THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS. SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

ORDER ON THE STATE'S MOTION FOR RECONSIDERATION

In this case, the plaintiffs challenge aspects of the State's school funding laws and practices. See Doc. 17 (Am. Compl.) (asserting claims under Part II, Article 5 of the New Hampshire Constitution ("Part II, Article 5")). On November 20, 2023, the Court entered partial summary judgment in the plaintiffs' favor. See Doc. 86 (the "Summary Judgment Order"). The Court thereafter held a two-week bench trial on the plaintiffs' remaining claim that by underfunding the delivery of a constitutionally adequate education ("Constitutional Adequacy"), the State forces school districts to make up the difference via local property taxes assessed at varying rates. While the Court's decision on that claim remained under advisement, the New Hampshire Supreme Court issued an opinion partially affirming and partially reversing the Summary Judgment Order. See Rand v. State, 2025 N.H. 27 (issued June 10, 2025) (the "Rand Opinion"). On August 18, 2025, this Court issued an Order on the merits of the bench trial claim. See Doc. 157 (the "Merits Order"). The State now moves for reconsideration of the Merits Order. See Doc. 158; see also Doc. 159 (Pls.' Obj.). The Court held a hearing on that motion on October 14, 2025. For the reasons that follow, the State's motion is **DENIED**.

Background

Part II, Article 83 of the New Hampshire Constitution "imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools . . . and to guarantee adequate funding." Claremont Sch. Dist. v. Governor, 138 N.H. 183, 184 (1993). To comply with that duty, the State must "define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability." Londonderry Sch. Dist. v. State, 154 N.H. 153, 155–56 (2006) ("Londonderry I") (quotation omitted). With respect to the "constitutional taxes" requirement, Part II, Article 5 mandates that such taxes "be proportionate and reasonable—that is, equal in valuation and uniform in rate." Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) ("Claremont II") (citations and quotations omitted)).

At present, State funding for Constitutional Adequacy includes "base adequacy aid" and "differentiated aid" (collectively, "Adequacy Funding"). See RSA 198:40-a, III (providing that the "sum total" of base adequacy aid and differentiated aid, if any, "shall be the cost of an adequate education"). Effective July 1, 2023, the legislature amended RSA 198:40-a to provide for base adequacy aid of $4,100 per pupil in the average daily membership in residence ("ADMR"), and differentiated aid of $2,300 for each pupil in the ADMR who is eligible for a free or reduced price meal, $800 for each pupil in the ADMR who is an English language learner, and $2,100 for each pupil in the ADMR who receives special education services. See RSA 198:40-a, II. On July 1, 2025, the New Hampshire Supreme Court held that the base adequacy aid amount reflected in RSA 198:40-a, II, is unconstitutional. See Contoocook Valley Sch. Dist. v. State, 2025 N.H. 29 ("ConVal").

In the Merits Order, this Court similarly found that the plaintiffs had carried their burden of proving "that the total amount of current Adequacy Funding and the current amount of special education differentiated aid, as provided for in RSA 198:40-a, are constitutionally insufficient." Doc. 157 at 56. The Court further found that the plaintiffs properly challenged this issue under Part II, Article 5 because the insufficiency of State education funding "effectively convert[s]" a portion of local property tax revenues into a State education tax" that is assessed at varying rates. Id. at 6.

Analysis

The State now moves for reconsideration of the Merits Order. See Doc. 158. In particular, the State argues that: (1) there is an insufficient "connection between the alleged injury and the substantive claims advanced and the remedies sought by the plaintiffs"; (2) the Court erroneously concluded that local property tax revenues used to make up for the insufficiency in Adequacy Funding are effectively converted into a State tax assessed at different rates; and (3) the Court's analysis concerning point (2) conflicts with a portion of the Rand Opinion. See id.; see also Doc. 161 (State's Reply to Pls.' Obj.) at 3–4 (contending the plaintiffs failed to prove that any "shortfall" in Adequacy Funding "is necessarily being covered by local education property taxes and not by other sources of State revenue").

Upon review, the Court concludes that the Rand Opinion did not address the issues resolved via the Merits Order. See Rand, 2025 N.H. 27. The analysis in the Rand Opinion was necessarily limited to the issues raised in the State's Rule 46(c) appeal of the Summary Judgment Order. See id. ¶ 3. In that Order, the Court concluded that the legislature violated Part II, Article 5 by allowing communities to retain

revenues generated by a facially uniform tax (the "SWEPT") that exceeded the communities' respective Adequacy Funding needs, and by allowing communities to offset amounts owed under the SWEPT via negative local tax rates. See id.

On appeal, the supreme court determined that the "practice of setting negative local tax rates" to "offset" the facially uniform SWEPT rate violates Part II, Article 5 because taxpayers in those communities do not pay the SWEPT rate. Id. ¶ 23. By contrast, the supreme court determined that because taxpayers who reside in excess revenue communities pay all amounts owed under the SWEPT, the legislature's decision to let communities retain excess SWEPT revenues amounts to a spending decision which does not implicate Part II, Article 5. See id. ¶ 14 (contrasting this scheme with the situation at issue in Opinion of the Justices (School Financing), 142 N.H. 892, 899–902 (1998), wherein taxpayers in excess communities received special abatements of excess education tax revenues and thus the excess was not collected). In light of this rationale, the Rand court rejected the plaintiffs' claim that taxpayers in excess revenue communities effectively pay a lower SWEPT rate. See id. ¶¶ 15–16. Although the Rand court acknowledged that only a portion of SWEPT revenues generated in excess communities is being used for Adequacy Funding, the court concluded that such a "[t]heoretical indirect effect[] of the scheme" is "not relevant to the analysis under Part II, Article 5." Id. ¶ 16.

The issue resolved via the Merits Order is related to, but meaningfully distinct from, the issues resolved via the Rand Opinion: while the Rand Opinion is focused on the collection and use of SWEPT revenues, the Merits Order focused on the ramifications of insufficient Adequacy Funding levels. The overarching premise of the

plaintiffs' latter claim is that Adequacy Funding is so inadequate that local taxpayers must make up for at least a portion of the resulting shortfall in order to meet the demands of Constitutional Adequacy.

As explained in the Merits Order, the plaintiffs established at trial that State education funding levels are not sufficient for schools to meet Constitutional Adequacy. See Doc. 157 at 37–38. For example, the plaintiffs presented credible testimony from Dr. John Freeman reflecting that Pittsfield could not meet the demands of Constitutional Adequacy using only State education funding and federal education funding administered through the State. See id. at 38. Because Dr. Freeman's testimony reflected significant efforts to keep education expenditures low, the Court concluded that Pittsfield is a good "bellwether" for other New Hampshire school districts with respect to this issue. See id. at 37–40. Given this and other credible evidence the plaintiffs presented at trial, the Court concluded that certain aspects of Adequacy Funding are constitutionally insufficient, and that local communities must make up for a portion of this shortfall via local property taxes assessed at varying rates. See id. at 40.

As outlined above, the Rand Opinion did not analyze whether the State violates Part II, Article 5 by forcing local communities to fund a portion of the State's education-related constitutional obligations via local taxes assessed at varying rates. See Rand, 2025 N.H. 27. Accordingly, the Court is unpersuaded by the State's claim that the Merits Order conflicts with the Rand Opinion. See Doc. 158 at 7–8.

Further, and notwithstanding the State's contrary position, see Doc. 158 at 4–7, the Court remains of the view that the New Hampshire Supreme Court addressed the overarching issue implicated by the bench trial claim in Claremont II. See Doc. 157 at

2–3 (discussing 142 N.H. at 467–71). The Claremont II court described the then-existing education scheme as follows:

> Funding for public education in New Hampshire comes from three sources. First, school districts are authorized to raise funds through real estate taxation . . . . Second, funds are provided through direct legislative appropriations, primarily in the form of Foundation Aid, Building Aid, and Catastrophic Aid . . . . Third, approximately three percent of support for the public schools is in the form of federal aid.
>
> At the present time, the State places the responsibility for providing elementary and secondary public education on local school districts. State statutes, rules, and regulations delineate the requirements to be followed by school districts . . . .
>
> To comply with the State's requirements, school districts must raise money for their schools with revenue collected from real estate taxes. Every year, the selectmen of each town are required to assess an annual tax of $3.50 on each $1,000 of assessed value for the support of that district's schools. Each school district then details the sums of money needed to support its public schools and produces a budget that specifies the additional funds required to meet the State's minimum standards. A sum sufficient to meet the approved school budget must be assessed on the taxable real property in the district. The commissioner of revenue administration computes a property tax rate for school purposes in each district. Using the determined rate, city and town officials levy property taxes to provide the further sum necessary to meet the obligations of the school budget.

142 N.H. at 466–67 (citations omitted).

The Claremont II court held "that the property tax levied to fund education is, by virtue of the State's duty to provide a constitutionally adequate public education, a State tax and as such is disproportionate and unreasonable in violation of part II, article 5[.]" Id. at 467. In reaching this conclusion, the supreme court rejected the State's assertion that "[b]ecause the school tax is a local tax determined by budgeting decisions made by the district's legislative body and spent only in the district, it meets the constitutional requirement of proportionality." Id. at 467–68; see also id. at 469 ("That the State, through a complex statutory framework, has shifted most of the responsibility for

supporting public schools to local school districts does not diminish the State purpose of the school tax. 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."). Rather, the Claremont II court explained: "To the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State." Id. at 471; accord id. at 476 ("The State's duty to provide for an adequate education is constitutionally compelled . . . . While the State may delegate its obligation . . . to local school districts, it may not do so in a form underscored by unreasonable and inequitable tax burdens.").

The present funding scheme is different from the one at issue in Claremont II insofar as the present scheme purports to provide the funds necessary to meet Constitutional Adequacy. The plaintiffs proved at trial, however, that Adequacy Funding levels are insufficient for this purpose. The plaintiffs further proved that total State funding for education is insufficient to meet the demands of Constitutional Adequacy, and thus some portion of the State's education-related constitutional obligations is being funded through local property taxes. Within each community, local tax rates reflect "whatever rate [is] necessary to" make up for the disconnect between State education funding and the necessary costs of Constitutional Adequacy. See id. at 467. As the plaintiffs own and pay taxes on property located in communities with relatively high local property tax rates, they are uniquely harmed by this outcome.

Consistent with the foregoing, the Court is not persuaded by the State's assertion that the Court misapplied Claremont II in concluding that the portion of Constitutional Adequacy costs communities must fund through local taxes amounts to a State tax assessed at varying rates, in violation of Part II, Article 5. Although the State seemingly suggests that local communities could opt not to bridge the gap between State education funding and the requirements of Constitutional Adequacy via local property tax revenues, this aspect of the State's motion centers on the premise that the statutory scheme already reflects adequate funding levels. See Doc. 161 at 7 ("RSA 76:8, III does not factor into the State's adequate education grant nor does the State count revenue raised by its exercise as part of the State's adequate education funding grant to a municipality." (citations omitted)). As explained above (and in the Merits Order, see Doc. 157 at 37–40, 43–44), the plaintiffs disproved that underlying premise at trial. Indeed, the plaintiffs proved that total State funding for education is not sufficient to meet the demands of Constitutional Adequacy, and thus some amount of local property taxes are being used "to fund [part of] the provision of an adequate education[.]" Claremont II, 142 N.H. at 471. Because local property taxes are not assessed at uniform rates throughout the State, this results in a violation of Part II, Article 5. See id.

This conclusion undermines the State's claim that the remedies sought by the plaintiffs—i.e., a determination that the funding levels specified in RSA 198:40-a, II, are unconstitutional—will not address their claimed injuries. If the State increases Adequacy Funding to levels that align with the necessary costs of Constitutional Adequacy, then local communities will not need to make up for any related shortfall in

State funding. As a result, the plaintiffs would no longer be compelled to pay what amounts to an unconstitutional State tax. See id.

The State's argument on this final point raises a broader issue concerning the overall scheme. During the hearing, the State emphasized its view that any complaint regarding local taxation must be made to the local taxing authority, and that the State is not the proper party to remedy the plaintiffs' concerns. This argument ignores the unique characteristics of the public education system in New Hampshire. While it is the State's obligation to meet the demands of Constitutional Adequacy, the State has downshifted that obligation to the local school systems via statutes and regulations that require schools to satisfy this standard. As Adequacy Funding is insufficient (standing alone or coupled with other State education funding sources) for schools to meet Constitutional Adequacy, the State's underfunded mandate directly forces local communities to bridge the gap with local funds. Cf. Rand, 2025 N.H. 27, ¶ 16 (concluding that "[t]heoretical indirect effects" of the education funding scheme are "not relevant to the analysis under Part II, Article 5"). Consistent with the holding in Claremont II, this converts a portion of local taxes into an unconstitutional State tax. See 142 N.H. at 467.

For standing purposes, the Court must (and does) conclude that the total amount of State education funding is insufficient for communities to meet Constitutional Adequacy, and thus local communities have no choice but to bridge the gap through local tax revenues. The Court observes, however, that the plain language of RSA 198:40-a, III, contemplates that Adequacy Funding alone will be sufficient for schools to meet the demands of Constitutional Adequacy. See ConVal, 2025 N.H. 29, ¶ 6 (quoting

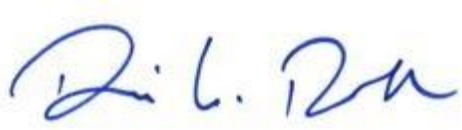
RSA 198:40-a, III, for the proposition that Adequacy Funding "shall be the cost of an adequate education"). Indeed, the Supreme Court's recent decision in ConVal supports the conclusion that Adequacy Funding levels must, standing alone, provide sufficient funds for schools to meet Constitutional Adequacy. See id. ¶ 22 ("To the extent the State makes a broader argument that the trial court erred by not considering sources of funding originating in statutes other than RSA 198:40-a, we disagree. By its plain language, RSA 198:40-a governs "'the annual cost of providing the opportunity for an adequate education as defined in RSA 193-E:2-a.' The State has not persuaded us that the other statutes it relies upon provide funding directed to that specific purpose."). That holding does not render this action moot, however, because ConVal was limited to the sufficiency of base adequacy aid whereas the plaintiffs in this action established the insufficiency of both base adequacy aid and special education differentiated aid. Accordingly, even if the legislature corrects the level of base adequacy aid in response to ConVal, this would not remedy the plaintiffs' special education-related claim.

In summary, the Court concludes that in light of the unique characteristics and constitutional implications of New Hampshire's public education system, the State's underfunding of Constitutional Adequacy forces local communities to bridge some portion of the gap with local taxes assessed at varying rates. As the plaintiffs have proven that current State education levels are constitutionally insufficient, the Court finds no basis to reconsider its conclusion that the plaintiffs have standing to seek redress under Part II, Article 5.

Conclusion

For the reasons outlined above, the State's motion for reconsideration is **DENIED**. See Doc. 158.

SO ORDERED.



1-26-2026

David W. Ruoff
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 01/27/2026