintenance and upkeep, including roof repair, fire alarm replacement, updating classroom equipment that was over 50 years old, and fixing crumbling masonry lining in windows overlooking the playground, risking both structural integrity as well as student and faculty safety. Even with these compromises, Berlin was only able to cut its budget by \$925,076 and, to make up the difference, the district froze discretionary spending for the school year. Even with all of these measures, Berlin's per-pupil expenditures were \$17,051.23 for 2020–2021. Plaintiffs' Ex. 056-C. Dr. Cascadden testified that budget year was not an anomaly. Multiple rounds of budget reductions and extreme cost-cutting measures had become routine by 2020.

The State provided no meaningful challenge to Dr. Cascadden's expert testimony. The State's expert Dr. Greene did not undermine Dr. Cascadden's opinion that it is apparent from statewide data that no school district in the state can rely on the State's Adequacy Funding alone to provide an adequate education. Rather, Dr. Greene criticized Dr. Cascadden's opinion on the

basis that she did not provide a method for determining the cost of an adequate education. But as with Dr. Freeman, that criticism is irrelevant: Dr. Cascadden was not required and did not purport to provide a method to calculate the cost of an adequate education. As the Supreme Court determined in *Szewczyk v. Continental Paving, Inc.*, an expert’s testimony need not rely on some strictly defined methodology or testing to be considered reliable. 176 N.H. 148, 158-60 (2023). Rather, if a qualified expert considers the facts of a case and draws on her expertise to evaluate those facts, the conclusion she draws is sufficiently supported by “specialized knowledge” and may not be excluded from evidence. *Id.* at 156, 158-60. Other than criticizing Dr. Cascadden for not doing something she never claimed—and was not required—to do, Dr. Greene had no challenge to her testimony. .

2. Public Data Submitted into Evidence Proves that no District Can Provide an Adequate Education Based on State Adequacy Funding

Almost a year ago, after a three-week trial, this Court held that no school district could provide New Hampshire children with the opportunity for an adequate education if it had to rely solely on the State’s base adequacy aid of \$4,100 per student and indeed, that no district could provide an adequate education for less than \$7,356.01 in base adequacy per student. Order at 7, 56, *Contoocook Valley Sch. Dist. v. New Hampshire*, No. 213-2019-cv-00069 (Super. Ct. Nov. 20, 2023) [hereinafter *ConVal* Trial Order].

Public data admitted into evidence at the Rand trial shows that, when the total Adequacy Funding is considered (including base adequacy grants and all differentiated aid grants), no district receives total Adequacy Funding that is equal to \$7,356.01 per student. In 2022-2023, the Stratford

school district received the highest amount of Adequacy Funding at \$6,533.91 per student.¹⁰ Thus, the \$7,356.01 number that the Court found would likely be insufficient (and that Dr. Freeman in fact proved was insufficient) still exceeds the highest Adequacy Funding by \$822.10 per pupil. On cross examination, the State asked Dr. Freeman if he considered whether \$7,356.01 was a sufficient amount to cover base adequacy costs for Pittsfield. Dr. Freeman responded that in his analysis, he had already doubled the base adequacy amount—which was approximately equal to the *ConVal* ordered cost—and that cost was insufficient.

Furthermore, the Salaries-Benefits tab on each of the school district’s required financial reports, DOE-25s, admitted into evidence at trial demonstrate that Adequacy Funding generally does not even cover the salaries and benefits of school district teachers.¹¹ See Plaintiffs’ Exhibits 044-A–044-H (District Public School, Cost of an Adequate Education: Municipal Summary of Adequacy Aid),¹² 100A-E–308A-E (DOE Annual Financial Reports by District),¹³ 056-A–056-G

¹⁰ See Plaintiffs’ Ex. 044-B. This per-student cost is calculated by dividing Stratford’s total cost of an adequate education (Column N) by its total membership (Column F).

¹¹ See, e.g., DOE-25s for Berlin and Pittsfield. Note that the calculation is not always obvious as some towns send students to another town’s schools by contract, so there are no teachers listed in the DOE-25 for certain school groups (e.g., Winchester sends high school students to Keene by contract, so there are no high school teachers listed on Winchester’s DOE-25). Further, the fact that some school districts are not coterminous with a single town can make analyzing town-based data (Adequacy Funding in Plaintiffs’ Exs. 044A–044H) against district-based data (DOE-25s, Plaintiffs’ Exs. 100A-E–308A-E) a difficult exercise.

¹² A school district’s Adequacy Funding (base adequacy + differentiated aid) is laid out in these Municipal Summary exhibits in the column entitled “Total Calculated Cost of an Adequate Education.” The DOE-25 forms include stabilization grants/extraordinary aid in their adequacy number (MS-25 tab, cell C66), but those grants are not included under the legal definition of Adequacy Funding. Therefore, the adequacy number reported in the DOE-25s is higher than adequacy aid.

¹³ Teacher salaries are outlined in cells B10, B19, B28, and B37 of the Salaries-Benefits tab. Teacher benefits are outlined in cells C10, C19, C28, and C37 of the Salaries-Benefits tab.

(Reports, Cost Per Pupil by District), and 079-A–079-G (Reports, Teacher Minimum Starting Salary). Likewise, the DOE-25s show that all districts incur additional costs to run even a basic school district (e.g., student bus transportation, line 589).

3. Together with Plaintiffs’ Witness Testimony, Public Data Aligned with the State’s Definition of Adequacy Shows that no District in the State can Provide an Adequate Education Relying Solely on Adequacy Funding.

In *ConVal*, the Supreme Court agreed with this Court’s observation that “it is ‘impossible’ to address the *ConVal* plaintiffs’ costing argument without first determining what is required to deliver an adequate education as defined in the Statute.” 174 N.H. 154, 166. In light of that guidance, Plaintiffs in this case established through expert and fact witness testimony that, *as a matter of fact*, to deliver an adequate education in all of RSA 193-E:2-a’s learning areas, districts require: educators; principals; administrative support services; guidance counselors; library media specialists; technology coordinators; custodians; instructional materials; technology; teacher professional development; facilities operations and maintenance; transportation; school nurse services; and superintendent services.¹⁴ At trial, Dr. Freeman categorized these inputs into four categories (or buckets):

- Educators;
- Learning Environment & Student Support Services;
- Curriculum & Instructional Materials; and

¹⁴ In their Pre-Trial Brief, Plaintiffs explained in detail how these resources are required by the legal standards governing the components of an adequate education in RSA 193-E:2-a’s learning areas. Plaintiffs’ Pre-Trial Brief at 23–30. Plaintiffs do not restate that explanation here but incorporate the relevant briefing by reference.

- Facilities and Administrative Services.¹⁵

As discussed below, Plaintiffs’ witnesses testified that these four categories of inputs are necessary as a matter of fact to provide an adequate education in the RSA-193 learning areas. The State did not dispute Plaintiffs’ evidence that (1) these inputs are necessary at least to some degree and (2) that even by doubling its Adequacy Funding, Pittsfield could not provide *any* resources for most of these inputs. This further establishes that the State’s Adequacy Funding is grossly deficient.

a. Educators

i. Educators & Professional Development

To deliver the opportunity for an adequate education, districts need teachers to provide instruction to students and professional development for those teachers. As Dr. Freeman explained, the subset of the Ed. 306 minimum standards that the State concedes are part of adequacy (“**State’s Adequacy Regulations**”) all require instruction by teachers.¹⁶ The State does not dispute this.¹⁷

State data corroborates the opinion that the State’s base cost of adequacy is insufficient to provide more than a reasonable teaching staff. For FY 2024, the State provided districts with \$4,100 per student for base adequacy. Plaintiffs’ Ex. 69-B, N.H. Dept. of Educ., Municipal

¹⁵ These categories are reflected in DOE-25 form account numbers. Educators: 1100, 1200, and 2200; Curriculum & Instructional Materials: 1100, 1200, 2200, and 2700; Learning Environment & Student Support Services: 1400, 2100, and 3100; Facilities and Administrative Services: 2300, 2400, 2500, 2600, and 2700. *See, e.g.*, Plaintiffs’ Exs. 052-A–053-F, 100A-E– 308A-E. The most convenient way to find these items is on the MS-25 tab of the DOE-25 forms.

¹⁶ These regulations include Ed 306.37 (English/Language Arts (“**ELA**”) and Reading), 306.43 (Mathematics), 306.45 (Science Education), 306.46 (Social Studies), 306.49 (Holocaust and Genocide Education), 306.31 (Arts Education Program), 306.48 (World Languages), 306.40(b) (Health Education), 306.41(b) (Physical Education), 306.47 (Technology and Engineering Program), 306.33(a)(4)(c) (personal finance literacy), and 306.44 (Computer Science).

¹⁷ The State does not dispute that instruction, assessment, and teacher development are necessary components of an adequate education. *ConVal* State Appeal Brief at 27–28 (adequacy “reasonably covers instruction and assessment . . . and teacher development as a matter of law”).

Summary of Adequacy Aid – Final April 2024 at 1. The State reported the average teacher salary in 2023-24 was \$67,096.40. Plaintiffs’ Ex. 10-A, N.H. Dept. of Educ., 2023 – 2024 Teacher Average Salary in Public School Districts 1. Dr. Freeman opined the lowest amount of benefits can be calculated by adding districts’ cost for the cheapest health insurance plan¹⁸ and the mandated costs of N.H. Retirement System contribution,¹⁹ FICA taxes,²⁰ unemployment insurance, and worker’s compensation insurance.²¹ Using this method, the average teacher benefits cost was roughly \$29,519.47. Accordingly, a teacher costs \$96,615.87 on average. Even taking a conservative approach and discounting the average by 10%, a teacher would still cost \$86,954.28. Assuming teachers can teach all subjects, eight periods a day, to thirty students in a classroom, a district would spend over three-quarters of its entire base adequacy funding on teaching staff ($\$4,100 * 30 = \$123,000$ received for base adequacy compared with \$86,954.28 for a teacher). As teachers cannot teach eight periods a day under collective bargaining agreements, a district needs roughly one and one-third of a teacher per class of thirty students. When factoring that in, the cost of teachers eats up virtually all of the State's base adequacy funding: $(\$86,954.28 * 1.33) = \$115,649.20$ in cost compared to \$123,000 in funding. This does not factor in the fact that some classes require less than 30 students, such as science labs and K-2 classes, nor the fact that high

¹⁸ Dr. Freeman estimated that Pittsfield paid around \$10,800 for a single-person plan.

¹⁹ Dr. Freeman testified that the statewide contribution rate was 17.36% in FY 2019. The rate had increased to 19.64% in FY 2024. N.H. Ret. Sys., NHRS Employer and Member Contribution Rates since 1971 (Aug. 2024), available at https://www.nhrs.org/docs/default-source/employer-contribution-rates/nhrs_historical_contribution_rates.pdf?sfvrsn=a88e3bb4_16.

²⁰ Dr. Freeman testified the tax rate was 7.65%.

²¹ Dr. Freeman testified that the two insurance payments were nominal and came to approximately \$408.86.

school teachers are generally not certified to teach more than one discipline. As districts require significantly more than just teachers, the State's cost of base adequacy is woefully insufficient.

ii. Remediation Services

Dr. Freeman testified the State's Adequacy Regulations, require additional educators, beyond just teachers. Several subject area regulations specifically require early intervention or remediation services, including Ed. 306.37 (ELA and Reading Program). Likewise, Ed. 306.27, which governs the curriculum content for high school and is incorporated into most of the State's Adequacy Regulations, also requires districts to provide remedial instruction in all curriculum areas. Dr. Freeman testified that to provide remediation, Pittsfield needed to provide ongoing professional development to its teachers in assessing student needs. Pittsfield also needed additional educators, such as a math interventionist to provide remedial instruction to students who needed it.

iii. English Language Arts Positions

Dr. Freeman further testified that Pittsfield needed a library media specialist and a reading specialist because those positions were specifically required by the Ed. 306.15(a)(3), which cites to Ed. 306.37, the regulation for the ELA and Reading Program.

The State did not dispute Dr. Freeman's expert testimony that these educators are necessary to deliver an adequate education.

b. Learning Environment & Student Support Services

Plaintiffs also established that to receive a constitutionally adequate education, students need access to student support services and health services.

i. Nurses

Dr. Freeman's testimony established the indispensable role of nurses for providing students access to an adequate education which the Court held necessary for an adequate education in its *ConVal* Trial Order at 28. Many students require nurses under their IEPs, but nurses also support general education students through Section 504 plans. Pittsfield frequently has students with health issues that demand a nurse's presence, necessitating the need for a *per diem* nurse when classes go on field trips. Moreover, nurses are vital for maintaining a healthy and safe school environment providing critical services to students in health crises. In Pittsfield, one of the school nurses also served on the School Safety Committee, a mandated body for every school district. The State did not put forth evidence contradicting any of Dr. Freeman's testimony about school nurses. Dr. Freeman was forced to eliminate all school nurse positions under a budget that was double the Adequacy Funding amount. Ex. 002-A.

ii. Guidance Counselors & Behavioral Specialists

Dr. Freeman also testified that guidance counselors and behavioral specialists are critically necessary to deliver an adequate education because they help students and ensure that students' behavior does not interfere with their classmates' ability to receive an adequate education. Dr. Freeman testified that guidance counselors in Pittsfield also provide crisis counseling and ongoing support to students to ensure access to the general curriculum, and they are sometimes required by students' IEPs. He also testified that Pittsfield has a behavior specialist with additional certifications and qualifications that allowed her to provide guidance to IEP teams, as well as four behavior support counselors who build relationships with students and respond directly and immediately to crises in the school buildings. Dr. Freeman testified that a guidance counselor alone could not provide these services.

To further illustrate the essential role of school counseling services in helping students access their education, Plaintiffs presented the testimony of Annette Blake, a middle school counselor with 26 years of experience. During her decades-long career, Ms. Blake has worked with approximately 7,800 New Hampshire students. Ms. Blake also teaches graduate courses at Plymouth State University, focusing on the standards set by the Council for Accreditation of Counseling and Related Educational Programs (CACREP), the national standard for school counselling. She is a member of the American School Counselor Association (ASCA) and a former president and treasurer of the New Hampshire School Counselors Association (NHSCA).

Ms. Blake testified without contradiction that school counseling services are necessary for students to access an adequate education and detailed several instances of how she worked to assist students in accessing their education. Blake testified about her work implementing 504 plans to put in place accommodations that students needed to participate in school and about the crucial role of school counselors in mobilizing teams to respond to student crises such as suicidal ideation. Blake pointed out the critical importance of mental health support, a student “can’t learn if she’s dead.”

Ms. Blake also emphasized that the services provided by school counselors cannot be provided by teachers as teachers lack the time and specialized training to provide the intensive interventions that certain students need. Despite the vital role school counselors play in ensuring students’ access to an adequate education, Dr. Freeman’s \$5.3 million budget did not include any school counseling or behavioral support positions. Ex. 002-A. The State put forward no evidence to refute the need for guidance counselors and behavioral specialists.

c. Curriculum & Instructional Materials

The State's Adequacy Regulations requires districts to provide a curriculum for each of the RSA 193-E:2 learning areas, and informational and instructional supplies and materials to deliver that curriculum.

i. Curriculum

Dr. Freeman testified that the State's Adequacy Regulations mandate that curricula ensure that students develop specific skills. Ed. 306.43(a)(7) requires "a developed curriculum incorporating number and operations, geometry and measurement, data, statistic and probability, and functions and algebra consistent with RSA 193-C:3, III" and the State's Adequacy Regulations call for different curricula at different grade levels. For example, the science education program, requires school districts to have vastly different programming and facilities requirements at the elementary, middle, and high school levels, including requirements for physical science, biology, chemistry, physics, and earth space science. *See* Ed. 306.45.

Dr. Freeman explained that curriculum development is an ongoing process that requires resources and staff time beyond their regular working hours. Pittsfield relied on external grants to pay teachers, usually in the summer or over weekends, to develop the curricula. Dr. Freeman also testified that districts need ongoing professional development to ensure teachers are up to date on the subject areas and the latest pedagogy. Some curricula, such as mathematics, also required services of external consultants. Curriculum development was not a one-off effort—Pittsfield had to periodically review its curricula to ensure that they were up to date.

ii. Technology

State Adequacy Regulations require school districts to integrate technology into their pedagogy. For example, Ed. 306.43, which describes the State's Mathematics Program, has a

technology requirement. Elementary schools must provide “opportunities for all students to build and construct knowledge and understanding of mathematical concepts through developmentally appropriate activities that include concrete experiences and interactions with manipulatives, technology, and their environment.” *See* Ed. 306.43(a)(2). Dr. Freeman elaborated on the requirement: “It’s also important . . . for application purposes, that students have concrete experiences and interactions,” where they can use “a real variety of equipment” such as “compasses or rulers, technology, of course, the necessity to integrate technology.” To fulfill this regulation, schools would thus need to supply instructional materials, including technology. Schools also need employees to maintain and repair the equipment and technology. In Pittsfield, this function is accomplished by an IT manager and an IT paraprofessional, neither of whom made it into the \$5.3 million budget.

iii. The State did not challenge these inputs.

The State put on no witness testimony that curriculum and instructional materials are unnecessary adequacy inputs.²² Dr. Freeman could not afford to allocate a single dollar to the technology budget, even with double the Adequacy Funding. Adequacy Funding *See* Plaintiffs’ Ex. 002-A.

d. Facilities & administrative services

Plaintiffs established at trial that to deliver the opportunity for an adequate education, school districts must ensure healthy and safe facilities alongside administrative services to oversee

²² Indeed, the State does not dispute that technology is a necessary component of an adequate education. *ConVal* State Appeal Brief at 27-28 (adequacy “reasonably covers . . . materials and supplies including technology . . . as a matter of law”).

and manage them effectively. These elements are integral to creating an environment conducive to learning, where students and teachers are safe and students can access an adequate education.

i. Specialized facilities

The State's own definition of adequacy requires districts to provide certain specialized facilities to deliver an adequate education. For example, Ed. 306.45 mandates that middle school science education programs include "laboratory experiences and activities," while high school science programs require "laboratory and field work." Ed. 306.45. These requirements necessitate that schools be equipped with fully functional science laboratories and resources, including specific workstations and equipment, that allow for hands-on experimentation and real-world scientific exploration.

ii. Healthy facilities

Another example is Ed. 306.40 concerning a health education program. Among Ed. 306.40's requirements is one for "[h]ealthy school facilities." Ed. 306.40(a)(5). To meet this requirement, Pittsfield provides custodial services, collaboration with a public health officer or fire chief for annual inspections, and contracted services related to things such as HVAC systems. Dr. Freeman testified that to meet his target budget of double Adequacy Funding, he was unable to provide safe and healthy facilities to his students. For example, custodial services were reduced to weekly cleanings instead of daily ones in direct violation of state law. *See* Ed. 306.09. The allocation for repairs to the HVAC systems was cut in half as well, even though it was unclear if such a reduction was actually feasible. Apart from erroneously suggesting that Ed. 306.09 "doesn't lay out . . . the number of days that a school has to be cleaned," the State failed to address how such requirements could be met without incurring facilities and administrative services costs. The State also offered no witness testimony to suggest that daily cleanings are unnecessary. Instead,

the State has argued that none of the requirements of 306.40(a) are part of an adequate education. But the State's contrived litigation position is belied by the evidence. When evaluating districts on whether they have met the requirements of adequacy, the State dictates that districts indicate that they have complied with the entirety of 306.40. Plaintiffs' Ex. 011 at 2, IBAS Report ("Under New Hampshire law, all public schools are required to demonstrate that they provide an adequate education, as defined by RSA 193."); *id.* at 28–30 (listing the entire Ed. 306.40 as a regulation referenced by RSA 193-E:3-b).

iii. Facilities for students with disabilities

Dr. Freeman also stressed that specialized facilities are necessary to provide students with disabilities access to an adequate education. He emphasized that the necessity extends to the full range of special education services, since an opportunity for an adequate education must be provided to *all* students regardless of abilities or needs. This necessity encompasses access to educational facilities and programs in all subject areas, including science labs.

Dr. Freeman raised a few examples, including accommodations to allow physically disabled students to access the facilities, special equipment for students with limited vision, and paraprofessionals to assist students with executive function difficulties in tracking and attending classes. Dr. Freeman also gave the example of transportation. In Pittsfield, school transportation services are provided by a charitable local contractor, Ms. Morrison, at such a low price that during the entirety of Dr. Freeman's time in Pittsfield, no other contractor could put up any competitive bid. Dr. Freeman testified that transportation is essential for students with special needs to access their education if they are placed out-of-district based on their needs or if they require certain appliances on the bus for them to ride safely to and from school. As a result, even though Dr. Freeman determined that Pittsfield could not afford the significantly underpriced transportation

for regular education with a \$5.3 million budget, he chose to keep transportation for special education, because there would simply be no education for many students with special needs without it. *See* Plaintiffs’ Ex. 002-A.

iv. Safe facilities

In further support of Dr. Freeman’s testimony, Dr. Cascadden also testified that districts must spend resources on maintaining functional and safe school facilities in order to deliver an adequate education. She discussed capital improvement projects in the Berlin school district such as asbestos removal, construction of a service road for better ambulance access, and construction of a school entrance vestibule for safety purposes. Without these projects, the safety of students and staff would be compromised, making it difficult for students to focus on learning.

v. Superintendents

On administrative services, Dr. Freeman testified that school districts need superintendent services for a wide variety of functions. State regulations require the school administrative unit (SAU) to be responsible for planning, management, and oversight, and there are duties that can only be carried out by the superintendent, such as recommending professionals for employment or removing teachers when appropriate. *See* Ed. 302.01, Ed. 302.02. As a result, while some small, “high functioning” school districts—the rare ones that have appropriate systems in place to assist in the discharge of superintendents’ administrative duties—can do without a full-time superintendent, none can eliminate the position altogether. Dr. Freeman testified that in Pittsfield, he was in charge of reviewing the curriculum, planning professional development, and developing the school district assessment plan. Dr. Freeman stated that there were also an administrative assistant performing HR functions and a business manager for finance-related duties, both of whom needed to be full time for the basic operation of the school district. To bring the budget

under \$5.3 million, Dr. Freeman cut the superintendent position to only 20 percent. *See* Plaintiffs' Ex. 002-A.

vi. Principals & Other Administrators

Dr. Freeman also described the important role principals play with regard to teacher work. Principals focus on teacher competence, delivery of instruction, and maintaining an appropriate school environment. All of the functions are critical to school improvement efforts based on Dr. Freeman's own experience as an elementary school principal in Pittsfield starting in 1999. Dr. Freeman explained that prior to the study, Pittsfield had already reconfigured its principal positions due to concerns over administrative costs. As a result of that effort, Pittsfield had two deans certified as principals in lieu of two principals at the elementary and high schools.

Pittsfield also had a director of interventions who was in charge of remediation and behavioral interventions, who spent 50 percent of her time fulfilling the State's requirement for a reading teacher. *See* Ed. 306.15. In addition, Pittsfield had a special education administrator. Even this skeletal configuration could not be sustained under a budget double the State's Adequacy Funding, and Dr. Freeman had to cut the director of interventions and one of the deans, leaving only one certified principal for both schools and the special education administrator for the district. Plaintiffs' Ex. 002-A. The resulting school district is also one where teachers, many of whom are inexperienced or have not gone through traditional teacher training programs due to the churn of employees, receive no support in terms of instruction and pedagogy from a director of interventions.

e. The State Cannot Blame Schools for Mismanagement of Adequacy Funds

When discussing these additional adequacy inputs, the State argued that school districts have leeway in deciding how they provide certain services, implying that school districts can choose to provide the services in more cost-effective ways (e.g., Dr. Greene’s testimony regarding schools in developing nations, charter schools and parochial schools).

The argument is irrelevant for the simple reason that the State’s Adequacy Funding, at \$2.69 million under Dr. Freeman’s study, cannot even cover the cost of teachers. Dr. Freeman’s doubling of Adequacy Funding did not allocate any money to many required services. It wasn’t even close. Using the \$5.3 million in double Adequacy Funding, the resultant Pittsfield school district is one that violates a host of federal and state laws and regulations and is unable to meet the needs of many students.

In his critique of Dr. Freeman’s Pittsfield Study, Dr. Greene suggested that some interventions are not “actually helpful” and “just things that are fashionable.” When pressed, however, Dr. Greene did not identify any spending in Dr. Freeman’s study that was merely “fashionable.” Additionally, despite Dr. Greene’s recognition that arts programs are part of constitutional adequacy and not just a “fashionable” thing to have, Dr. Freeman had to omit them from his budget. This demonstrates that Dr. Freeman pared down the budget below its absolute essentials, leaving no room for superfluous or “fashionable” items.

Dr. Greene also pointed out that Dr. Freeman did not consider adjusting teacher blocks or having teachers provide instruction virtually. However, Dr. Greene provided no data or real-world examples to illustrate that these alternatives would actually be a more cost-effective option, while still providing a constitutionally adequate education to New Hampshire students.

4. The Evidence Shows that the Appropriate Cost of Adequacy Should Take into Account the Average Costs of the Educational Inputs Necessary for Adequacy

As discussed above, this Court recently directed the State to set a base Adequacy Funding level that will fulfill the State's obligation to fund the opportunity for a constitutionally adequate education. *ConVal* Trial Order at 54. Plaintiffs have established that in making this calculation, the State should take into account statewide average district expenditures on Adequacy Inputs, including the ones discussed above and most particularly for the non-commodity components of an adequate education, such as competent professional and paraprofessional staff.

Dr. Freeman showed that Pittsfield's average cost per pupil is close to the statewide average. *See, e.g., See* Plaintiffs' Ex. 056-A. Therefore, by showing that Pittsfield's Adequacy Funding was insufficient, Dr. Freeman also showed that most districts cannot function on Adequacy Funding alone. Dr. Freeman concluded that Pittsfield is a reasonable barometer for other school districts in the state. Average district expenditures on adequacy inputs represent the actual cost of those resources in the real world, including in the existing legal and economic environments in which districts operate, with unavoidable constraints on the ability of districts to reduce costs indefinitely.

Contrary to the State's assertion that districts can opt to spend less (the State's witness Dr. Greene analogized school spending decisions to people's choices on whether to go to restaurants or "cook at home"), evidence shows that district expenditures are the outcome of already extensive cost-cutting efforts. For example, Dr. Freeman confirmed that Pittsfield operated with severe financial limitations and had implemented a wide range of efficiency measures. These included paying teachers some of the lowest salaries in the state of New Hampshire (Plaintiffs' Ex. 79-F); eliminating positions including foreign language ones and programs such as the wood shop and machine shop technology programs (*see* Plaintiffs' Ex. 002-A), cutting teacher benefits by increasingly shifting health insurance premium costs onto teachers (*id.*), relying on the

benevolence of townsfolk for cheap transportation contracts, operating with only a part-time superintendent (*id.*), and using external grants to fund curriculum development and professional development (*id.*). These measures cost Pittsfield dearly—Dr. Freeman testified about Pittsfield’s struggle with retaining qualified personnel and preserving institutional knowledge, a result of the high turnover rate caused by below-market teacher salaries. With an average salary lower than that in the surrounding school districts such as Concord and Epsom, Pittsfield saw experienced teachers leaving for other school districts. Dr. Freeman described a teacher who joined Pittsfield with a bachelor’s degree and no experience, spent six or seven years in Pittsfield, and moved to a job in Epsom for a 50 percent pay increase. Dr. Freeman described this to be a typical scenario. When the teachers left, they took with them years’ worth of teaching experience and professional development. Pittsfield suffered from this brain drain because of its inability to pay the market price for teachers.

Despite adhering to a tightly controlled budget process, Pittsfield had a per pupil spending level that was slightly above the state average. Data from the 2018–2019 school year showed that Pittsfield's per-pupil expenditure was approximately \$16,442, compared to the state average of \$16,346. Plaintiffs’ Ex. 056-E. More recent data from the 2022–2023 school year indicated that the state average per-pupil expenditure had increased to approximately \$20,322, while Pittsfield’s per-pupil expenditure for the same period was slightly higher at \$20,634. Plaintiffs’ Ex. 056-A. This demonstrated that Pittsfield’s spending continued to track close to the state average.

Plaintiffs chose to focus their financial analysis on Pittsfield, not because it was a bellwether district, but because its spending was at the state’s average. The State did not challenge that Pittsfield’s spending was at the average, nor did the State introduce evidence that Pittsfield was wasteful or inefficient. To the contrary, Dr. Freeman’s testimony underscored the frugality of

his approach to budgeting in this high needs district. His testimony also established that the State's calculation of the cost of adequacy is not even close to what is needed. Doubling the state's Adequacy Funding was insufficient and the State did not introduce evidence to challenge this assertion. If an average spending district cannot come close to funding a constitutionally adequate education, then there is good cause to find the entire funding system unconstitutional.

Dr. Cascadden's testimony establishes that Berlin's spending also reflects the unavoidable costs of delivering an adequate education. Similar to Pittsfield, Berlin's budget underwent years of cost-cutting and compromise with the sole aim of providing an adequate education to its students at the lowest possible cost. After Berlin took the drastic step of closing the Brown Elementary School due to insufficient funding, other budget cuts were still necessary and a flatlined budget was adopted by the city.

The rationale for severe cuts was simple: the city could not afford the school budget given it had no potential new revenue, no economic development, and there was a fourth year loss of its stabilization grant. Local taxpayers could not afford the burden of another local property tax increase.

In light of the significant budget constraints facing districts such as Pittsfield and Berlin, it is disingenuous and offensive to argue that somehow they chose to spend more than what is absolutely necessary to provide students with constitutional adequacy.

Instead of showing precisely how school districts could spend less, the State's expert, Dr. Greene criticized the use of average spending numbers as a benchmark, arguing that it would require all school districts to have a per-pupil spending that is above the state average.

Plaintiffs do not contend that the cost of an adequate education is the average per-pupil spending in New Hampshire. Instead, Plaintiffs argue that the cost of adequacy should be calculated using the real-life costs of Adequacy Inputs—of which the average spending on *those inputs* is an accurate barometer. Dr. Greene’s claim that one school district’s increase of their spending will result in other school districts being forced to increase their spending is ridiculous. Spending outside of adequacy is irrelevant to the Plaintiffs’ arguments and this Court’s concerns. However, state averages are highly relevant to determining the cost of components of adequacy that must be acquired in a competitive market (e.g., teachers).

The State may, if it chooses, reduce the number of components of adequacy subject to price competition but it hasn’t done so. For example, Dr. Freeman emphasized the importance of transportation in making sure that students can get to school and access *any* of their education. Instead of treating buses as a district expense, the State could implement a statewide initiative to pay for student transportation services through a single, statewide contract.

C. The Evidence at Trial Showed that Districts are Forced to Fill the Deficiency Gap with Local Taxes that are not Uniform in Rate

It is not in dispute that the State must fully fund a constitutionally adequate education. Because fully funding an adequate education is a State duty, the Supreme Court has ruled that taxes used to fund an adequate education must be “equal in valuation and uniform in rate throughout the State.” *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 468 (1997) (“*Claremont II*”); *see also* SWEPT MSJ Order, Dkt. No. 86 at 2 (Nov. 20, 2023); N.H. Const. pt. II, art. 5. The Supreme Court also made clear that to the extent local school taxes are used to fund constitutional adequacy, they are in fact state taxes. *See Claremont II*, 142 N.H. at 469 (“Although the taxes levied by local school districts are local in the sense that they are levied upon property within the

district, the taxes are in fact State taxes that have been authorized by the legislature to fulfill the requirements of the New Hampshire Constitution.”). Plaintiffs’ evidence at trial confirms this. As Plaintiffs’ state and local taxation expert, Kevin Clougherty testified, local education taxes are set by the DRA.²³

The evidence at trial, discussed above, established that the State has set Adequacy Funding at an unconstitutionally low figure. As a result, the State shifts to local taxpayers the burden of funding an adequate education through local education taxes. *See*, Plaintiffs’ Ex. 60-A (DOE 2020-2021 State Summary Revenue and Expenditures of School Districts showing that 60.7% of the total net education revenue comes from “Local Taxation”). Indeed, Dr. Cascadden testified that nearly 50% of the Berlin school district budget came from the local property tax revenue. Similarly, Dr. Freeman testified that about half of the gap in Pittsfield’s education funding is provided by local taxpayers. Plaintiff Jessica Wheeler-Russell testified that one of her reasons for joining the instant lawsuit was that her local education tax burden was increasing every year and that other members of her community were growing increasingly worried that they would be pushed out of their homes due to the increasing local education taxes.

Due to the great variability in property wealth between school districts across the State, local property taxes are highly disproportionate. As Mr. Clougherty explained at trial, local education taxes are equalized to allow for comparison across different districts which allows for a fair comparison of tax rates between towns. The equalized tax rates set out in DRA and DOE publications make clear that local education tax rates are not uniform across the state. *See*,

²³ Mr. Clougherty’s qualifications as a New Hampshire taxation expert include roles such as interim financial advisor for the U.S. Treasury, Commissioner of Revenue for New Hampshire, and Chief Financial Officer (CFO) for the City of Manchester.

Plaintiffs' Ex. 38-C. For example, Mr. Manganiello testified, that in the 2021-2022 school year, taxpayers in Allentown paid an equalized local education tax rate of \$11.74 per \$1,000 of equalized valuation while the taxpayers in Alton paid an equalized local education tax rate of \$4.32 per \$1,000. *See also* Plaintiffs' Ex. 61-B.

The State's reliance on these widely disparate local taxes to cover the cost of an adequate education, to any degree, violates Part II, Article 5 of the New Hampshire Constitution. Indeed, this funding scheme replicates the unconstitutional and inequitable core issue of the funding system that the Supreme Court meticulously examined and invalidated in *Claremont II*. *See* 142 N.H. 462, 467.

D. The State Did Not Demonstrate That Its Calculated Cost of Adequacy Funding Is Necessary to Achieve a Compelling Government Interest

The State did not put on any evidence to demonstrate that its calculation of Adequacy Funding—which burdens fundamental constitutional rights—is necessary to achieve a compelling government interest or that it is narrowly tailored to achieve that interest. The State was on notice that it had to do so. Specifically, the State knew that the burden of proof had shifted because at the close of Plaintiffs' case the State moved to dismiss the Plaintiffs' claims for insufficient evidence and failure to state a claim. The standard for a court's "findings of fact at the close of the plaintiff's case in-chief" is "whether the plaintiff has established the case by a preponderance of the evidence." *Renovest Co. v. Hodges Dev. Corp.*, 135 N.H. 72, 78 (1991). Based on this standard, this Court found that Plaintiffs met their burden, and the State was aware that they would need to put forth their own evidence, rather than just critiquing Plaintiffs' evidence.

The State provided no evidence that any district can provide an adequate education relying solely on the arbitrary per-pupil Adequacy Funding specified in RSA 198:40-a. Indeed, the State

did not put on a single witness to testify that a district could deliver the instruction required by its definition of adequacy relying on Adequacy Funding. Nor did the State introduce proof that an adequate education could be funded by Adequacy Funding *plus* extraordinary needs grants or stabilization funding or Medicaid funding. As discussed, neither Dr. Greene nor Dr. Shuls conducted an analysis to determine whether the State’s Adequacy Funding is sufficient to finance a constitutionally adequate education—the most fundamental question of this case. Their silence is telling; it underscores the State’s inability to justify the current level of base Adequacy Funding it provides.

Nor did the State provide any evidence that its taxation system, which forces districts to fill the funding gap for adequacy with local taxes, is *necessary* to fulfill a compelling government interest. In fact, the State failed to even identify any compelling government interest. As discussed, the State’s expert, Dr. Shuls, merely testified that the State’s allocation of tax burden between state and local education taxes, was “within the norm that one would expect from rational policy makers.” That is not even close to proving necessity. Adequacy Funding

Instead, the State continued to assert that the totality of Plaintiffs’ evidence was insufficient to prove their case because Plaintiffs did not bring a representative of every single district in New Hampshire to the stand to testify that they cannot provide a state funded adequate education using only Adequacy Funding. But the *Rand* trial did not take place in a vacuum. As discussed *supra*, the Supreme Court has already determined that a constitutionally adequate education is a fundamental right and that the state must define its components, cost out those components, and pay for it. *See Londonderry Sch. Dist. SAU No. 12 v. State*, 154 N.H. 153, 155, 161–62 (2006). The *Rand* trial was the fourth trial of facts related to New Hampshire’s system of funding its schools. The *Claremont* petitioners in the mid-1990s and the *Londonderry* petitioners in the mid-

2000s conducted long trials that challenged both the adequacy of the education received by New Hampshire students and the sufficiency of state funding. Both cases involved multiple rounds of appeals. The *ConVal* petitioners conducted a three-week trial before this Court less than two years ago that was focused on the sufficiency of funding but that did not argue that any child was deprived of a constitutionally adequate education. The *Rand* plaintiffs conducted a trial similar to *ConVal* limited to the sufficiency of state funding. The facts of school funding in New Hampshire are well-known and well-rehearsed in trial formats. Most of the Plaintiffs' factual assertions were not seriously challenged, or challenged at all. The evidence on which the Plaintiffs relied largely came from data maintained by the State at either the Department of Education or the Department of Revenue Administration. There was no point in unnecessarily taking up the Court's time with repetitive testimony

II. Plaintiffs Established at Trial that the State does not Provide Sufficient Funding to Deliver an Adequate Education to Children with Disabilities and Children who Live in Poverty, and that Districts Must Fill the Gap with Non-Uniform Local Education Taxes

By adopting RSA 198:40-a, the state has admitted that adequacy includes educating and recognizing the special circumstances of children who live in poverty, are learning English, or qualify for special education. The statute is also an admission that it costs more to educate children in these three categories. RSA 198:40-a provides: “[T]he annual cost of providing the opportunity for an adequate education as defined in RSA 193-E:2-a shall be as specified in paragraph II.” Paragraph II provides extra increments of Adequacy Funding, called “differentiated aid” for children in each of these three categories of special circumstances. The inclusion of these extra increments is an admission that it costs more to provide an adequate education to children who live in poverty, are learning English, or have special needs.

That children who qualify to receive differentiated aid are constitutionally entitled to Adequacy Funding sufficient to meet their special circumstances is not the issue in this case. What is at issue is whether the amounts assigned by the state to pay for differentiated aid for qualifying students is sufficient to meet the state's constitutional responsibility. As set out below, Plaintiffs have proven without contradiction, that it is not.

A. The Evidence at Trial Proved that the State's Calculated Cost of Differentiated Aid Fails to Pay for the Cost of an Adequate Education for Children Living in Poverty

There is no dispute that children living in poverty need additional resources to access an adequate education. Dr. Shuls conceded that children living in poverty may need additional resources. Dr. Greene conceded that smaller class sizes is one of the levers that improves the educational outcomes of children in poverty. Dr. Freeman also testified that children living in poverty need additional resources, such as additional literacy support, more personalized and intensive support from instructors and other behavior support specialists, to access their education. Dr. Freeman testified to the difference such resources make to students living in poverty. When Pittsfield had additional resources (through one-time grants) to provide personalized supports for children living in poverty, those students were able to make significant gains in their education, as reflected in their academic performance.

The State's differentiated aid funding for children eligible for free or reduced-price meals is currently set at \$2,300 (in addition to the base adequacy grant for that child). This amount is insufficient. As Dr. Freeman explained, even doubling Pittsfield's Adequacy Funding was not enough to allow his district to fund adequacy, let alone devote additional resources to services needed for children living in poverty. Freeman's study suggests that both base adequacy and the increment of differentiated aid devoted to children in poverty should be more than doubled. For

purposes of Plaintiffs' declaratory judgment request, however, it is sufficient for the Court to conclude that the differentiated aid for children in poverty is constitutionally deficient.

B. The Evidence at Trial Proved that the State's Calculated Cost of Differentiated Aid Fails to Pay for the Cost of an Adequate Education for Children with Disabilities

Plaintiffs have shown, without contradiction, that the funding for children who require special education services is insufficient to pay for the state's responsibility. In the words of plaintiff witness, Jennifer Dolloff, EdD., "it's not even close."

Dolloff's testimony, combined with the expert opinions of Dr. Freeman, make clear that the state funding for special education services, now set at approximately \$2,100 per student pursuant to RSA 198:40-a, is unconstitutionally low and the Court should so declare. Further, the Court should find and declare, based on the evidence adduced at trial from Dr. Dolloff and Dr. Freeman, that the differentiated aid for children living in poverty is not duplicative of the differentiated aid for children who qualify for special education. Poverty presents its own set of challenges to providing an adequate education to children in New Hampshire. These challenges are not coextensive with the challenges addressed through the provision of special education and related services.

Finally, while the plaintiffs do not ask the Court to set a minimum funding amount for providing an adequate education to children who qualify for special education, the Court should recommend to the legislature that it consider Dr. Dolloff's testimony that 70 percent of the \$850 million spent on special education and related services in New Hampshire each year is used at the placement stage and these services are, in fact, necessary for children with special needs to access the general education curriculum. The other, approximate 30 percent is spent to identify and evaluate the children who potentially qualify for special education and related services or to case

manage the services they actually receive. Although not an absolute prerequisite to the adoption of a fair and constitutional funding formula, the Court should also recommend the legislature consider other funding models that do not rely on a flat per capita funding scheme because the costs of educating children with special needs is so highly variable. Other models should be considered (e.g., a state insurance-style plan).

1. The Evidence at Trial Proved that Children who qualify for Special Education and Related Services Require those Services to Access any part of the General Education Curriculum, including that part that Constitutes an Adequate Education.

Dr. Jennifer Dolloff and Dr. John Freeman provided most of the Plaintiffs' evidence at trial about the costs of special education and related services. Dr. Freeman's background was described above. Dr. Dolloff has worked in special education for 36 years. She has undergraduate and master's degrees specific to special education. She earned her doctorate in educational leadership from Rivier University. Because of a unique set of circumstances, Dr. Dolloff has deep familiarity with the many districts in which she worked and the many school districts and private providers that she evaluated on behalf of the State as a contractor with the Southeastern Regional Education Services Center (SERESC) in Bedford. Dr. Dolloff worked as the director of special education in the state's two largest districts, Manchester and Nashua. She also worked as a special education coordinator for the tiny school districts that comprise the Monadnock School District. She worked in and evaluated special education programming in districts starved for funds, such as Lisbon, Winchester, and Hinsdale, and she worked for incredibly well funded districts like Bedford. Dr. Dolloff's most recent employment in New Hampshire was as the special education director in the SAU comprised of the Goffstown and New Boston school districts, which are middle-wealth districts.

Relevant to the issues this Court must address, Dr. Dolloff had direct responsibility for budgeting for special education and related services in all the districts where she was employed as the special education director. She was responsible for supervising costly out-of-district placements as a special education coordinator and kept up to date on the costs of these services as a special education director. Finally, as the leader of special education departments in diverse school districts, Dr. Dolloff had to recommend the hiring and firing of employees and the identification and retention of non-W-2 independent contractors. Dr. Dolloff learned from her vast experience how special education works in New Hampshire and what it costs. She was able to convey her fund of knowledge without impeachment to the Court.

Dr. Dolloff did not cost-out the portion of education that constitutes adequacy. Nor, did she testify as to a proper definition of adequacy. Instead, she testified that children who are found to qualify for special education through a detailed and carefully prescribed IEP process, require the services delineated by the IEP team to access *any part* of the general education curriculum. Dr. Dolloff testified that a child with limited vision, for example, requires books in braille or text to speech software to access written materials. It didn't matter whether the written materials concerned core subjects generally accepted as being within the definition of adequacy or the most esoteric subject one could imagine. The extra services provided through a special education teacher and the technology provided as a related service were necessary so that the child with special needs (limited vision) could participate in any part of the general education curriculum. As a result, it does not matter upon which definition of adequacy the Court settles. All special education services

should be funded by the State as necessary to allow a special needs child a fair opportunity to acquire an adequate education.²⁴

RSA 186-C:1 makes clear the purpose of special education services for children with disabilities is to provide children with a “free appropriate public education” (“**FAPE**”) in the least restrictive environment. RSA 186 C:1. Dr. Dolloff testified that the least restrictive environment means that where possible, districts avoid removing or isolating children with disabilities from students without disabilities. She also testified that the legal preference for least restrictive environments has a cost implication. Least restrictive environments tend to be less costly than more restrictive environments.

Consistent with RSA 193-E:1, and to provide students with a FAPE in the least restrictive environment, the special education laws codified in RSA 186-C and Ed. 1100 *et seq.* require districts to provide students with “instruction specifically designed to meet the[ir] unique needs . . .” RSA 186-C:2, IV (defining “**Special Education**”). Districts must develop a written plan for the education for each child with a disability – an individualized education program or “**IEP**” – that provides “necessary special education” or “special education and related services.” RSA 186-C:2, III. A student’s IEP includes descriptions of their individual areas of need, what the goals are for addressing that need, and which additional services they require to progress toward those goals. “Related services,” Dr. Dolloff testified, are services necessary for a student to benefit from the general education curriculum and to make gains and master the goals that are set out for them.

²⁴ It is also relevant that New Hampshire’s stated policy is to provide all children with equal educational opportunities and these opportunities include a fair opportunity to access an adequate education. *See* RSA 186-C:1 (“It is hereby declared to be the policy of the state that: I. All children in New Hampshire be provided with equal educational opportunities....”).

Related services can include therapeutic counseling, occupational services, and physical therapy, among other offerings.

As with areas within the scope of general education, the special education and related services needed are determined on an individual basis but the cost of those services are accounted for in the aggregate in school district budgets. It is the accumulation of those costs—not the cost of any particular child with special needs—that are at issue in this case. *See Claremont I*, 138 N.H. at 192 (“[t]he right to an adequate education mandated by the constitution is not based on the exclusive needs of a particular individual, but rather is a right held by the public to enforce the State’s duty.”).

2. The Evidence at Trial Demonstrates that the Special Education Standards Set Out by the State in Ed. 1100 Are Necessary for an Adequate Education but Serve to Limit the Opportunity for Price Competition.

Evidence at trial established that average spending for necessary special education and related services is \$26,000 per child. There can be no dispute that children cannot be provided with the services they need without first identifying them and carefully assessing them. The cost to manage the process of identifying children with special needs, evaluating them, designing an IEP, and then overseeing the services provided exceeds \$5,000 per child, according to Dr. Dolloff. Yet, the state’s differentiated aid for special education is about \$2,100. The funding increment at this low level does not pay for *any* services. Those costs are entirely shifted to the local taxpayer.

New Hampshire has established a detailed regulatory scheme to provide an adequate education for children with disabilities. By explicit regulation, the State must approve local special education programs and reviews policies and procedures, including those concerning IEPs compiled by school districts. Ed 1126.02. The State also audits all state and federal funding

provided to school districts for their special education and related services programming. Ed. 1125.04.

The New Hampshire system is defined by New Hampshire statutes and regulations promulgated by the New Hampshire Board of Education. In many instances, the legislature and state board of education have chosen to incorporate federal special education laws, but as Dr. Dolloff testified, she was trained to and did in fact follow state special education laws. The New Hampshire Special Education Standards, codified at Ed. 1100, aim to ensure that all children with disabilities have access to a FAPE in the least restrictive environment, consistent with the New Hampshire special education statutes, RSA 186-C and state regulations. Incorporating federal law, state regulations carefully prescribe the process to be followed by New Hampshire school districts in evaluating children for potential special needs, deciding how to develop IEPs, who should be on the IEP teams, opportunities for parental input, and monitoring of student progress once services are provided. *See* Ed. 1107, 1109, and 1111. Dr. Dolloff used the state promulgated flow chart to explain how the special education process is designed to work. Plaintiffs' Ex. 20-B.

The very tight time frames prescribed by the state Special Education Standards are carefully monitored by the state through a software management system called, New Hampshire Special Education Information System (NHSEIS, formerly NH SPEDIS). Local school districts are required to input events and dates of completion relevant to the state's supervision of special education programming and timeliness is a consideration for approval of local programs. The tight timeframes are not arbitrary. They are necessary, according to Dr. Dolloff, to the advancement of learning for children with special needs. However, they make use of requests for proposals and other bureaucratic processes for the retention of independent contractors untenable. As well, the scarcity of qualified contractors makes competition almost non-existent. Finally, Dr. Dolloff

testified that the state sets the rates that may be charged by out-of-district providers. Local districts do not and cannot negotiate those rates which may be in excess of \$300,000 per year for a child with complex disabilities who requires residential services. *See Ed. 1129 et seq.*

Dr. Dolloff testified that there is a direct correlation between the poverty level in a school district and the rate of special education identification within that district, as poverty brings along additional obstacles for children and those challenges make it difficult for students to really focus on education and develop the skills they need. Well-resourced school districts experience lower rates of special education identification because specialized support systems already exist in wealthy districts to ensure that students who are at risk do not remain at risk for long. To illustrate this, Dr. Dolloff described a scenario in which a teacher notices that their kindergarten student is not reading. In a wealthier district, the cost of serving that student is low because the district already has resources in place, such as specialized reading programs, to address reading deficiencies early across the entire student population. On the other hand, impoverished districts often cannot afford across-the-board solutions and end up addressing problems later and deploying specialized resources to identify and tutor children for longer periods of time to overcome reading deficiencies. Dr. Dolloff stressed the importance of early identification and intervention both to benefit the student and to reduce costs.

3. The Evidence at Trial Proved that the State's Adequacy Funding Fails to Cover the Cost of an Adequate Education for Children with Disabilities, Shifting the Burden to Local Property Taxpayers with Non-Uniform Rates

Plaintiffs provided substantial evidence that the costs of the special education process detailed above far exceed the State's Adequacy Funding. Dr. Freeman testified that in his expert opinion the state's differentiated aid for special education of \$2,100 per student is far below the

actual costs needed for special education students, which averaged over \$26,000 per special education student in Pittsfield. The \$26,000 cost figure was comparable to the average special education cost of most New Hampshire school districts (\$25,737 in FY 2022).²⁵ Dr. Freeman testified that the state and federal special education funding combined is not enough to cover even 50 percent of Pittsfield's spending on special education.

It is also clear based on the DOE-25 and state enrollment data that no district for which the number of special education students enrolled is available²⁶ spends as little as the \$2,100 afforded to districts to meet special education needs. *See* Plaintiffs' Exs. 15, 052-A-053-F, 100A-E-308A-E 15. For FY 2022, Columbia had the lowest average expenditure per special education student at \$5,073 and Sunapee had the highest at \$59,309.²⁷ A year by year review further shows that average special education costs within a district can vary greatly within a few years. For FY 2019, Jackson had the lowest average expenditure per special education student at \$7,623, and Bethlehem had the highest at \$66,2778.

Dr. Dolloff testified that in her experience, the State's total funding for children with special needs of \$4,100 plus differentiated aid of \$2,100 per pupil was not sufficient to cover the cost of the special education services necessary in any of the districts where she worked or

²⁵ Mr. Manganiello demonstrated this calculation in the aggregate during trial by dividing the total cost of special education found in DOE-25s, Ex. 52-A, by the number of special education students found in Plaintiffs' Ex. 15, determines the average expenditure per special education student (of about \$26,000).

²⁶ Counts are suppressed in districts with 10 or fewer special education students in order to protect privacy.

²⁷ This can be calculated by taking the total special education spending in a district's DOE-25 for any given year (CELL L546) divided by the number of special education students enrolled in the district (listed in Plaintiffs' Ex. 15).

evaluated a special education program. Dr. Dolloff explained that just performing required case management services for a child with disabilities alone costs schools approximately \$5,000 per year, a number that was consistent across every district in which she served or evaluated programs. Dr. Dolloff explained that state-provided differentiated aid was beneficial, but it was never close to enough to provide the services that were needed. Also relevant, Dr. Dolloff further explained that the constraints and requirements of the special education process impose expenses on districts that are outside of their control. For example, the rates for out-of-district placements are set by the state and districts have no discretion to pay less for them. Similarly, Dr. Dolloff explained that due to the rapid timeline for a student's evaluation process and the implementation of the IEP, districts are not able to comparison-shop or use requests for proposals to retain contractors.

In response, the State makes two arguments, each unavailing.

First, the State argues that it provides funding for special education through other sources (such as Special Education Aid or federal funding under the IDEA that is passed through to local districts). But Dr. Dolloff testified that all of the state and federal funding combined was not even close to providing enough funding for special education budgets. Moreover, as Dr. Dolloff explained, the state's Special Education Aid, RSA 186-C:18, is only available to defray extraordinary costs when a school district has a student expense that exceeds three and a half (3.5) times the average per pupil expenditure. At a current average per pupil cost of approximately \$20,000 per student, this means Special Education Aid does not even begin to become available until after a district documents that it has spent more than \$70,000 in qualifying special education expenses. Dr. Dolloff further explained that the amount of reimbursement was often prorated by the legislature, either late in the year the expenses were incurred, or in the following year. *See e.g.*, Plaintiffs' Ex. 64-F, N.H. Dep't of Educ., *FY 2019 Special Education Aid Estimates 1* (2018)

(prorated entitlement of school districts is only 70 percent of their actual entitlement). Thus, a district would not receive *any* additional funding from the State (beyond the \$2,100 for differentiated aid), until the district has spent \$70,000 in additional costs for a single student. Then, this money is pro-rated by as much as a 30 percent reduction after the district has incurred the expense.²⁸

Second, the State argued that Dr. Dolloff's testimony is limited to the districts where she worked. But Dr. Dolloff's experience extends to a vast array of districts across the State that includes districts where she was an employee, a consultant, and an evaluator. Moreover, Dr. Freeman and Dr. Cascadden's opinions, as Rule 702 experts, are not limited to the specific districts where they worked. Expert witnesses are entitled to rely on other data. Their testimony is appropriately grounded in their extensive experience and review of data (detailed above), none of which the State has challenged.

4. The Evidence at Trial Provided that Due to the State's Failure to Fund an Adequate Education for Students with Disabilities, Districts Must Bridge the Gap with Local Taxes

The consequence of the State's failure to pay for the full cost of an adequate education for special education students (that is, the full cost of such students' IEPs) is that property taxpayers are forced to meet the cost of providing an adequate education to children with disabilities in their district. At trial, Mark Manganiello conceded that the total cost of special education in New Hampshire is approximately \$850 million, yet through various funding programs, the State

²⁸ In the same vein, the State has argued that the Court should consider extraordinary needs grants to defray the cost of special education. But as discussed above, the extraordinary needs grants were phased in recently and are set to be phased out by the State. Thus, districts cannot rely on them to cover the cost of an adequate education for children with disabilities.

contributes only around \$100 million. He also affirmed that the federal government contributes approximately \$50 million through the IDEA and Medicaid. This leaves approximately \$700 million in costs for special education in New Hampshire—costs that are covered by local taxpayers.²⁹ As discussed above, the local education taxes that cover the costs of these necessary services are non-uniform.

5. Special Education Expenditures Do Reflect Real-World Costs

Plaintiffs submitted evidence that district special education expenditures do reflect the real-world costs of providing necessary services in a context that makes it impossible to reduce their costs. For example, if students need out-of-district placements, the cost of those placements are set by the State and cannot be negotiated by districts. Similarly, the expedited timeline in which districts must provide services to students with disabilities, and the dearth of contractors available to provide those services, means that districts must hire whoever is available with appropriate credentials. Considering the average costs of such inputs and the reality that districts must purchase them in real-world conditions imposes constraints on their ability to negotiate prices.

²⁹ Special education costs in New Hampshire for the 2021-2022 school year are included in Plaintiffs' Ex. 052-B. Instruction costs were \$611,339,248 (Row 525, Column L), Related Services costs were \$146,990,016 (Row 529, Column F), administration costs were \$30,709,414 (Row 535, Column F), legal costs were \$1,446,783 (Row 540, Column F), and transportation costs were \$52,252,547 (Row 545, Column F). In sum, these special education costs totaled \$842,738,008 (Row 546, Column L). Through various funding programs, the State contributed only \$93.7 million. This included \$31,791,289 in state special education aid (Plaintiffs' Ex. 052-B at Row 126, Column F) and \$61,904,967 in Adequacy Funding (Plaintiffs' Ex. 044-C at Row 6, Column P). The federal government also contributed approximately \$63.8 million through the IDEA (\$48,002,145) and Medicaid (\$15,767,653). *See* Plaintiffs' Ex. 052-B at Row 159, Column H and Row 160, Columns F and H, respectively. This left approximately \$685 million in costs for special education in New Hampshire that fell to the local property taxpayer.

III. Plaintiffs Are Entitled to Declaratory and Injunctive Relief

Based on the above, Plaintiffs respectfully request that this Court grant the following declaratory and injunctive relief.

A. The Court Should Issue a Declaratory Judgment.

The Declaratory Judgment should declare that:

1. RSA 198:40-a, II is unconstitutional because it fails to provide enough money to deliver an adequate education as defined in RSA 193:E-2(a).

2. The amount of differentiated aid provided in RSA 198:40-a, II is unconstitutional because it fails to provide enough money to cover the additional cost of services that are necessary for students with disabilities and students eligible for free or reduced price meals to access an adequate education as defined in RSA 193:E-2(a).

3. Differentiated aid for children living in poverty is not duplicative of the differentiated aid for children who qualify for special education and related services.

4. Because RSA 198:40-a is insufficient to cover the full cost of an adequate education, districts must rely on local school taxes to pay for the cost of an adequate education. These local school taxes, when deployed to fund a state responsibility, are state taxes and violate the New Hampshire Constitution because they are not uniform in rate across the state.

B. The Court Should Grant Plaintiffs Injunctive Relief.

Plaintiffs further request that the Court enjoin the State from using its current calculated cost of an adequate education, as set out in RSA 198:40-a, and from using non-uniform local education taxes to fund the cost of an adequate education, after March 31, 2026. Within 90 days

of the legislature adopting legislation implementing its updated calculation of the cost of an adequate education, Plaintiffs shall be able to challenge it.

C. The Court Should Issue These Recommendations.

Considering the history of litigation over the sufficiency of Adequacy Funding, Plaintiffs also ask that this Court recommend that (i) the legislature consider certain factors in recalculating the cost of an adequate education; and (ii) to build public confidence, that the legislature express its explicit reliance on its study in crafting a new calculation that is adopted by statute. The non-exhaustive list of factors that the Court should recommend the legislature consider in developing its new calculation of the cost of an adequate education includes:

- The average costs of delivering instruction, including educator compensation and professional development because districts must compete with each other to hire and retain staff;
- the cost of student support services because an adequate education must foster a positive learning environment;
- the cost of adequate curricular and instructional materials;
- the costs related to facilities and administrative services;
- the high costs of the services that are necessary for students with disabilities to access an adequate education as detailed in students' IEPs which may necessitate using an insurance-style funding model rather than a flat rate per capita funding model for this category of students;
- the distinct costs of services that are necessary to allow students who are eligible for a free or reduced price meal to access an adequate education;
- to the extent the State continues to fund public education using a model that combines base and differentiated aid, the State should consider that doubling the amount of Adequacy Funding (the base and differentiated aid grant) did not allow a highly efficient school district like Pittsfield to provide an adequate education to general education students, students receiving free and reduced lunch, and students with special needs;

- to the extent the State continues to fund public education using a model that combines base and differentiated aid, the State should proportionally increase the funding provided to districts based on their student populations receiving free and reduced lunch.

These considerations are neither binding nor exhaustive.

D. The Court Should Award Attorneys' Fees.

Plaintiffs ask the Court to award attorneys' fees. New Hampshire law is clear that “[w]here an individual is forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention, an award of counsel fees on the basis of bad faith is appropriate.” *Harkeem v. Adams*, 117 N.H. 687, 691 (1977). Furthermore, “[a]ttorney's fees may [also] be awarded when a litigant's action bestows a substantial benefit not only on the party who litigated the action, but on the public as well.” *Sivalingam v. Newton*, 174 N.H. 489, 499 (2021). Plaintiffs are entitled to reasonable attorneys' fees on either or both of these bases. As discussed *supra*, the right to an adequate education is a well-established fundamental right guaranteed by the Constitution of the State of New Hampshire, and Plaintiffs should not have to seek judicial redress to secure it. In addition, the benefits of a judgment in favor of the Plaintiffs will better inform the New Hampshire public of their constitutional rights in regard to public education, the perennial budget crises facing public school districts, and as to changes to their taxation system.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this brief has been served on this 15th day of November, 2024, by way of the Court's electronic filing and service system to all parties of record.

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