

# Attachment 1

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven Rand et al.

v.

The State of New Hampshire

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**DEFENDANTS' RESPONSE TO PLAINTIFFS' FIRST REQUESTS FOR  
ADMISSIONS**

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The State of New Hampshire, by and through counsel, hereby responds to the Petitioners' First Requests For Admissions under Superior Court Rule 28.

**GENERAL OBJECTIONS**

The State incorporates the following General Objections into each and every individualized response contained herein, as set forth below, and into each and every amendment, supplement or modification to these responses hereafter provided to the specific request below. The State does not waive any General Objection in response to any specific request.

1. The State objects to the plaintiffs' definition of "you," "your," and "State" as including "all elected and appointed officials, employees and agents." This definition is overly broad and unduly burdensome. The "State of New Hampshire," in its broadest sense, encompasses three branches of government made up of dozens of agencies, divisions, and other subparts, and acts through thousands of elected or appointed officials, employees, and other agents. It is neither feasible nor reasonable to expect discovery responses in this case, including responses to these requests, to encompass all information that may be within the possession of the state government as a whole or the personal knowledge of any state official, employee, or agent. This is especially true given that there is no temporal limit on many of the requests in question. In keeping with the

agreed-upon discovery schedule in this case, the needs of this litigation, and the focus of the requests, the responses below are provided by New Hampshire Department of Education (“NHED”) based on information that is within NHED’s custody and control and identifiable through a reasonably diligent search.

2. The State objects to each request to the extent it purports to require the disclosure or production of information subject to the attorney-client privilege, the work product doctrine, the executive privilege, the legislative privilege, the deliberative process privilege, or any other privilege or is otherwise immune from disclosure under the Superior Court Rules, the New Hampshire Rules of Evidence, or state law. Any inadvertent disclosure of information that is protected under the attorney-client privilege, the work product doctrine, the executive privilege, the legislative privilege, the deliberative process privilege, or any other privilege or is otherwise immune from disclosure under the Superior Court Rules, the New Hampshire Rules of Evidence, or state law shall not constitute a waiver of that privilege, immunity, or legal bar and shall not prevent the defendants from objecting to discovery with respect to such information or use of such information in court. The State will prepare an appropriate privilege log to the extent one is required in this case.

3. The State objects generally to each request to the extent that it seeks the production of information that is irrelevant to the issues germane to this matter and/or is overly broad, would subject the defendants’ offices to unreasonable, oppressive, and undue burden and expense, and/or is not proportional to the needs of the case.

4. The State objects generally to each request insofar as it seeks to have the defendant identify information or documents that are already in plaintiffs’ possession or are readily accessible to plaintiffs or that the plaintiffs may produce in this case.

5. The defendants object generally to each request to the extent that it purports to seek information which is not within the knowledge, possession, custody, or control of the State, including but not limited to the knowledge of past legislatures, legislative committees, NHED Commissioners, NHED Division Directors and NHED agency personnel.

6. The State objects generally to each request to the extent that it calls for speculation and conjecture, opinion, or legal conclusions.

7. The State objects generally to each request to the extent that it is vague and/or ambiguous.
8. The State objects to each request to the extent that it assumes certain legal conclusions or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any factual or legal contention, characterization, or implication that is contained in these requests.
9. The State's objections and responses do not constitute an adoption of the Definitions or Instructions contained in the plaintiffs' requests. The State objects to those Definitions and Instructions to the extent they: (i) are unclear, ambiguous, overbroad, unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; or (iii) purport to impose any requirement or discovery obligations beyond those set forth in the Superior Court Rules or the pertinent case law.
10. The State reserves all objections as to the relevance or admissibility of any responses provided herein and reserves the right to supplement or alter these responses as discovery continues.

### **REQUESTS FOR ADMISSION**

1. Admit that the data published online by the New Hampshire Department of Education ("NHDOE") in NHDOE's Financial Reports is accurate and that you are aware that the data is relied upon by the public, news media, and State policy makers. <https://www.education.nh.gov/who-we-are/division-of-educator-and-analytic-resources/bureau-of-education-statistics/financial-reports>

**Objections:** The State objects to this request to the extent it incorporates the definition of "you," "your," and "State" contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request as it is a compound request that cannot be responded to through a single admission or denial. The State further objects to this request to the extent it can be read to imply that NHED is under any legal obligation to ensure the accuracy of self-reported, unaudited data published on its website at the link provided. The State further objects to this request on relevancy grounds, as the accuracy of self-reported,

unaudited data on NHED website and whether the public, news media, or state policymakers rely on that data has no bearing on whether the cost of an adequate education set forth in RSA 198:40, II is sufficient to cover an adequate version of the substantive educational program set forth in RSA 193-E:2-a. The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs' claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this request as follows.

NHED lacks information or knowledge sufficient to admit or deny whether the data contained on NHED website linked in this request is accurate, as that data is self-reported and unaudited. NHED also lacks information or knowledge sufficient to admit or deny whether that data "is relied upon by the public, the news media, and State policy makers," as it is not clear from this broad statement who is purportedly relying on the data or for what purpose. NHED denies, however, any implication that it is reasonable to rely on the data published on NHED website at the link provided in this request to determine the cost of an adequate education.

2. Admit You have no knowledge that any New Hampshire school district spends as little per pupil on education as the base adequacy amount, set in RSA 198:40-a. II(a), including any annual escalators pursuant to RSA 198:40-d.

**Objections:** The State objects to this request to the extent it incorporates the definition of "you," "your," and "State" contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request on relevancy grounds, as cost of an adequate version of the substantive educational program set forth in RSA 193-E:2-a cannot be discerned from the total amount a school district expends per pupil on education, the total amount a school district spends per pupil on education has no bearing on whether the cost of an adequate education set forth in RSA 198:40, II is sufficient to cover an adequate version of the

substantive educational program set forth in RSA 193-E:2-a, and school districts do not provide information to NHED that specifies what portions of their total expenditures are made to provide an adequate version of the core educational program defined in RSA 193-E:2-a. The State further objects to this request to the extent it assumes that differentiated aid provided in RSA 198:40-a, II(b) through (e) is not included within the cost of an adequate education, as determined by the legislature through RSA 198:40-a. The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs' claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this request as follows.

NHED admits that is unaware of any school district that spends a total amount per pupil on education that is equal to or less than the total amount per pupil that school district receives to cover the cost of an adequate education under RSA 198:40-a and RSA 198:41. NHED denies any implication that this means that the cost of an adequate education set forth in RSA 198:40-a is insufficient to fund an adequate version of the substantive educational program defined in RSA 193-E:2-a. NHED further denies any implication that the State bears any burden of proof on this issue. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

3. Admit You have no knowledge that any New Hampshire school district spends as little additional amounts to meet the educational needs of children who qualify for differentiated aid pursuant to RSA 198:40-a. II (b-e) as the differentiated amounts set out in that statute, including any annual escalators pursuant to RSA 198:40-d.

**Objections:** The State objects to this request to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State

further objects to this request on relevancy grounds, as cost of an adequate version of the substantive educational program set forth in RSA 193-E:2-a cannot be discerned from the total amount a school district expends per pupil on education, the total amount a school district spends per pupil on education has no bearing on whether the cost of an adequate education set forth in RSA 198:40, II is sufficient to cover an adequate version of the substantive educational program set forth in RSA 193-E:2-a, and school districts do not provide information to NHED that specifies what portions of their total expenditures are made to provide an adequate version of the core educational program defined in RSA 193-E:2-a. The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs' claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response: Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this request as follows.

NHED admits that is unaware of any school district in which the total amount expended per pupil to education children who qualify for differentiated aid pursuant to RSA 198:40-a, II(b) through (e) is equal to or less than the amounts per pupil the school district receives in differentiated aid under RSA 198:40-a, II(b) through (e). NHED denies any implication that this means that the cost of an adequate education set forth in RSA 198:40-a is insufficient to fund an adequate version of the substantive educational program defined in RSA 193-E:2-a. NHED further denies any implication that the State bears any burden of proof on this issue. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

defined in RSA 193-E:2-a, I. NHED denies any implication that it is under any obligation to conduct such an analysis. NHED further denies that the State bears the burden of disproving the plaintiffs' claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

6. (a) Admit that new learning areas have been added to RSA 193-E:2-a, I in 2019 and 2022 under sub-sections (10) and (11)—personal finance literacy and computer science—but that no additional funding as part of RSA 198:40-a, II has been provided for these components.

(b) Admit that you have not determined the cost of complying with sub-sections (10) and (11).

**Objections:** The State objects to this request to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request as it is a compound request that cannot be responded to through a single admission or denial. The State further objects and declines to respond to the portion of this request delineated as part (a) because it seeks admissions on questions of law, which is not a proper area of inquiry through a request for admission. *In re New England Compounding Pharmacy, Inc. Prod. Liab. Litig.*, No. MDL 13-2419-RWZ, 2015 WL 13715291, at \*2 (D. Mass. Sept. 8, 2015) (“[A] party may not seek an admission as to a pure conclusion of law.”); *cf. TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995) (“[P]arties may not stipulate to legal conclusions to be reached by the court.”). The State further objects to this request because the New Hampshire Supreme Court has made clear that what cost elements the legislature may or may not have included in the formula contained in RSA 198:40-a, II is irrelevant to the question of whether the funding provided to each school district under that statute is sufficient to cover the cost of a constitutionally adequate education. *See Contoocook Valley School District v. State of New Hampshire*, 174 N.H. 154, 165–66 (2021) (“[T]he legislature’s underlying rationale for reaching the cost set forth in the statute, including the

methodology contained in the Joint Committee’s Final Report and 2008 Spreadsheet, is irrelevant to determining whether the amount is sufficient to cover the cost of delivering an adequate education as defined by the legislature in RSA 193-E:2-a.”). The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See id.* at 161, 167 (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** In light of the above objections, NHED declines to respond to the portion of this request delineated as part (a). Notwithstanding the above objections, and without waiving them, NHED admits that it has not independently analyzed what it would cost to provide an adequate version of a personal finance and computer science curriculum. NHED denies that it is under any obligation to conduct such an analysis. NHED also denies any implication in this request that the cost of an adequate education set forth in RSA 198:40-a is insufficient to fund an adequate version of the substantive educational program defined in RSA 193-E:2-a. NHED further denies any implication that the State bears any burden of proof on this issue. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

7. Admit that data for 2021-2022 published NHDOE website demonstrates that there is not a single district in the state of New Hampshire where the cost per pupil expenditures are less than \$14,000 per pupil.

<https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-increases-by-district-2000-2022.pdf>

**Objections:** The State objects to this request to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request on relevancy grounds, as cost of an adequate version of the substantive educational program set forth in RSA 193-E:2-a cannot be discerned from the total amount a school district expends per pupil on education, and the total amount a school district spends per pupil on education has no bearing on whether the cost of an adequate education set forth in RSA 198:40, II is sufficient to cover an adequate version of the substantive educational program set forth in RSA 193-E:2-a. The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this request as follows.

NHED admits that the data contained at the website cited in this request reflects that in 2021-2022, no school district had total education expenditures of less than \$14,000 per pupil. NHED denies any implication that this means that the cost of an adequate education set forth in RSA 198:40-a is insufficient to fund an adequate version of the substantive educational program defined in RSA 193-E:2-a. NHED further denies any implication that the State bears any burden of proof on this issue. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).\

11. Admit that, other than cost-of-living adjustments mandated by RSA 198:40-d, the differentiated aid pursuant to RSA 198:40-a, II (b-e) has not been raised since 2007.

**Objections:** The State objects to this request to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request because it seeks an admission as to a question of law, which is not a proper area of inquiry through a request for admission. *In re New England Compounding Pharmacy, Inc. Prod. Liab. Litig.*, No. MDL 13-2419-RWZ, 2015 WL 13715291, at \*2 (D. Mass. Sept. 8, 2015) (“[A] party may not seek an admission as to a pure conclusion of law.”); *cf. TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995) (“[P]arties may not stipulate to legal conclusions to be reached by the court.”). The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** Notwithstanding the above objections, and without waiving them, NHED admits the statement in this request.


13. Admit that you have not amended the school district reporting requirements for Annual Financial Reports (DOE-25, or any other report) to allow you to gather data that breaks down school district expenditures consistent with the legislative definition of a constitutionally adequate education contained in RSA 193-E:2-a.

**Objections:** The State objects to this request to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the requests for the reasons stated in the above general objections. In light of this objection, any response to this request, to the extent one is provided, is made by NHED. The State further objects to this request to the extent it can be read to imply that NHED is under any legal obligation “to gather data that breaks down school district expenditures consistent with the legislative definition of a constitutionally adequate education contained in RSA 193-E:2-a.” The State further objects to this request to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof).

**Response:** Notwithstanding the above objections, and without waiving them, NHED admits that it has not amended the school district reporting requirements in the manner described in this request.

**VERIFICATION**

I, Caitlin D. Davis, am the Director of the Division of Education Analytics & Resources, for the Department of Education, for the State of New Hampshire. The factual matters stated in the foregoing Responses to the Requests for Admission are provided on behalf of the Department of Education in my official capacity and are not necessarily within my personal knowledge or within the personal knowledge of any single individual. Based on reasonable inquiry of staff within the New Hampshire Department of Education, I am informed and believe, and based on such information and belief hereby verify, under penalty of perjury, that the factual statements in the foregoing Responses to the Requests for Admission are true and correct to the best of my knowledge, information, and belief.


  
\_\_\_\_\_  
Caitlin D. Davis

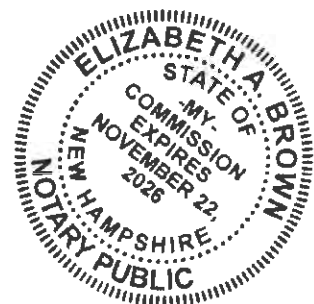
Date: March 17, 2023

STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

Personally appeared before me the above-named Caitlin D. Davis on this 17<sup>th</sup> day of March, 2023 and made oath that the foregoing statements by her are true and correct to the best of her knowledge and belief.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 11/22/2026



Respectfully submitted,

STATE OF NEW HAMPSHIRE, *et al.*

By their attorney,

JOHN M. FORMELLA,  
ATTORNEY GENERAL

Date: March 20, 2023

By: /s/ Samuel Garland  
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# Attachment 2

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven Rand et al.

v.

The State of New Hampshire

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**DEFENDANT’S OBJECTIONS AND RESPONSES TO PLAINTIFFS’ FIRST SET  
OF INTERROGATORIES**

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The State of New Hampshire, by and through counsel, hereby respond to the Petitioners’ First Requests For Interrogatories under Superior Court Rule 23.

**GENERAL OBJECTIONS**

The State incorporates the following General Objections into each and every individualized response contained herein, as set forth below, and into each and every amendment, supplement or modification to these responses hereafter provided to the specific interrogatories below. The State does not waive any General Objection in response to any specific interrogatory.

1. The State objects to the plaintiffs’ definition of “you,” “your,” and “State” as including “all elected and appointed officials, employees and agents.” This definition is overly broad and unduly burdensome. The “State of New Hampshire,” in its broadest sense, encompasses three branches of government made up of dozens of agencies, divisions, and other subparts, and acts through thousands of elected or appointed officials, employees, and other agents. It is neither feasible nor reasonable to expect discovery responses in this case, including responses to these interrogatories, to encompass all information that may be within the possession of the state government as a whole or the personal knowledge of any state official, employee, or agent. This is

especially true given that there is no temporal limit on many of the requests in question. In keeping with the agreed-upon discovery schedule in this case, the needs of this litigation, and the focus of the interrogatories, the responses below are provided by New Hampshire Department of Education (“NHED”) based on information that is within NHED’s custody and control and identifiable through a reasonably diligent search.

2. The State objects to each interrogatory and document request to the extent it purports to require the disclosure or production of information subject to the attorney-client privilege, the work product doctrine, the executive privilege, the legislative privilege, the deliberative process privilege, or any other privilege or is otherwise immune from disclosure under the Superior Court Rules, the New Hampshire Rules of Evidence, or state law. Any inadvertent disclosure of information that is protected under the attorney-client privilege, the work product doctrine, the executive privilege, the legislative privilege, the deliberative process privilege, or any other privilege or is otherwise immune from disclosure under the Superior Court Rules, the New Hampshire Rules of Evidence, or state law shall not constitute a waiver of that privilege, immunity, or legal bar and shall not prevent the defendants from objecting to discovery with respect to such information or use of such information in court. The State will prepare an appropriate privilege log to the extent one is required in this case.

3. The State objects generally to each interrogatory to the extent that it seeks the production of information that is irrelevant to the issues germane to this matter and/or is overly broad, would subject the defendants’ offices to unreasonable, oppressive, and undue burden and expense, and/or is not proportional to the needs of the case.

4. The State objects generally to each interrogatory insofar as it seeks to have the defendant identify information or documents that are already in plaintiffs’ possession or are readily accessible to plaintiffs or that the plaintiffs may produce in this case.

5. The defendants object generally to each interrogatory to the extent that it purports to seek information which is not within the knowledge, possession, custody, or control of the State, including but not limited to the knowledge of past legislatures, legislative committees, NHED Commissioners, NHED Division Directors and NHED agency personnel.

6. The State objects generally to each interrogatory to the extent that it calls

for speculation and conjecture, opinion, or legal conclusions.

7. The State objects generally to each interrogatory to the extent that it is vague and/or ambiguous.

8. The State objects to each interrogatory to the extent that it assumes certain legal conclusions or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any factual or legal contention, characterization, or implication that is contained in these interrogatories.

9. The State's objections and responses do not constitute an adoption of the Definitions or Instructions contained in the plaintiffs' requests. The State objects to those Definitions and Instructions to the extent they: (i) are unclear, ambiguous, overbroad, unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; or (iii) purport to impose any requirement or discovery obligations beyond those set forth in the Superior Court Rules or the pertinent case law.

10. The State reserves all objections as to the relevance or admissibility of any responses provided herein and reserves the right to supplement or alter these responses as discovery continues.

### **Interrogatories**

1. Identify the basis for your conclusion that the annual cost of an opportunity for an adequate education as laid out in RSA 198:40-a, II is sufficient for school districts to provide a constitutionally adequate education as defined under New Hampshire law.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of "you," "your," and "State" contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs' claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears

2. State whether, pursuant to your duty to provide a constitutionally adequate education as defined under New Hampshire law, you have requested that school districts provide further documents, information, or data about their internal operations that bear on the specific costs required to provide a constitutionally adequate education in each school district.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State incorporates the above general objections as if fully set forth herein. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof). The State further objects to this interrogatory to the extent it assumes that the cost of an adequate education established by statute is unconstitutional. *See id.* at 161 (noting that RSA 198:40-a, like all statutes, is presumed to be constitutional and will only be invalidated “upon inescapable grounds”). The State further objects to this interrogatory to the extent it assumes the existence of a legal obligation that does not exist under established law or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any legal or factual contention, characterization, or implication that is contained in this interrogatory.

**Response:** Notwithstanding the above objections, and without waiving them, the State responds to this interrogatory as follows.

The legislature, through the enactment of RSA 198:40-a, has established the annual cost for providing the opportunity for an adequate education as defined in RSA 193-E:2-a and as specified by RSA 198:40-a, II. NHED’s obligation is to calculate adequacy grants according to New Hampshire law and make the required disbursements. NHED does not have agency discretion or authority to independently determine cost of an adequate education. New Hampshire School Districts are subject to multiple reporting requirements, including but not limited to reporting financial data via annual submissions of the DOE25 and MS-22. School districts are not required to specifically report to

NHED which amounts of their total expenditures are made to provide an adequate version of the substantive educational program the legislature has defined in RSA 193-E:2-a or delineate expenditures that are to support the amounts to provide an adequate version of the substantive educational program the legislature has defined in RSA 193-E:2 as compared to expenditures beyond what is needed to provide an adequate version of the substantive educational program the legislature has defined in RSA 193-E:2, including for services a local school district may choose to provide.

3. Describe in detail the basis for and any analysis taken regarding the increase in the annual cost of an opportunity for an adequate education as laid out in RSA 198:40-a, II from \$3,450 to \$3,561.27 per pupil in 2016, including any data relied upon in determining the amount of the increase.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State incorporates the above general objections as if fully set forth herein. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof). The State further objects to this interrogatory to the extent it assumes that the cost of an adequate education established by statute is unconstitutional. *See id.* at 161 (noting that RSA 198:40-a, like all statutes, is presumed to be constitutional and will only be invalidated “upon inescapable grounds”). The State further objects to this interrogatory to the extent it assumes the existence of a legal obligation that does not exist under established law or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any legal or factual contention, characterization, or implication that is contained in this interrogatory.

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this interrogatory as follows.

<https://www.education.nh.gov/who-we-are/division-of-educator-and-analytic-resources/bureau-of-education-statistics/state-adequate-education-aid>.

5. State whether you have analyzed if the Consumer Price Index adjustment (including the market basket of products and services) as laid out in RSA 198:40-d is an adequate measure of annual cost increases in the costs to provide a constitutionally adequate education as laid out in RSA 198:40-a, II.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof). The State further objects to this interrogatory to the extent it assumes that the cost of an adequate education established by statute is unconstitutional. *See id.* at 161 (noting that RSA 198:40-a, like all statutes, is presumed to be constitutional and will only be invalidated “upon inescapable grounds”). The State further objects to this interrogatory to the extent it assumes the existence of a legal obligation that does not exist under established law or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any legal or factual contention, characterization, or implication that is contained in this interrogatory.

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this interrogatory as follows.

The legislature, through the enactment of RSA 198:40-a, has established the annual cost for providing the opportunity for an adequate education as defined in RSA 193-E:2-a and as specified by RSA 198:40-a, II. NHED’s obligation is to calculate adequacy grants according to New Hampshire law and make the required disbursements. NHED does not have agency discretion or authority to independently determine cost of an adequate education. NHED is neither authorized nor obligated to conduct the analysis

described in this interrogatory. NHED is not currently aware of any instance in which such an analysis has been conducted.

6. Describe in detail how the annual cost of an opportunity for an adequate education as laid out in RSA 198:40-a, II has changed since 2007.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof). The State further objects to this interrogatory to the extent it assumes that the cost of an adequate education established by statute is unconstitutional. *See id.* at 161 (noting that RSA 198:40-a, like all statutes, is presumed to be constitutional and will only be invalidated “upon inescapable grounds”). The State further objects to this interrogatory to the extent it assumes the existence of a legal obligation that does not exist under established law or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any legal or factual contention, characterization, or implication that is contained in this interrogatory.

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this interrogatory as follows.

The legislature, through the enactment of RSA 198:40-a, has established the annual cost for providing the opportunity for an adequate education as defined in RSA 193-E:2-a and as specified by RSA 198:40-a, II. NHED’s obligation is to calculate adequacy grants according to New Hampshire law and make the required disbursements. NHED does not have agency discretion or authority to independently determine cost of an adequate education. RSA 198:40-a, and any changes that have been made to that statute since 2007, are matters of public record that speak for themselves. A history of NHED’s adequacy aid calculations dating back to FY 2007 is available at

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this interrogatory as follows.

NHED has not identified any instance in which made a written assertion of the type described in this interrogatory.

23. Outside the course of litigation, enumerate all instances where you have asserted in writing that a New Hampshire school district is offering classes or educational services that are outside the definition of constitutional adequacy as defined by the *Claremont* line of cases and RSA 193-E:2-a and provide copies of any communications about this topic developed internally or exchanged with the school district.

**Objections:** The State objects to this interrogatory to the extent it incorporates the definition of “you,” “your,” and “State” contained in the definitions section of the interrogatories for the reasons stated in the above general objections. In light of this objection, any response to this interrogatory, to the extent one is provided, is made by NHED. The State further objects to this interrogatory to the extent it implies that the State bears the burden of disproving the plaintiffs’ claims in this case. *See Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 161, 167 (2021) (confirming that a plaintiff challenging whether the amount provided under RSA 198:40-a, II is constitutionally sufficient bears the burden of proof). The State further objects to this interrogatory to the extent it assumes that the cost of an adequate education established by statute is unconstitutional. *See id.* at 161 (noting that RSA 198:40-a, like all statutes, is presumed to be constitutional and will only be invalidated “upon inescapable grounds”). The State further objects to this interrogatory to the extent it assumes the existence of a legal obligation that does not exist under established law or certain facts not established in this proceeding. The State does not admit, adopt, or acquiesce in any legal or factual contention, characterization, or implication that is contained in this interrogatory.

**Response:** Notwithstanding the above objections, and without waiving them, NHED responds to this interrogatory as follows.

NHED has not identified any instance in which made a written assertion of the type described in this interrogatory.

**VERIFICATION**

I, Caitlin D. Davis, am the Director of the Division of Education Analytics & Resources, for the Department of Education, for the State of New Hampshire. The factual matters stated in the foregoing Interrogatory Responses are provided on behalf of the Department of Education, in my official capacity and are not necessarily within my personal knowledge or within the personal knowledge of any single individual. Based on reasonable inquiry of staff within the New Hampshire Department of Education, I am informed and believe, and based on such information and belief hereby verify, under penalty of perjury, that the factual statements in the foregoing Interrogatory Responses are true and correct to the best of my knowledge, information, and belief.



\_\_\_\_\_  
Caitlin D. Davis

Date: March 17, 2023

STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

Personally appeared before me the above-named Caitlin D. Davis on this 17<sup>th</sup> day of March, 2023 and made oath that the foregoing statements by her are true and correct to the best of her knowledge and belief.



\_\_\_\_\_  
Notary Public

My commission expires: 11/22/2026



Respectfully submitted,

STATE OF NEW HAMPSHIRE, *et al.*

By their attorney,

JOHN M. FORMELLA,  
ATTORNEY GENERAL

Date: March 20, 2023

By: /s/ Samuel Garland

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Solicitor General

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# Attachment 3

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THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

DOCKET NO.

215-2002-CV-00167

\* \* \* \* \*

STEVEN RAND AND RANDVEST, INC., \*

et al, \*

Plaintiffs, \*

vs. \*

THE STATE OF NEW HAMPSHIRE, \*

Defendant.

\* \* \* \* \*

DEPOSITION OF **JOHN J. FREEMAN, Ph.D.**

New Hampshire Department of Justice

33 Capitol Street

Concord, New Hampshire

July 13, 2023 9:34 a.m.

Maryellen Coughlin, CSR/RPR/CRR

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**APPEARANCES :**

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I N D E X

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**JOHN J. FREEMAN, Ph.D.**

EXAMINATIONS

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| BY MS. WARR   | 214 |

E X H I B I T S

NO.

DESCRIPTION

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1 Q. Okay. You said that the state has  
2 failed to adequately define an adequate  
3 education. Are you proposing a definition?

4 A. I am not.

5 Q. Are you proposing a method to come  
6 up with a definition?

7 A. No.

8 Q. You also said that in your opinion  
9 the state has failed to adequately fund an  
10 education or an adequate education. Are you  
11 proposing an amount that is necessary to fund an  
12 adequate education?

13 A. No.

14 Q. Are you proposing a method to come  
15 to an amount?

16 A. No.

17 Q. Okay. I'm going to hand you what  
18 we will mark as Exhibit 1.

19 Just for purposes of keeping  
20 everything clear, you don't have an exhibit --  
21 other exhibits in the case that we need to follow  
22 up with? We can start with Exhibit 1?

23 MR. JAOUDE: Let's just call it

1 Freeman 1.

2 MS. WARR: Okay, we'll call it  
3 Freeman 1. I just didn't want to throw off  
4 anything that's happening.

5 (Whereupon, Deposition Exhibit 1,  
6 Expert report of Dr. Freeman,  
7 was marked for identification.)

8 **BY MS. WARR:**

9 Q. Okay. Mr. Freeman, do you  
10 recognize the document that I've handed you?

11 A. Yes.

12 Q. Can you tell me what it is?

13 A. This is a report that I submitted  
14 to Mr. Volinsky relative to this case.

15 Q. And I think, if we look, the report  
16 itself is the first eight pages of the document;  
17 is that correct?

18 A. That sounds right. Yes, that's  
19 correct.

20 Q. Okay. And then after the report  
21 there's a Freeman report Exhibit A, and it  
22 appears to be your C.V. afterwards; is that  
23 right?

**C E R T I F I C A T E**

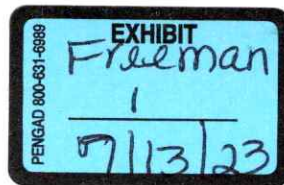
1  
2 I, Maryellen Coughlin, CSR/RPR/CRR and  
3 notary public in the State of New Hampshire, do  
4 hereby certify that the foregoing is a true and  
5 accurate transcript of my stenographic notes of  
6 the deposition of JOHN J. FREEMAN, Ph.D., who  
7 appeared before me, satisfactorily identified  
8 himself, and was by me duly sworn, taken at the  
9 place and on the date hereinbefore set forth.

10 I further certify that I am neither  
11 attorney nor counsel for, nor related to or  
12 employed by any of the parties to the action in  
13 which this deposition was taken, and further  
14 that I am not a relative or employee of any  
15 attorney or counsel employed in this case, nor  
16 am I financially interested in this action.

17  
18   
19

20  
21 \_\_\_\_\_  
22 MARYELLEN COUGHLIN, CSR/RPR/CRR  
23

# Attachment 4



November 30, 2022

Andru Volinsky,  
160 Law, PLLC  
PO Box 1181  
Concord, NH 03302

Re: Rand v. State

Dear Mr. Volinsky:

Please consider this my expert report in the case of Rand v. State, No. 215-2002-CV-00167. I reserve the right to amend or supplement this report as I learn additional information about this case.

I have been certified as a professional educator since 1970. Since that time, I have held positions as a classroom teacher, building administrator, and superintendent, as well as an adjunct instructor of university courses in education. As a school superintendent, I have directly supervised school district business managers, principals, special education administrators, grant administrators, and others. I have prepared budgets for governing bodies to consider and have supervised spending. I have worked in schools and school districts in New Jersey, New York, Massachusetts, Maine, and New Hampshire. I also worked in the Ojibwe School in North Dakota. In New Hampshire, I worked in the Barrington, Seabrook, Pittsfield, and Strafford School Districts. In addition to my positions of employment, I have worked with other educators formally and informally through the New Hampshire School Administrators Association, the New Hampshire Principals Association, two national study committees of the National Governors Association, and through the Nellie Mae Education Foundation, a philanthropic non-profit that provided extensive grant-funding to my school district from approximately 2010 through 2016. I have also interacted extensively with various school boards and the State Legislature, as well as served as a consultant to schools and statewide educational organizations in New Hampshire and other states, including New York, Ohio, and Vermont. I bring all of my professional experience, education and training to bear in offering my professional opinions in this matter. My opinions follow. (My detailed resume is attached to this report as Exhibit A and is incorporated by reference.)

1. The level of State funding to meet the State's responsibility to fund a constitutionally adequate education is not adequate.

Although I am not a lawyer, I am aware that the New Hampshire Supreme Court, in the Claremont cases, determined that the State has a responsibility to define, cost-out, and fund the components of a constitutionally adequate public education (K-12). The State has adopted R.S.A. 193-E:2, Criteria for an Adequate Education, and R.S.A. 193-E:2-a, Substantive Educational Content of an Adequate Education, in response. The latter statute references "school approval standards" which are promulgated by the New Hampshire Department of Education ("NH DOE") as Ed 306. While I do not agree that these statutes provide sufficient operational or practical detail to permit a reliable assessment of the costs of providing a

constitutionally adequate education, I will work with these statutes for the purpose of offering my opinions and assume, for the sake of argument, that the criteria described in R.S.A. 193-E:2 and 193-E:2-a and the standards described in Ed 306 constitute a constitutionally adequate education, and this is what I mean when I use the term “adequate education” or “constitutionally adequate education.”

One other caveat that concerns student performance measures is appropriate. NHDOE data show that an unacceptably high number of students fail to achieve acceptable levels of learning and that low achievement levels are much more prevalent in school districts with higher levels of poverty and among students who come from low-income families. For example, the results of the 2019 National Assessment of Educational Progress - *The Nation's Report Card* - published by the National Center for Educational Statistics, indicate that only 28% of New Hampshire grade four and eight students who are eligible for free or reduced priced meals in the National School Lunch Program performed at a level termed “*proficient or greater*,” while 55% of New Hampshire grade four and eight students who are not eligible for free or reduced priced meals performed at a level termed *proficient or greater*. So, although I am not basing my report on outcome performance measures, the failure of our educational system to produce better and more equitable outcomes should be a consideration in determining acceptable funding levels.

The State has determined the cost of an adequate education, as of the date of this report, to be \$3786.66 on a per pupil annual basis. This amount has not materially changed in approximately 14 years, although this figure is adjusted slightly on a periodic basis. R.S.A. 198:40-d. For the 2022-2023 fiscal year, the State's base adequacy cost is set at \$3786.66. The costing out process was conducted under the New Hampshire legislature's supervision in 2008. The rationale for the cost determinations reached by the legislature's commission and adopted by the legislature and the rationale for which costs were included as part of adequacy – and which costs were omitted – are unclear and arbitrary.

\$3786.66 per pupil is insufficient to provide an adequate education in New Hampshire. No school in New Hampshire of which I am aware provides an adequate K-12 education while spending approximately \$3786.66 or less per pupil. Even the lowest spending school district in New Hampshire spends three times this amount, and the average per pupil spending in the state is approximately \$21,000. All school districts spend considerably more than \$3786.66. The \$3786.66 base cost does not reflect the actual costs incurred to provide a constitutionally adequate education in any New Hampshire district.

The base cost adequacy figure, \$3786.66, for example, presumes class sizes that are at the maximum allowed by school approval standards. Class size maximums are different from average student-teacher ratios that are established based on pedagogic and logistical concerns. A grade 5 cohort of 32 students, for example, would require two teachers per state regulations resulting in a teacher-student ratio of 16-1, far less than provided for in the State's costing out of adequacy. Average student-teacher ratios are much lower than the minimum standards for school approval would allow and the \$3786.66 base adequacy amount does not account for actual student-teacher ratios as they exist in New Hampshire schools. Specifically, according to the NHDOE's October 2021 enrollment report, average student-teacher ratios for grades 1-2 was 16.2 students, yet, Ed 306.17(a) mandates a maximum class size of 25 students. For grades 3-4,

the average student-teacher ratio is 17.5 students. Ed 306.17(a) sets a maximum of 30 students. For grade 5 and above the average student teacher-ratio is 17.0 students. Ed 306.17(a) sets a maximum of 30 students per class.

Further, while working as the superintendent of schools in the Pittsfield School District, I performed an exercise in which I attempted to reduce Pittsfield's then approximately \$10 million annual school budget - which had remained relatively constant for a 10-year span - to the \$2.7 million per year that Pittsfield received in adequacy aid from the state. I listed the personnel and the educational goods and services that would need to be cut from the school district's actual budget to bring expenses down to the level of the State's allotted funding for adequacy. The result was a non-functioning school district that failed to meet student needs, failed to meet minimum standards, violated a host of state and federal laws, and violated the terms of collective bargaining agreements. I attach a summary of my work from that study as Exhibit B to this report and adopt it by reference.

A. "Differentiated Aid" is also insufficient to pay for the additional costs of students in the differentiated aid categories.

In addition to providing a base cost of \$3786.66 to pay for adequacy, the State has established a schedule of additional per-student aid payments made for children who meet certain criteria. The aid provided for these children is defined in R.S.A. 198:40-a and is termed "differentiated aid." The categories of differentiated aid and the aid amounts distributed per pupil each year are reflected in Table 1, below.

I am unaware of the methodology the State used to determine the amounts distributed as differentiated aid.

The aid amounts reflected in Table 1 are not nearly sufficient to provide an adequate education for children who qualify in these categories.

No school or school district in which I have worked in New Hampshire is able to provide a constitutionally adequate education at an approximate cost of \$3786.66 per child, plus the aid amounts reflected in Table 1 for children who qualify for differentiated aid. No New Hampshire school or New Hampshire school district of which I am aware through interactions with my colleagues and other sources is able to provide a constitutionally adequate education at an approximate cost of \$3786.66 per child plus the qualifying differentiated aid amounts.

As an illustration of the insufficiency of differentiated aid amounts, I offer the following. In the 2021-2022 school year, of the 164,965 students enrolled (*Average Daily Membership*, or ADM), 30,309 students qualified for special education services based on October 1 data provided by the New Hampshire Department of Education; statewide, the number of students with special needs represents 18% of the total state enrollment. Of course, this varies by district and varies over the course of the year as students are identified, move in and out of districts, or are discharged from services.

Assuming the 18% average applies to Pittsfield (although, for Pittsfield, this is likely a bit understated), 96 of Pittsfield's 534 students qualify for services, and the differentiated aid provided by the state. Pittsfield's local budget special education allocation for the 2021-2022 school year was \$2,495,960. In addition, the district also budgeted \$579,059 for what are termed *related services* for identified students; this includes psychological services, speech therapy, physical therapy, occupation therapy, and vision services. This does not include counseling services and incidental services associated with student needs, nor does it include additional special education services charged to the district's annual IDEA Grant (approximately \$170,000 for 2021-2022) or the district's annual Preschool Grant (approximately \$5650 for 2021-2022); these are federal grants that provide, among other services in Pittsfield, for the cost of the district's school psychologist, who serves the needs of special education students and programs. Simply stated, the Pittsfield School District allocated \$3,075,019 in the local operating budget for special education and related services for expenses related to its 96 special needs students, an allocation that is not offset by federal grant funds. See also Section 3 of this report below.

The taxpayers of Pittsfield in FY 2021-2022 effectively allocated about \$32,031 for each of these 96 students to provide for special education services and related services, while receiving differentiated aid of \$1995.21<sup>1</sup> for each. For these mandated special education and related services, the Pittsfield School District received slightly more than 6% of the actual cost of special education and related services. Of course, the district received the base aid of \$3708.78<sup>2</sup> for each of these children, so the total received for each special needs student was \$5703.99, or 18% of the total actual cost. Either way, the taxpayers of Pittsfield assumed a far greater expense in paying for the actual cost of providing their special needs students with an adequate education.

[The remainder of this page is intentionally left blank.]

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<sup>1</sup> This is the differentiated aid amount for the year cited.

<sup>2</sup> Again, this is the aid amount for the year cited.

**Table 1. Adequacy and Differentiated Aid pursuant to RSA 198:40-a**

| Category  | Amount     |
|---|------------|
| Cost of an Adequate Education   | \$3,786.66 |
| Differentiated Aid – Free- or Reduced-Price Lunch.                    | \$1,893.32 |
| Differentiated Aid – English Language Learner                         | \$740.87   |
| Differentiated Aid – Special Education                                | \$2,037.11 |
| Differentiated Aid – Low Test Scores                                  | \$740.87*  |
| *Only available if doesn't receive other Differentiated Aid.          |            |
| (Amounts updated to reflect recent adjustments after suit was filed.) |            |

**B. The actual cost of providing an adequate education has risen substantially over the last 14 years while the State's assessment of the cost of adequacy has not changed materially during that time.**

The cost of education has dramatically increased over the course of the last 14 years. The State has not materially increased its estimate of the cost of providing an adequate education over that time. Except for a one time increase of \$100 per student in 2015, the State's designated cost for adequacy has only increased by a CPI escalator. See R.S.A. 198:40-d. As I believe the base cost is inadequate, I note the failure to increase that cost materially over time renders the State's estimate of the cost of providing an adequate education even more inadequate. The same is true for the differentiated aid amounts.

For example, in approximately 2011, the Legislature phased out the State's 35% contribution to the pensions of school district employees with one year's notice. This phase-out increased the cost of providing pensions for employees by 35% almost overnight. I am not aware of the State recalculating its assigned cost of adequacy or the assigned increments of differentiated aid to reflect this 35% increase in school district pension costs that the State decided was appropriate. Pensions, health insurance, and other benefits are essential components of the cost to hire and retain educators who are the core of any school's efforts to deliver an adequate education.

This is an example of the State's downshifting of costs to local school districts. In Pittsfield, this downshifting has resulted in either an additional burden to taxpayers to pay increased operational costs or elimination of programs due to a need to maintain reasonable budget increases, or both.

2. The State requires school districts meet requirements that should be included in the cost of adequacy because they are legally and practically necessary for the delivery of an adequate education, but are not included.

The State of New Hampshire requires school districts to meet numerous statutory and regulatory requirements that do not appear to be included in the cost of adequacy. My purpose in pointing this out is to suggest that the State requires schools to meet certain criteria to be fully approved and does not fully fund the cost of these criteria. A school must provide services and personnel defined by statute and/or regulation to legally operate. A school district must also honor the terms of collective bargaining agreements it has entered in good faith to attract and retain required personnel. If a school cannot legally operate, "open its doors," so to speak, it cannot provide an adequate education.

Illustrations of required personnel and services that are not included in the cost of adequacy but that should be as they are required by statute or regulation are central office staff and administrators (e.g., superintendents, finance managers, bookkeepers, administrative assistants, etc.), school nurses, and teaching aides. School districts must also supply facilities that include buildings, athletic facilities, playgrounds, etc., buildings in which educational and administrative services are provided, as well as pay for the utilities to heat and light those buildings. These costs do not appear to be fully included in the State's costing out of adequacy. Further, school districts must either retain personnel or contract for outside services to clean and maintain buildings (including snow removal, HVAC services, water and air testing, building security equipment, and others) and provide food services for both breakfast and lunch. These costs are also apparently not fully considered in the State's base adequacy cost of \$3786.66, but they should be to reflect state requirements and practical necessities.

3. A *Free Appropriate Public Education* ("FAPE") is equivalent to an "adequate education" for children who qualify for special education services.

I am familiar with the special education programs that were provided in the schools where I taught, or supervised personnel, or that were provided in school districts where I was a superintendent. Again, I do not provide opinions as an attorney, but as an experienced educator; I am aware of the processes by which children qualify for special education services and the process for defining the services to be provided through the design and approval of Individual Education Plans ("IEPs"). I am also aware of the manner and means by which special education services are funded in New Hampshire. A portion of special education costs are paid for with a combination of federal funds, the differentiated aid program discussed above, the Special Education/Catastrophic Aid program described in R.S.A. 186-C:18, and some Medicaid funding. The majority of special education costs, however, are paid for with local funds derived from local property taxes, as illustrated briefly above.

I contend that for children who qualify for special education services, a *Free and Appropriate Public Education* (FAPE), the federal standard, is the equivalent of constitutional adequacy. New Hampshire has adopted this federal standard for its students who qualify for special education services and the State should fund the costs of meeting the FAPE standard as part of the cost of adequacy.

The State should pay for the cost of special education services that are not paid through federal funding. Local school districts should be relieved of the cost of paying for special education services that are not funded by the federal government. As noted above, approximately \$3786.66 is not sufficient for this purpose. Nor, is \$3786.66 plus differentiated aid of \$2,037.11 sufficient for this purpose. Finally, the Special Education Aid (formerly known as CAT Aid) program does not fill the gap in funding.

As an illustration, in the Strafford School District, the cost of providing special education services during the current, 2022-2023 school year, is estimated at approximately \$2,077,400 (including both special education and related services) paid by local funds according to the budget proposed by the Strafford School Board and approved by voters in March 2022; in addition to this, another approximately \$176,650 is provided by Federal grants to support the implementation of special education requirements and special education preschool programs (IDEA and Preschool grants); the total anticipated cost of services for special needs students is approximately \$2,254,050 for the year. The School District also anticipates the receipt of \$109,671 in differentiated aid, \$0 in Special Education Aid, and a negligible revenue amount of Medicaid funds; this leaves the district with \$2,144,379 to be paid with local property taxes. It is my contention that, in this example, \$2,144,179 should be considered a cost of adequacy and paid with state funds.

One other point should be made. In addition to determining that there is a shortfall in the amount the State pays for adequate special education services, the way in which New Hampshire funds special education services - with its heavy reliance on local funds - has significant local budgeting implications that could be ameliorated with state funding for these services. As things currently stand, school districts must assume the costs of providing high-cost special education services without advance notice of when they will be necessary (e.g., when a qualifying child that requires services moves to the district). Funding services at a state level would allow funds to "travel with the child" and eliminate the potential budget squeezes caused by such costs that result in diminished personnel or services in other budget areas and impacts serving the needs of students who do not qualify for special education.

4. The failure of the State to establish a fair cost of adequacy and to pay that cost requires local school districts to pay for much of the State's constitutional responsibility at widely differing tax rates.

Every dollar that the State does not send to school districts for the cost of adequacy must be provided by local school districts or the cities in which the districts are located. These districts and cities may only raise revenues through the imposition of local property taxes. Thus, the effect of the State's failure to fully fund adequacy is to downshift the cost of this state responsibility to the local property taxpayer.

A fair estimate of the cost of providing an adequate education in New Hampshire is the average cost per pupil across the state, plus the cost per pupil of transportation, plus the cost of capital expenditures on a per pupil basis. This figure is in the approximate amount of \$21,000 per pupil. It is my opinion that the State should pay this amount to school districts to fully fund the cost of adequacy. This amount may vary slightly to reflect the specific demographics or

geography of a given district. As the cost is based on an average, the amount paid for adequacy will reflect changes over time and a CPI or other escalator will be unnecessary.

5. R.S.A. 516:29-b Disclosure.

My opinions and the bases therefore are included in this report and its exhibits. I also relied on financial reports published by the New Hampshire Department of Education on its website. My relevant education and employment experiences are listed in Exhibit A. I have not published relevant articles in the last ten years.

I have never previously been an expert in litigation. I have not been deposed in the last four years. I am not being compensated for my work as an expert.

Respectfully submitted,

*/s/ John J. Freeman*

John J. Freeman, Ph.D.

**Freeman Report**  
**Exhibit A**

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**John J. Freeman**

135 Beaver Road  
Strafford, New Hampshire 03884  
603-664-2866 (home)  
603-948-6017 (cell)  
[freemannh@gmail.com](mailto:freemannh@gmail.com)

**Leadership**

**Superintendent of Schools, 2021-2022**

- Strafford School District, Strafford, New Hampshire
- Leader for PS-8, 400-student small town district

**Superintendent of Schools, 2008-2020**

- Pittsfield School District, Pittsfield, New Hampshire
- Leader for two-school, PS-12, 600-student small town district

**School Principal, 1999-2008**

- Pittsfield Elementary School, Pittsfield, New Hampshire
- Leader for PS-6, 400-student, small town elementary school

**School Principal, 1997-1999**

- Seabrook Elementary School, Seabrook, New Hampshire
- Leader for PS-8, 900-student, small town elementary/middle school

**Superintendent of Schools, 1996-1997**

- Barrington School District, Barrington, New Hampshire
- Leader for two-school, K-8, 1000-student small town school district

**School Principal, 1987-1996**

- Barrington School District and Barrington Middle School, Barrington, New Hampshire
- Originally, leader for two-school, K-8, 650-student elementary/middle school; later, leader for 5-8, 350 student, small town middle school

**School Principal, 1984-1987**

- Major Edwards Elementary School, West Boylston, Massachusetts
- Leader for K-6, 450-student, suburban elementary school

**School Principal, 1982-1984**

- Andover Elementary School, Andover, Maine, and Woodstock Elementary School, Bryant Pond, Maine
- Leader for two K-6, 130- and 100-student, rural elementary schools

**Administrative Intern, 1981-1982**

- Douglas G. Grafflin School, Chappaqua, New York
- Intern (Assistant Principal duties) for K-6, 565-student, suburban elementary school

**Teaching Assistant Principal, 1980-1981**

- Knollwood Elementary School, Parsippany, New Jersey
- Leader support for K-6, 375-student, suburban elementary school

**Consultation**

**Educational Consultant, 2012-2021**

- Transforming Educational Practice, LLC, Strafford, New Hampshire
- Coach and facilitator for schools and districts on range of topics, including strategic planning, personalized learning, district and school development, supervision, community engagement
- Facilitator and presenter for state, regional, and national level organizations, including ASCD Annual Conference, ASCD Leadership Conference, EastConn Regional Educational Service Center, Education Northwest Annual Conference, Harvard University Urban Schools Project, Nellie Mae Educational Foundation, New Hampshire Department of Education, New Hampshire School Administrators Association, New Hampshire School Boards Association, Regional Educational Laboratory of the Northeast and the Islands, Vermont School Boards Association, Vermont School Administrators Association

**School Change Coach, 2012-2016**

- The Center for Secondary School Redesign, West Warwick, Rhode Island
- Coach and school development facilitator for public schools in Massachusetts, New Hampshire, New York, Ohio, and Vermont

**Senior Consultant, 2019-2022 (not continuous)**

- The Bryan Group, Incline Village, Nevada
- Facilitator for competency-based superintendent search process for New Hampshire district

**Other Service**

**National Working Group: Equity in Public Education, 2014-2015**

- Council of Chief State School Officers / National Governors Association
- Participant on New Hampshire team in year-long project

**White House Summit on Next Generation High Schools, 2014**

- Invited participant for one-day convening

**National Working Group: Innovation Lab Network, 2013-2014**

- Council of Chief State School Officers / National Governors Association
- Participant on New Hampshire team in year-long project

**Teaching**

**Adjunct Instructor, 1988-2010 (not continuous)**

- Southern New Hampshire University, 1988-2010 (not continuous)
- Teacher for undergraduate communications, education, literature, and writing courses

**Adjunct Instructor, 1993-1996 (not continuous), 2008**

- University of New Hampshire, Durham, New Hampshire
- Teacher for graduate and undergraduate education courses

**Adjunct Instructor, 1988-1995 (not continuous)**

- Franklin Pierce College, Portsmouth and Somersworth, New Hampshire
- Teacher for undergraduate communications and writing courses

**Adjunct Instructor, 1985-1987**

- Fisher Junior College, various locations, Massachusetts
- Teacher for undergraduate communications and writing courses

**Elementary and Middle Grades Teacher, 1970-1981**

- Parsippany-Troy Hills Schools (1970-1973, 1974-1981), Parsippany, New Jersey
- Ojibwa School (1973-1974), Turtle Mountain Reservation, Belcourt, North Dakota
- Classroom teacher of grades 2, 4, 5, 6, 7; itinerant teacher of gifted and talented, grades 2-6; science teacher of primary grades special needs summer school, grades 1-3

### Education

**Ph.D., Educational Administration, 1998**

- University of New Hampshire, Durham, New Hampshire

**Non-Matriculated Graduate Student, Educational Administration, 1979-1981**

- New Jersey City University (formerly Jersey City State College, Jersey City, New Jersey)

**M.Ed., Elementary Education, 1974**

- University of North Dakota, Grand Forks, North Dakota

**M.A., English, 1973**

- Seton Hall University, South Orange, New Jersey

**B.A., Elementary Education, 1970**

- Kean University (formerly Newark State College), Union, New Jersey

### Certifications

**Superintendent of Schools, 0001**

**School Principal, 0003**

**Elementary School Teacher, 1811**

### Community

**Board of Directors Member**

- The Granite YMCA (formerly Greater Manchester YMCA), Manchester, New Hampshire

**Board of Directors Member and Board of Directors President**

- YMCA of Strafford County, Rochester, New Hampshire

**Executive Committee Member**

- Capital Area Public Health Network, Concord, New Hampshire

**Scoutmaster, Cubmaster, Assistant Cubmaster**

- Pack 23 and Troop 23, Boy Scouts of America, Strafford, New Hampshire

**Soccer Coach (licensed)**

- Recreation: U-12, U-14, high school girls, Strafford, New Hampshire
- School: Strafford School, middle school girls, Strafford, New Hampshire

**Honors**

**Chairman's Award for Outstanding Volunteer Service**

- Greater Manchester YMCA

**Eagle Scout**

- Boy Scouts of America

**Faculty Hall of Fame, Portsmouth Center**

- Southern New Hampshire University

**Fellowship Grant**

- University of North Dakota

**New Hampshire State Champion**

- New England Secondary School Consortium

**New Jersey State Scholarship**

- State of New Jersey

**Remarkable Role Model Award**

- New Hampshire Association of School Principals

**Teaching Assistantship**

- University of New Hampshire

**Volunteer of the Year**

- The YMCA of Strafford County

**Freeman Report**  
**Exhibit B**

---

## **"Adequate" Pittsfield schools**

John Freeman, Superintendent, Pittsfield School District

Doug Hall, Chichester, NH

February 14, 2019

The 2018/19 budget for Pittsfield schools is \$10,302,402. With 581 students, that amounts to \$17,732 per student.

The New Hampshire Department of Education annually calculates a "Total Calculated Cost of an Adequate Education" for each town in the state based on existing state law. For the 2018/19 school year the amount stated for Pittsfield is \$2,690,333.

We decided to determine how Pittsfield's existing budget could be reduced by 74% to reach the State's level. It really wasn't possible. So we decided to add the State's "Stabilization" grant for this year of \$2,185,277, Special Education aid of \$284,000, and Medicaid Reimbursement of \$130,000. With this target of \$5,289,610, (\$9,104 per student) we pared down the existing budget.

During this budgeting exercise, every attempt was made to keep as much of the "core" teaching in place as possible at all grade levels.

To achieve this budget level, however, many Federal and State laws, and the State's Minimum Standards for schools are violated. For those interested, we can provide the 500+ line item budget and a list of such violations of law and regulation line item by line item.

As you read the needed changes below, please recognize that this lower budget is still more than double what the State has stated is enough for an "adequate" education in Pittsfield.

### **Changes Throughout the District**

Eliminate all art, music, and physical education classes in all grades

- Currently there are 3 teachers: 1 art, 1 music, 1 physical education; PS-6 students receive instruction in each, every four days; programs in art, music, and physical education for elementary school students would be terminated

Eliminate all school nurses and any medical support

- Currently there are two nurses, one in each school building; medical support includes substitute nurses and access to external medical professionals on a rare, but as-needed basis; nurses also assist with certain health curriculum topics at both the elementary and middle high school; elimination of these positions would require administration of medications by non-health professionals; elimination would result in termination of services to special needs students whose IEP's require such; would also limit ability of classes to experience field trips when classes include one or more medically fragile students; health and medical consults with teachers and parents would also be eliminated

- Eliminate several behavior support positions, both counselors and support staff**
- Currently there are 4 positions: 1 counselor/behavioral support professional position and 1 support staff position at each building; elimination of these positions would place significant additional burden on supervisors – both classroom teachers and paraprofessionals who may supervise recess and other periods, as well as administration for addressing individual student behavioral needs; may also force complex special needs students to be placed out of district
- Eliminate four custodians**
- Currently have 8 custodians; elimination of 2 of 4 daytime positions would reduce district's ability to keep up with minor repairs as well as maintenance on the district grounds, including maintenance and clean-up at Drake Field, which is district property located away from the buildings; elimination of 2 nighttime cleaning positions would reduce the ability to maintain current level of cleaning and minor maintenance
- Reduce building cleaning to twice per week at best**
- Reduced staff would require nighttime crew to take on some tasks of daytime crew and spread the nightly cleaning tasks over 2 to 2.5 nights for full cleaning of buildings and grounds
- Eliminate many provisions in the current teacher contract, including life insurance, health insurance buy-back, sick day buy-back**
- Of course, these issues would need to be negotiated, which would be highly unlikely; however, elimination of basic job benefits would need to be considered by the school board as an alternative to cutting teaching staff
- Eliminate field trips**
- Currently, the PTO and parent fees supplement modest allowance for field trips; the district's commitment to field trips would be eliminated
- Eliminate all athletic programs**
- Currently have middle and high school teams in soccer, basketball, softball, and baseball; volleyball has recently been eliminated; all programs would now be eliminated
- Eliminate district reading specialist**
- The district reading specialist provides guidance to teachers, to teacher teams, and to the curriculum development process; this position, which supports both the general population and struggling students in different ways, would be eliminated
- Eliminate 34.5 paraprofessional positions, including special education teacher aides**
- Currently, two general paraprofessionals serve our kindergarten classes; most other paraprofessionals serve special needs students as requirements in individualized education plans; two paraprofessionals provide support for student management; elimination of these positions would put the district in "non-compliance" of special education laws
- Eliminate purchase of equipment, supplies, books, subscriptions, technology apps, etc.**
- District would not make any equipment, book, or supply purchases to support instruction in any grade or subject area
- Eliminate ESOL program (English for speakers of other languages)**

- Small, federally-required ESOL program would be eliminated, terminating support for children who are speakers of other languages

Eliminate all transportation services (parents to transport their children)

- All transportation – regular education and special education – would be eliminated; parents would be required to provide transportation to and from schools

Eliminate all funds for substitute teachers

- Substitute teachers would not be provided when teachers are absent due to illness, emergency, training, etc.; students in absentee-teacher classrooms would be distributed among other classes and/or assembled in a central location – such as cafeteria – for the day

Eliminate three special education teachers

- Elimination of special education teachers would require that other special education teachers increase their caseloads; additionally, direct contract time with students and time for teacher consultation would be significantly reduced

Eliminate reimbursement for university courses, workshops, and professional development

- All professional development – both for individual teachers and for larger segments of the faculty – would be eliminated; this would curtail most innovation and school improvement efforts

Eliminate mentor teachers who support new teachers

- With high rate of staff turnover, loss of mentor teachers would eliminate a critical layer of support for new staff

Eliminate technology personnel, equipment, training, etc.

- Two technology-related positions have already been eliminated: IT coach and online learning coordinator; the final two positions in the district – IT manager and IT assistant – would also be eliminated, leaving the district without any support for technology use by either students or adults

Eliminate several categories of consultations for complex learners

- Complex learners require the services of external consultants to assist teachers and parents in providing their education; for example, these include vision specialists and psychologists, which provide support for specific students

Eliminate all travel reimbursement

- District would eliminate all reimbursed travel, for example, to attend external training, to attend state-wide meetings, for home visits, etc.

Eliminate all co-curricular programs (clubs, activities, etc.)

- The district offers clubs and activities at all three levels – elementary, middle, and high school; these programs – restorative justice, chess club, student council, ski/snowboard club, etc. – would be eliminated completely

Eliminate the summer recreation program

- The district co-sponsors (along with local charities) a summer program at Drake Field; activities include field trips to a number of regional attractions; the program has a very positive reputation and fills needs of families for care and enrichment during the summer months; this program would be eliminated.

Eliminate guidance program, including both an administrator and counselors

- Currently, the district employs 1 administrator and 2 counselors (1 counselor having been eliminated a number of years ago); these individuals provide

guidance for career as well as guidance for students, families, and staff regarding critical and emergency student issues; these positions would be eliminated

**Eliminate SAP counselor (substance misuse)**

- In collaboration with Second Start and a federal grant, the district provides one SAP counselor who serves both middle level and high school students and families; this service would be eliminated

**Eliminate speech/language, PT, OT, and vision services for special needs students**

- These services are provided through external contracts and are required in individual student IEP's; these services would be eliminated, and the district would be out of compliance with federal and state law

**Eliminate summertime work on development and change**

- Teachers are paid \$25/hour for summertime work on innovations and school development; this opportunity would be eliminated

**Eliminate stipends for teacher leaders**

- Teacher leaders provide support and leadership for school operations and school improvement; these roles would be eliminated

**Eliminate all librarians, media center staff, and media centers**

- Media centers in both buildings would be closed due to lack of staffing and resources

**Eliminate school board stipends**

- Modest annual stipends for board members would be eliminated

**Eliminate school board expenses, including legal consultation and auditing services**

- School board periodically requires consultation with counsel; annual audits are also required; these resources would be eliminated

**Reduce time of superintendent to one day/week**

- Superintendent position would be further reduced to one day per week; many duties required by school board policy and tradition will be eliminated

**Eliminate photocopiers and their supplies**

- Photocopying equipment – used in support of student learning, logistics, and communications – would be eliminated

**Eliminate maintenance of athletic field**

- The district owns and maintains a park in downtown Pittsfield – Drake Field; the Field is utilized for soccer and baseball teams, but also includes a boat launch, playground, basketball court, and tennis courts which are used by community members; it is often the site of community events; maintenance would be eliminated

**Eliminate building level administrator**

- The schools are led by a dean of instruction and a dean of operations service both schools; one of these positions would be eliminated, resulting in one "principal" for both buildings

**Eliminate office incidentals: postage, supplies, advertising, etc.**

- Modest allocation for office supplies and operations would be eliminated

**Changes At Pittsfield Elementary School**

Increase average class size to 30

- The current staff of 16 classroom teachers would be reduced to 11 teachers, increasing average class size in K-6 to from about 20 students per class to about 29 students per class.

Eliminate an office secretary

- One of two clerical staff to be eliminated, requiring remaining clerical staff of one to assume all roles currently being addressed by two staff

### **Changes At Pittsfield Middle High School**

Eliminate business education, family & consumer science, and health

- Eliminate 2 high school teachers in unified arts team, eliminating courses

Eliminate science teacher

- Eliminate 1 of 4 high school science teachers, requiring larger class size (exceeding state limit in laboratory classes), elimination of some required courses, and elimination of some electives

Eliminate student participation in Concord Regional Technical Center classes

- Currently, 17 juniors and seniors participate in CRTC programs (none of these specialized career-oriented classes are offered in Pittsfield); this option would be eliminated

Eliminate foreign languages program

- Foreign language teacher has previously been eliminated; this would close our offerings, which currently entail a paraprofessional who supervises *Rosetta Stone* online instruction

Eliminate an office secretary

- One of two clerical staff to be eliminated, requiring remaining clerical staff of one to assume all roles currently being addressed by two staff

We note again that we have tried to retain as many "core" teaching positions as possible to reach this budget target of \$5,289,610.

Reducing further to the level the State declares is the "cost of an adequate education" will require lopping off another \$2.6 million. Having removed almost everything else, this further reduction will require elimination of nearly half of the classroom teachers. Class sizes will approach 60 students per teacher.

How can anyone honestly claim that this would be "adequate?"

# Attachment 5

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THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

DOCKET NO.

215-2002-CV-00167

\* \* \* \* \*

STEVEN RAND AND RANDVEST, INC., \*

et al, \*

Plaintiffs, \*

vs. \*

THE STATE OF NEW HAMPSHIRE, \*

Defendant.

\* \* \* \* \*

DEPOSITION OF **CORINNE E. CASCADDEN, Ed.D.**

New Hampshire Department of Justice

33 Capitol Street

Concord, New Hampshire

July 14, 2023 9:11 a.m.

Maryellen Coughlin, CSR/RPR/CRR

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**APPEARANCES :**

Representing the Plaintiffs:

WHITE & CASE LLP  
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New York, New York 10020-1095  
BY: Michael Anthony Jaoude, Esq.  
Nicholas Roberti, Esq.  
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michael.jaoude@whitecase.com

Representing the Plaintiffs:

ANDRU H. VOLINSKY, ESQ.  
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Manchester, New Hampshire 03104  
603-669-7603  
andruvolinsky@gmail.com

Representing the Plaintiffs:

JOHN E. TOBIN, JR.  
1361 Elm Street, Suite 307  
Manchester, New Hampshire 03101-1323  
603-668-2900  
jtobinjr@comcast.net

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**FURTHER APPEARANCES :**

Representing the Plaintiffs:

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100 N. Main Street, Suite 512  
Concord, New Hampshire 03301  
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natalie@laflammelaw.com

Representing the Defendant:

STINSON  
700 Forsyth Boulevard, Suite 1100  
St. Louis, Missouri 63105  
BY: J. Nicci Warr, Esq.  
314-863-0800  
nicci.warr@stinson.com

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**FURTHER APPEARANCES :**

Representing the defendant:

NEW HAMPSHIRE DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

33 Capitol Street

Concord, New Hampshire 03301

BY: Anthony J. Galdieri, Esq.

Lawrence Gagnon, Esq.

Samuel R.V. Garland, Esq.

603-271-1214

anthony.J.Galdieri@doj.nh.gov

I N D E X

**CORINNE E. CASCADDEN, EdD.**

EXAMINATIONS

PAGE

BY MS. WARR

6

BY MS. LaFLAMME

206

E X H I B I T S

NO.

DESCRIPTION

PAGE

1

Expert report of Corinne  
Cascadden, Ed.D.

8

2

Complaint

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3

Spread sheet - District  
Public School adequacy SYF  
2022

142

1 marathon session. So if you need a break at any  
2 point, just let us know. And the only rule that  
3 we have with regard to that is if there's a  
4 question pending, that we would ask that you  
5 finish answering that question before we take a  
6 break.

7 A. Okay.

8 Q. And we will try to take breaks  
9 about every hour, hour and a half or so, too,  
10 just to let people sort of get up and walk  
11 around.

12 A. Okay.

13 Q. Is there any reason that you can't  
14 give full and truthful testimony today?

15 A. No.

16 Q. And am I pronouncing your name  
17 right, Cascadden?

18 A. Yes, Cascadden.

19 Q. Okay, great. Let's mark that as  
20 Cascadden 1.

21 (Whereupon, Deposition Exhibit 1,  
22 Expert report of Corinne Cascadden, Ed.D.,  
23 was marked for identification.)

1 this written report?

2 A. No.

3 Q. One of the things that you say in  
4 this first paragraph is that you do, quote, not  
5 agree that these statutes provide sufficient  
6 operational or practical detail to permit a  
7 reasonable assessment of the costs of providing a  
8 constitutionally adequate education; is that  
9 right?

10 A. Yes.

11 Q. Okay. What is the basis for that  
12 opinion?

13 A. Well, the statute identifies the  
14 content for an adequate education based on the  
15 state's definition, and it does not include all  
16 of the 306 Ed rules, so minimum standards for  
17 school approval. It doesn't include anything  
18 about where kids are, whether there's a health  
19 and safe environment, how many staff members are  
20 needed. So it omits some of the details.

21 Q. And you go on to say -- well,  
22 strike that.

23 Are you offering any opinion in

**C E R T I F I C A T E**

1  
2 I, Maryellen Coughlin, CSR/RPR/CRR and  
3 notary public in the State of New Hampshire, do  
4 hereby certify that the foregoing is a true and  
5 accurate transcript of my stenographic notes of  
6 the deposition of CORRINE E. CASCADDEN, Ed.D.,  
7 who appeared before me, satisfactorily  
8 identified herself, and was by me duly sworn,  
9 taken at the place and on the date hereinbefore  
10 set forth.

11 I further certify that I am neither  
12 attorney nor counsel for, nor related to or  
13 employed by any of the parties to the action in  
14 which this deposition was taken, and further  
15 that I am not a relative or employee of any  
16 attorney or counsel employed in this case, nor  
17 am I financially interested in this action.

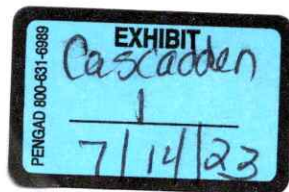
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23 MARYELLEN COUGHLIN, CSR/RPR/CRR

# Attachment 6

November 30, 2022

Andru Volinsky,  
160 Law, PLLC  
P.O. Box 1181  
Concord, NH 03302



Re: Mv Expert Report in Rand v. State

Dear Mr. Volinsky:

Please consider this my expert report in the case of Rand v. State, No. 215-2002-CV-00167. I reserve the right to amend or supplement this report as I learn additional information about this case.

I have been certified as a professional educator since 1975. Since that time, I have held positions as a classroom teacher aide, an elementary school teacher, a principal, and superintendent. As a school superintendent, I have directly supervised school district business managers, special education administrators, grant managers, project managers and others. I have worked in the Berlin, Littleton and Lyme public school districts over the course of my career that encompasses 43 years. I prepared and supervised the preparation of school budgets. I also taught middle school grades in a parochial school for 2 years. In addition to my positions of employment, I have interacted with other educators formally and informally through the New Hampshire School Administrators Association, the New Hampshire Association of School Principals, the National Education Association-NH, and the North Country Education Services, a regional cooperative service provider. I have also interacted extensively with school boards, city councils, town selectboards, and with the State Legislature. I served as an appointed member of the New Hampshire School Funding Commission in 2020 and 2021. I bring my professional experience, education and training to bear in offering my professional opinions in this matter. My opinions follow. (My detailed resume is attached to this report as Exhibit A and is incorporated.)

I. The level of State funding to meet the State's responsibility to fund a constitutionally adequate education is not adequate.

Although I am not a lawyer, I am aware that the New Hampshire Supreme Court, in the Claremont cases, determined that the State has a responsibility to define, cost-out and fund the components of a constitutionally adequate public education (K-12). In response, the State has adopted Revised Statutes Annotated (RSA) 193-E:2, Criteria for an Adequate Education, and RSA 193-E:2-a, Substantive Educational Content of an Adequate Education. The latter statute references "school approval standards" that are promulgated by the New Hampshire Department of Education (NHDOE) as Administrative Rule Ed 306. While I do not agree that these statutes provide sufficient operational or practical detail to permit a reliable assessment of the costs of providing a constitutionally adequate education, I will work with these statutes, for the purpose of offering my opinions that the criteria in RSA 193-E:2 and RSA 193-E:2-a and the Minimum Standards for School Approval in Ed 306 constitute a constitutionally adequate education and

this is what the terms "adequate education" or "constitutionally adequate education" signify in this report.

The State has determined the current per pupil cost of an adequate education to be \$3,786.66 per year. This amount has minimally changed in approximately 14 years. The costing out process was conducted in 2008 by a commission under the legislature's supervision. The report issued by that commission that conducted this process did not state a clear rationale for cost determinations or for its decisions about what to include or exclude from the definition of adequacy. The process used by the commission does not appear clearly rational or logical. The legislature's rationale is also not apparent.

By contrast to the opaque decision making of the 2008 commission and the legislature, I am aware that the State collects extensive data on the actual spending of school districts in the MS-25 and DOE-25 forms. These two forms provide over 600 lines of very specific cost data. I do not believe the NHDOE and the Legislature have engaged in a costing out process using the extensive data provided by school districts using these forms.

The base cost of adequacy \$3,786.66, for example, presumes class sizes that are set at the maximum allowed by minimum school approval standards (Ed. 306.17). Those maximum class sizes are: grades K-2, 25 students; grades 3-5, 30 students and grades 6-12, 30 students. Class size maximums are different from average student-teacher ratios. Student-teacher-ratios are established based on pedagogic and logistical considerations that do not always approximate the class size maximums. For example, a school with 26 first grade students requires two teachers to comply with school approval standards and this results in a mandated student-teacher ratio of 13 students. As in this example, average student-teacher ratios in New Hampshire public schools are generally much lower than the minimum standards for school approval maximum classroom sizes and the \$3,786.66 does not account for student-teacher ratios as they exist in New Hampshire schools.

No school or school district in which I have worked in New Hampshire, is able to provide a constitutionally adequate education at a cost of approximately \$3,786.66 per child. No New Hampshire school or school district of which I am aware through interactions with my colleagues and other sources is able to provide a constitutionally adequate education at a cost of approximately \$3,786.66 per child. The average per pupil cost in the 2020-2021 school year was approximately \$21,000 according to the NH DOE and no school district spent less than three times the State's base cost for adequacy.

I was a member of the New Hampshire School Funding Commission that was convened by the Legislature in 2020. I generally concurred in and supported the Commission's proposed Education Cost Model as a fair and equitable school funding formula, and voted to adopt the findings of the Commission whose report is available at: [https://carsey.unh.edu/sites/default/files/media/2020/12/final\\_report\\_forcommission\\_v5\\_12012020.pdf](https://carsey.unh.edu/sites/default/files/media/2020/12/final_report_forcommission_v5_12012020.pdf). I also wrote a two-page personal statement as an addendum to the Commission's report that I incorporate by reference and that is attached as Exhibit B to this report.

A. "Differentiated Aid" is also insufficient to pay for the additional costs of students in the differentiated aid categories.

In addition to providing a base cost of \$3,786.66 to pay for adequacy, the State has established categories for additional payments made for children who meet certain criteria. The aid provided for these children is defined in RSA 198:40-a and is termed "differentiated aid." The categories of differentiated aid and the aid amounts distributed per pupil each year are reflected in Table A, below. These differentiated aid figures are adjusted slightly on a periodic basis. See RSA 198:40-d.

The aid amounts reflected in Table A are insufficient to provide an adequate education for children who qualify in these categories.

No school or school district in which I have worked is able to provide a constitutionally adequate education at a cost of \$3,786.66 per child plus the aid amounts reflected in Table A for children who qualify for differentiated aid. No New Hampshire school or school district of which I am aware through interactions with my colleagues and other sources is able to provide a constitutionally adequate education at a cost of \$3,786.66 per child plus the qualifying differentiated aid amounts.

As an illustration, students who qualify as English Language Learners (ELL) must be tested annually with WIDA ACCESS for ELLS testing protocol. The cost of testing is approximately \$720 per pupil (based upon an average \$120/hour for a New Hampshire certified ESOL teacher). This leaves virtually no money for necessary services as the differentiated aid for ELL is \$740.87.

As a second illustration, the differentiated aid amount for children who qualify for special education services is \$2,037.11 per identified child. Based on the number of students identified to be in need of special education services in any of the schools I supervised, the differentiated aid amounts didn't even cover the cost of one special educator. However, this exhausted the differentiated aid available and required the school district to cover the costs of all other required services which included individualized speech services, occupational therapy, physical therapy, nursing, counseling and/or the services of an individual educational assistant. As mentioned below, the State's Catastrophic Aid program does not contribute to special education costs until the school district spends more than three and half times the average per pupil cost. RSA 186-C:18. This means that special education costs are not defrayed by the Catastrophic Aid program for most students who receive special education services, unless they are in residential alternative placements and then the Catastrophic Aid funds cover only a portion of the high cost of residential placements.

[The remainder of this page is intentionally left blank.]

**Table A. Base Adequacy and Differentiated Aid as of 11-30-2022**

| Category  | Amount     |
|---|------------|
| Base Adequacy -- Average Daily Membership (ADM)                                   | \$3,786.66 |
| Differentiated Aid -- Free or Reduced Priced Lunch Membership                     | \$1,893.32 |
| Differentiated Aid -- English Language Learner Membership                         | \$740.87   |
| Differentiated Aid -- Special Education Membership                                | \$2,037.11 |
| Differentiated Aid - 3 <sup>rd</sup> grade reading membership, below proficiency* | \$740.87   |
| *Only available if child not eligible for other forms of Differentiated Aid       |            |
| (Amounts updated since date of filing suit.)                                      |            |

B. The actual cost of providing an adequate education has risen substantially over the last 14 years while the State's cost assessment has not changed materially during that time.

The cost of education has increased over the course of the last 14 years. The State has not materially increased its estimate of the cost of providing an adequate education over that time to take into account actual cost increases and other factors. As I believe the State's base cost for adequacy is insufficient, I note the failure to substantially increase that cost over time renders the State's estimate of the cost of providing an adequate education even more inaccurate and deficient.

As an illustration of the State's failure to increase adequacy amounts over time, I note that in approximately 2011, the Legislature phased out the State's 35% contribution to the pensions of school district employees with one year's notice. This caused a dramatic increase in the cost of pensions for all qualifying school district employees. I am not aware of the State recalculating its assigned cost of adequacy or the assigned increments of differentiated aid to reflect this 35% increase in school district pension costs that are mandated by statute for qualifying employees. See RSA 100-A.

2. The State requires school districts to meet requirements that should be included in the cost of adequacy because they are legally and practically necessary for the delivery of an adequate education by local districts.

The State of New Hampshire requires school districts to meet certain statutory and regulatory requirements that do not appear to be compensated as part of adequacy or differentiated aid. My purpose in pointing this out is to suggest that the State requires schools to meet certain criteria to be fully approved and does not fund the cost of these mandates or requirements. A school must provide services and personnel defined by statute and/or regulation

to legally operate. If a school cannot legally operate and open its doors, it cannot provide an adequate education. The costing out of adequacy should fully reflect these requirements.

Illustrations of required personnel and/or services that are not compensated, or not fully compensated, as part of the cost of base adequacy or differentiated aid are central office staff and administrators (e.g., superintendents), school nurses, educational assistants, school psychologists, and behavioral specialists. For instance, schools must operate in safe and functional buildings and the adequacy amounts do not reflect the actual costs of providing safety upgrades, maintenance, heat, and lights that are a part of a safe, healthy environment, and necessary for schools. Finally, I would add that school districts must comply with collective bargaining agreements that govern wage scales, benefits and conditions of employment. The State's base adequacy and differentiated amounts do not account for these costs.

3. A Free Appropriate Public Education ("FAPE") is equivalent to an "adequate education" for children who qualify for special education services.

I am familiar with the special education processes and services that operated within the schools where I taught, or supervised personnel, or in school districts where I was a superintendent. Again, I do not provide opinions as an attorney, but as an experienced educator. I am aware of and have participated in the process by which children qualify for special education services and the process for defining the services to be provided through the design and approval of Individual Education Plans (IEP). I am also aware of the manner and means by which special education services are funded in New Hampshire. Some special education costs are paid for with federal funds, through the differentiated aid program discussed above, by way of a Catastrophic Aid program described in RSA 186-C:18, and by Medicaid reimbursement for services for qualifying children. Most special education costs, however, are paid for with local funds derived from local property taxes.

For children who qualify for special education services, FAPE is the equivalent of constitutional adequacy. The State should pay the cost of all services defined in the IEP of children who qualify for special education that are not paid through federal funding. As mentioned above, \$3,786.66 is not adequate for this purpose. Nor, is \$3,786.66 plus differentiated aid of 2,037.11 adequate for this purpose. Finally, the State's Catastrophic Aid program does not fill the gap in funding.

4. The failure of the State to establish a fair and equitable cost of adequacy and to pay that cost requires local school districts, or the cities in which they are located, to pay for much of the State's constitutional responsibility at widely different tax rates.

Every dollar that the State does not pay toward the cost of adequacy because of its extremely low adequacy standard must be paid by local school districts, or the cities and towns in which the districts are located. These districts and cities and towns may only raise revenues through the imposition of local property taxes.

It is my opinion that a fair estimate of the cost of providing an adequate education in New Hampshire is the average cost per pupil across the state<sup>1</sup>, plus the costs per pupil of transportation and capital expenditures. This figure is approximately \$21,000 per pupil, based on the 2021-2022 Estimated Expenditures for School districts by the NHDOE's Office of School Finance. It is my opinion that the State should meet its obligation to pay this amount to school districts, as the cost for funding adequacy aid. This amount may be varied to reflect the specific demographics or geography of a given district. As the cost of adequacy aid is based on an average, the amount paid for adequacy will reflect changes over time.

5. RSA 516:29-b Disclosure

My opinions and the bases for my opinions are included in this report and its exhibits. I also reviewed data published on the NHDOE website. My relevant education and employment experiences are listed in Exhibit A. I have not published relevant articles in the last ten years.

I have never previously been an expert in litigation. I have not been deposed in the last four years. I am not being compensated for my work as an expert.

Respectfully submitted.

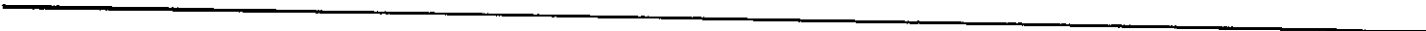
*Corinne Cascadden*

Corinne Cascadden, EdD.

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<sup>1</sup> This average cost figure is maintained in arrears by the NHDOE as part of the Catastrophic Aid program that has a threshold of three and one half times average cost before funds are distributed to a school district. RSA 186-C:18.

**Cascadden Report**  
**Exhibit A**



## Dr. Corinne E. Cascadden, Ed.D.

1787 Hutchins St. Berlin, NH 03570  
Phone: (603) 723-0860 corinne.cascadden@gmail.com



### Education

|                                   |                            |            |
|-----------------------------------|----------------------------|------------|
| Ed.D. NovaSoutheastern University | Educational Leadership     | Feb., 2017 |
| C.A.G.S. University of N.H.       | Educ., Adm. & Supervision  | Dec., 1995 |
| N.H. Certification                | School Principal           | June, 1987 |
| M.Ed. Plymouth State College      | Elementary Education       | May, 1982  |
| B.S. Plymouth State College       | Foreign Language - French. | May, 1975  |

### Professional Experience

|   |             |
|---|-------------|
| Interim Superintendent of Schools – NH SAU#76 – Lyme      | 2021-2022   |
| Interim Superintendent of Schools – NH SAU#84 – Littleton | 2019-2020   |
| Superintendent of Schools - NH SAU#3 - Berlin             | 2009 - 2019 |
| Principal grades K – 4                                    | 1986 - 2009 |
| Teacher grades 4 – 8                                      | 1975 - 1986 |
| Instructor Granite State College                          | 2003 - 2008 |
| Instructor White Mt. Community College                    | 2004        |

### Work Related Experiences

|  |             |
|--|-------------|
| Project A.W.A.R.E., (Advancing Wellness & Resilience Educ), Grant Writer | 2014- 2019  |
| National Institute of School Leadership (NISL)                           | 2013- 2014  |
| N.H. Reading First, Grant Writer   | 2004 - 2008 |
| 21 <sup>st</sup> C.C.L. N.H. Dept. of Ed. Advisory                       | 2004        |
| Title I Schoolwide Network   | 2002 - 2010 |
| Workshop Presenter   | 1997 – 2018 |
| National Charter School  |             |
| National School Boards Association                                       |             |
| North Country Inservice Day  |             |
| New England Reading Association  |             |
| NH School Principal's Association  |             |
| N.H. Teacher Induction Program/Mentorship                                | 1990 - 1992 |
| N.H. School Improvement Program  | 1989 - 1992 |
| N.H. Principal's Leadership Academy, Amherst, Mass.                      | 1990        |

### Committee/Volunteer/Organizational Experience

|   |              |
|---|--------------|
| NH State Representative, Coos District #5                             | 2022-present |
| North Country Healthcare, Board of Directors                          | 2021-present |
| NH School Funding Commission –Legislative Appointment                 | 2020         |
| WMUR-Project CommUNITY Advisory Board                                 | 2019         |
| Regional Chair, N.H. School Administrators Association                | 2016-2019    |
| White Mt. Community College, Advisory Board                           | 2009- 2019   |
| North Country Education Services, Exec.Board                          | 2009- 2019   |
| Federal Corrections -Berlin, Community Relations Board                | 2011- 2019   |
| No.Country Charter Academy, Board of Trustees                         | 2013- 2016   |
| N.H. Pre-Engineering Technology Advisory Council, Governor Appointee  | 2013 -2015   |
| N.H. Dept. of Education, State Consortium for Educator.Effectiveness. | 2013- 2016   |

### N.H. Endorsements (exp.2023)

|                           |   |
|---------------------------|---|
| Superintendent of Schools | School Principal                          |
| Elementary Education      | English Speaker of Other Languages (ESOL) |

**Cascadden Report**  
**Exhibit B**

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### *A.3. Corinne Cascadden – Retired Superintendent of SAU 3*

November 25, 2020

To the Members of the Commission to Study School Funding,

Thank you, and much appreciation to the Commission Members, for having the opportunity to participate in the massive undertaking of solving the public school funding inequities under the chairmanship of Representative David Luneau. The statement that “all students in all our communities” is a key point to be made, in order to understand how all public schools are due their financial supports.

I believe the commission work made significant progress in studying the NH School Funding crisis and prepared substantial and concrete recommendations for the legislative body to establish. Our work was driven thru organization and leadership of Bruce Mallory and the staff at University of New Hampshire’s Carsey School of Public Policy. Evidence of the current public school data includes a statistical analysis of schools and student characteristics, a report from the American Institute for Research (AIR), and the AIR simulator tool. The database resources from AIR should be implemented as the catalyst that provides how NH pays for public school education. I believe the commission members, with all their wisdom and expertise need to take these resources to the next level of practicality and specifics to the next legislative body.

We have heard from many NH citizens that the property tax payers can no longer continue to bear the costs for an adequate education, particularly as legislators enact several unfunded mandates as listed in the final commission report. Our towns and cities are trying to make decisions for school building improvements, infrastructure needs, and academic programming at the expense of continued increases in school education costs and requirements, and at the expense of foregoing many other community needs. The public spoke to the inequities of student opportunities and requested the Commission act boldly, radically, and uniformly in the development of a new school funding formula, i.e. not adding Band-Aids to the current regressive and obsolete funding formula. The research findings on student outcomes is compelling and the statistical analysis provides the distinct characteristics of NH students and their community profiles. Use of the AIR simulator tool is key for the state to fairly support all public schools, and to recognize the weights associated, representing the face of our NH public schools.

Unfortunately, the Commission did not propose a specific recommendation via majority vote on what funding formula would meet the constitutional requirements for an adequate education nor did the Commission decide on a source of additional revenue. I believe we all agree that student equity is the priority, however I suspect, we have differing views on providing property tax relief. While some districts and towns decide on foregoing school safety upgrades, others are deciding on adding advanced courses or turf on the playing fields. The final commission report provides three options for a new public school funding system.

In my opinion, the State of NH is legally responsible to pay for an adequate education. Example #1 of the final report, one uniform state education tax rate via local property taxes, should be the obvious and only solution. For years, local property owners have paid two mandatory education taxes, one called State

Education Tax, and the other Local Education Tax. Setting one uniform statewide education tax is the only solution to provide relief for local property tax payers. A reasonable tax rate can be set based on the use of the AIR Simulator tool. This will assure property poor communities can provide the same student opportunities as property wealthy towns and cities. As identified in the first funding option in the summary report on fiscal policy, it would be paramount for legislators to set a uniform state education tax rate. Local control of towns and cities will still continue and be exhibited at town meetings, council meetings, public school district meetings, where the public voices the priorities for their schools. Funding Examples #2 and #3 include two education taxes, both on the backs of local property tax payers, maybe under different names, but potential for no change in local tax burdens. Examples #2 and #3 may be "wolves in sheep's clothing".

The Legislators need to speak to an additional revenue source. The State is not currently paying its fair share to provide an adequate education to all NH public school students. The State will need to determine an additional revenue source other than property taxes, not 2 taxes named state and local. A statewide property tax at a uniform rate, along with the financials in the Education Trust Fund, would not meet the required financial needs. An additional revenue could be the balanced cost for providing an adequate education based on average student outcomes. It appears there is no support for broad based taxes, and I'm not proposing they be added. However, funding will be needed to support oversight of a uniform statewide property tax and funding will be needed to staff for oversight of student outcomes for a consistent and solid accountability support system. In addition, funding for categorical aid programs of special education, career and technical education, and building aid has to be seriously considered.

The final report, unfortunately, does not provide immediate hope and encouragement for financially strapped public school districts across the state who currently struggle to meet requirements, and no property tax relief for all who can no longer afford to maintain their homes. As a Commission, we have come so far in the process but I feel state legislators must not stop short of the finish line. The commission members have gone over and above expectations in doing a due diligence to study the school funding research, learning and understanding the process in other states, and carefully reviewing and discussing the data on NH's current funding formula. Doing nothing to make changes will continue to widen the gap among communities. Again, we will continue to be the haves and the have nots.

We are all in agreement that all students deserve and should be granted equal educational opportunities. It is in the state's best interest to invest heavily in the public school system in order to reap its benefits of a thriving and well educated workforce. All NH students should have the choice to work anywhere in the state regardless of where they come from. Don't we want all our children to work, stay, and play in NH? What a great opportunity for NH citizens and law makers to embrace a 'togetherness' approach to enhance the livelihood and economic vibrancy for the State of NH. I implore the state leaders to implement the work of the commission in a fair and equitable manner for the future of all our students and to satisfy local property tax relief.

Respectfully submitted,

Corinne Cascadden, Ed.D.

# Attachment 7



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TRANSCRIPT of the remote deposition of the above-named witness, called for Oral Examination in the above-entitled matter, said deposition being taken pursuant to Federal Court Rules, by and before JENNIFER WIELAGE, Certified Shorthand Reporter and Notary Public of the State of New York, License No. XI01916, on Thursday, July 20, 2023, commencing at 10:30 in the forenoon.

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A P P E A R A N C E S:

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BY: JOHN MUNICH, ESQ.  
Attorneys for Defendants

1 was that, in considering whether or not you agree to  
2 testify as an expert generally, you look at whether  
3 the side that's asking you to opine has a valid  
4 argument or concern; is that fair?

5 A. Right, that's true and most  
6 importantly that I wouldn't feel pressured to say  
7 anything that I didn't believe. And I believe John  
8 Munich is a person of character and I knew him by  
9 reputation and that helped give me confidence that  
10 that wouldn't be the case.

11 Q. So you didn't look into the New  
12 Hampshire funding system or relevant laws at all  
13 prior to agreeing to testify in the ConVal case?

14 A. I didn't do the specific research for  
15 the case prior to being engaged in the case, that is  
16 correct.

17 Q. And before you retained for ConVal,  
18 what did you understand that case to be about?

19 A. I understood it to be about whether  
20 the resources that the State of New Hampshire  
21 provides are sufficient for an adequate education.

22 Q. And you did not provide an opinion in  
23 ConVal as to whether the resources the State of New  
24 Hampshire provides are sufficient to provide an  
25 adequate education, did you?

1 A. That's correct.

2 Q. And you're not providing an opinion  
3 like that in this case, are you?

4 A. I am not.

5 Q. And you're being compensated to work  
6 on this case, I assume?

7 A. I am.

8 Q. What's your rate for this case?

9 A. I believe it's 400, 425, something  
10 like that, 400, maybe, I'm not sure.

11 Q. And again, all approximations are  
12 fine. I mean I can't even tell you how much I billed  
13 on cases in the past year. But roughly how many  
14 hours have you spent on the Rand case?

15 A. On the Rand case, to date, I would  
16 estimate 15 hours maybe, maybe.

17 Q. And in the ConVal case, do you have a  
18 similar rate?

19 A. I did.

20 Q. Okay. And roughly how many hours did  
21 you spend in the ConVal case?

22 A. I really can't remember. It was  
23 spread out over a year. Maybe 30 hours or so, 40 --  
24 maybe at max. I don't know.

25 Q. So one of your understandings of what

1 resources would be which, in Key Claim 1, I think  
2 that that is not a proper calculation of the cost of  
3 an adequate education.

4 Q. Sure. Let's talk about Key Claim 1.  
5 What is your basis for the opinion you make in Key  
6 Claim 1?

7 A. So again, I think the basis for my  
8 opinion is described in detail in the report itself.  
9 But to summarize it, it's that the claim that the  
10 average spending in the state constitutes what is  
11 required for adequacy is not sensible and -- for the  
12 reasons that I described in the report.

13 Q. But you're not opining to the portion  
14 of the Complaint where the plaintiffs identify that  
15 New Hampshire is not providing sufficient funding for  
16 adequacy, right?

17 A. I'm not offering an opinion on what  
18 amount of spending is required for adequacy.

19 Q. Were you asked to offer an opinion  
20 regarding that issue?

21 A. I was not.

22 Q. You note here the Plaintiffs failed  
23 to offer a proper calculation of the cost of  
24 providing constitutionally adequate education. Do  
25 you see that?

1 methodology were synonymous there roughly, yes.

2 Q. Understood. Then we were asking the  
3 same question, I'm just not great at this.

4 A. That's okay.

5 Q. So what is your understanding of the  
6 process of how the Committee determined the costs?

7 A. So I think that they looked at  
8 certain existing expenditures and factored those in,  
9 given the ratios, to come up with costs.

10 Q. So they looked at certain existing  
11 expenditures within New Hampshire School Districts  
12 and factored those in with the ratios they've listed  
13 on the report to determine the per pupil cost?

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. And that's a reasonable process?

18 A. I think so.

19 Q. And if you look at page 18 Paragraph  
20 3, the third paragraph under Salary and Benefits, the  
21 last sentence --

22 A. Beginning -- the one beginning: "In  
23 making its decisions or -- "

24 Q. That's correct.

25 A. Okay, yeah.

1 consideration of actual spending data, correct?

2 A. That's right.

3 Q. And with the caveat that they used  
4 salaries of a certain personnel with a certain  
5 qualification they determined, they looked at the  
6 average cost of expenditures to determine what the  
7 per-pupil amount should be to provide that input; is  
8 that correct?

9 A. That is correct.

10 Q. And is that a reasonable approach?

11 A. Yeah, I think it is.

12 Q. It's not an arbitrary approach,  
13 right?

14 A. That's correct.

15 Q. And you've looked at education  
16 funding models in other states, right?

17 A. I have.

18 Q. And are there other states that use  
19 the professional judgment model?

20 A. There are.

21 Q. And do they use a process similar to  
22 this or a different type of process?

23 A. In broad terms, it resembles this,  
24 but the details are always different.

25 Q. And do they all use actual spending

1 questions to fully make sure I understand, you know,  
2 what opinions you're giving and not giving in this  
3 case. So I'm just going to go through those real  
4 quickly.

5 You're not offering any opinions as  
6 to the sufficiency of the state's definition of  
7 adequacy, right?

8 A. I am not.

9 Q. And you're not offering any opinions  
10 as to what minimum school standards fall within the  
11 definition of adequacy, right?

12 A. I am not.

13 Q. And you're not offering any opinion  
14 as to whether school districts are spending money  
15 efficiently, right?

16 A. I am not.

17 Q. And if we look at Mr. Freeman's  
18 report -- if you still have that open?

19 A. Which exhibit was that?

20 Q. Exhibit 6.

21 A. One, two, three --

22 MR. MUNICH: Is it 6 or 7?

23 THE DEPONENT: I have it.

24

25 BY MR. JAOUDE:

1 districts have chosen to do in their negotiated  
2 families with families and IEPs necessarily equates  
3 to what is constitutionally required. The district  
4 could have chosen a different IEP agreement.

5 Q. Understood.

6 But you're not offering an opinion  
7 that a FAPE is not equivalent to an adequate  
8 education, correct?

9 A. I am offering that opinion. When I  
10 said in my report that the choices that districts  
11 make do not reflect what the cost of an adequate  
12 education is and an IEP can reflect choices by the  
13 district. It's not the same thing as what's  
14 constitutionally required. So it's not equivalent to  
15 an adequate education.

16 Q. Understood. And you're not offering  
17 any opinions relating to education tax rates in New  
18 Hampshire, are you?

19 A. I'm not.

20 Q. And I think I know the answer to all  
21 of these, but just to go through them.

22 You never worked as a superintendent  
23 for a school before, right?

24 A. I did not.

25 Q. And you never worked as a school

1 administrator?

2 A. I have not.

3 Q. And you've never worked on a school  
4 budget before?

5 A. I have not worked on a school budget  
6 before.

7 Q. And you've never worked as a  
8 K-through-12 teacher before?

9 A. I have not.

10 Q. And you've never done any analysis as  
11 to whether a certain amount of funding is sufficient  
12 to provide an adequate education?

13 A. Can you repeat the question? Because  
14 it's possibly have done something like that.

15 Q. Sure. You've never done any analysis  
16 as to whether a certain amount of funding is  
17 sufficient to provide an adequate education, correct?

18 A. I have not offered an opinion or done  
19 research on whether a specific dollar amount is a  
20 correct amount or not; that is correct.

21 Q. Understood.

22 MR. JAOUDE: Well, Dr. Greene, I have  
23 no further questions for you today. John, I'm not  
24 sure if you have any redirect, but otherwise, we're  
25 done on our side.

1 C E R T I F I C A T E

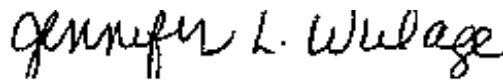
2 I, JENNIFER WIELAGE, a Notary  
3 Public and Certified Shorthand Reporter, do  
4 hereby state that prior to the commencement  
5 of the examination

6 JAY GREENE, PH.D.

7 was duly sworn by me to testify  
8 to the truth, the whole truth and nothing  
9 but the truth.

10 I do further state that the  
11 foregoing is a true and accurate transcript  
12 of the testimony as taken stenographically  
13 by and before me at the time, place and on  
14 the date hereinbefore set forth.

15 I do further state that I am  
16 neither a relative nor employee nor attorney  
17 nor counsel of any of the parties to this  
18 action, and that I am neither a relative nor  
19 employee of such attorney or counsel and  
20 that I am not financially interested in this  
21 action.

22 

23 JENNIFER WIELAGE  
24 License No. 30X100191600  
25

# Attachment 8

2 THE STATE OF NEW HAMPSHIRE

3 GRAFTON, SS SUPERIOR COURT

4 -----X

5 STEVEN RAND, et al.,

6 Plaintiffs,

7 -vs-

Case No.  
215-2022-CV-00167

8 THE STATE OF NEW HAMPSHIRE,

9 Defendant.

-----X

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12 REMOTE DEPOSITION OF DR. JAMES SHULS

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15 Reported by:

16 Angela M. Shaw-Crockett, CCR, CRR, RMR, CSR

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August 2, 2023  
10:33 a.m.

REMOTE DEPOSITION OF DR. JAMES SHULS, before  
Angela M. Shaw-Crockett, a Certified Court  
Reporter, Certified Realtime Reporter, Registered  
Merit Reporter and Notary Public of the States of  
New York, New Jersey, and Connecticut.

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ALSO PRESENT: John Tobin

\*\*

\*\*

\*\*

2 self-contribute whatever they so choose beyond that,  
3 correct?

4 A. Correct. That's essentially what  
5 New Hampshire is doing. You have the swept dollars,  
6 which are property tax dollars going to the state.  
7 Then you have the local property tax dollars that  
8 are determined by the local school district.

9 Q. And in that scenario, if the amount of  
10 adequacy provided by the state is less than what you  
11 would need to provide adequacy, you go back to that  
12 situation where local districts have to tax at  
13 uneven levels to raise the same amount of revenue to  
14 chip in, correct?

15 A. Hypothetically, if the state  
16 contributions, which would include whatever state  
17 revenues plus the state property tax -- if you're  
18 saying that's not enough for an adequate education,  
19 and then the local school districts have to tax  
20 themselves above and beyond, just as you were  
21 saying, then that would create a scenario where  
22 there would be possibly some inequities. You're  
23 assuming that the state funding is not adequate in  
24 that case.

25 Q. Sure.

2                   And by "possibly some inequities," it  
3 could also result in different tax amounts to raise  
4 the same total, right?

5           A.     That's correct.

6           MR. MUNICH: Michael, I think we have gone  
7 about over five minutes. Do you want to take a  
8 lunch break now, if that's convenient for you?

9           MR. JAOUDE: Let's take a break. How long  
10 would you prefer, Dr. Shuls?

11           Off the record.

12           (A discussion was held off the record.)

13           (At 1:14 p.m. a luncheon recess was  
14 taken.)

15           (At 2:04 p.m. the deposition resumes.)

2 we'll take a five-minute break, just to make sure  
3 there's nothing else. And then we should be out of  
4 here in the next ten minutes or so; okay?

5 A. Sounds good.

6 Q. Okay. So, again, apologies for redundancy  
7 if I've asked them before.

8 You're not offering any opinion as to the  
9 state's definition of "adequacy," right?

10 A. That's correct.

11 Q. You're not offering any opinions as to  
12 what minimum school standards fall within the scope  
13 of adequacy, correct?

14 A. That's correct.

15 Q. You're not offering any opinion as to what  
16 the cost components of providing an adequate  
17 education under the state's definition is, correct?

18 A. Correct.

19 Q. You're not offering any opinion as to  
20 whether school districts are spending money  
21 efficiently, correct?

22 A. Correct.

23 Q. You're not offering any opinion as to  
24 whether the adequacy level of funding provided by  
25 the state is sufficient to meet its definition of

2 "adequacy," correct?

3 A. I'm not offering an opinion on the  
4 specific bucket called "adequacy"; that's correct.

5 Q. You're not providing an opinion as to  
6 whether the state is meeting its constitutional  
7 obligations, correct?

8 A. That's correct.

9 Q. You're not providing an opinion as to  
10 whether education taxes in New Hampshire are  
11 constitutional, correct?

12 A. That's correct.

13 Q. You're not providing an opinion as to  
14 whether the education tax rates are equal in  
15 valuation and uniform in rate, correct?

16 A. Correct.

17 Q. And you're not providing an opinion as to  
18 whether each and every school district in  
19 New Hampshire is providing adequate education,  
20 correct?

21 A. That's correct.

22 MR. JAOUDE: So I'd say we'd take a  
23 10-minute break and meet back at 3:20 your  
24 time. I think we're done. I just want to make  
25 sure that there's opportunity to ask any

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CERTIFICATE

STATE OF NEW YORK )

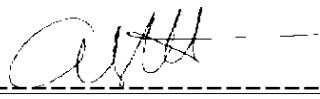
: SS

I, Angela M. Shaw-Crockett, a Certified Court Reporter, Registered Merit Reporter and Notary Public within and for the States of New York, New Jersey and Connecticut, do hereby certify:

That DR. JAMES SHULS, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 14th day of August, 2023.



-----  
ANGELA M. SHAW-CROCKETT, CCR, CRR, RMR, CSR  
LICENSE NO. XI00218400

# Attachment 9

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2019-0500

|                                   |    |                            |
|-----------------------------------|----|----------------------------|
| Contoocook Valley School District |    | The State of New Hampshire |
| Winchester School District        |    | New Hampshire Department   |
| Mascenic School District          |    | of Education               |
| Monadnock School District         | v. | Christopher T. Sununu      |
| Myron Steere, III                 |    | Frank Edelblut             |
| Richard Cahoon                    |    |                            |
| Richard Dunning                   |    |                            |

APPEAL PURSUANT TO RULE 7 FROM THE JUDGMENT OF THE  
CHESHIRE COUNTY SUPERIOR COURT

**ANSWERING BRIEF FOR THE DEFENDANTS**

THE STATE OF NEW HAMPSHIRE  
NEW HAMPSHIRE DEPARTMENT OF EDUCATION  
CHRISTOPHER T. SUNUNU  
FRANK EDELBLUT

By their attorneys,

GORDON J. MACDONALD  
Attorney General

Daniel E. Will, Bar #12176  
*Solicitor General*

Anthony J. Galdieri, Bar #18594  
*Senior Assistant Attorney General*

Lawrence M. Edelman, Bar #738  
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New Hampshire Department of Justice  
33 Capitol Street, Concord, NH 03301  
603-271-3658

(Oral Argument Requested: 15 minutes)

definition of an adequate education. PB 67. Because the proper analytical framework focuses on the per-pupil cost as a whole, and not the underlying methodology, these statements, even when assumed true, do not “buttress” the conclusory assertion in paragraph 24. And, in any event, the services in question do not fall within the definition of an adequate education at all, as discussed in the State’s opening brief and in the next section. The plaintiffs therefore failed to assert any well-pleaded facts supporting an inference that the per-pupil cost itself is insufficient. Accordingly, the trial court should have granted the State’s motion to dismiss.

**C. The plaintiffs did not introduce admissible evidence to support their claims.**

The State explained in detail in its opening brief how the plaintiffs failed, as a matter of law, to prove an actual deprivation of a fundamental right. DB 33-39. The plaintiffs attempt to resist this conclusion on two grounds. First, the plaintiffs contend that the definition of an “adequate education” includes each of the services in question, and that the State is therefore obligated under *Londonderry* to fund those services in full. PB 73-82. Second, the plaintiffs contend that the affidavits they attached to their motion for summary judgment were admissible under Rule 401 because they have a tendency to make it more probable that the State is failing to meet that obligation. PB 70-73.

The plaintiffs’ contention that the services in question fall within the definition of an “adequate education” is incorrect for the reasons stated in the State’s opening brief. In short, the legislature has defined an adequate education in RSA 193-E:2-a by setting forth a core educational program

that comprises the constitutional minimum. *See* DB 44-45. Neither RSA 193-E:2-a nor the relevant administrative rules referenced in that statute mentions the services on which the plaintiffs' base their case. *See* DB 45. Thus, these services are *ancillary* to the substantive educational program established by the legislature, and the State is not required to fund them. *See* DB 45-46.

The plaintiffs argue that these services are part of the legislature's definition of an adequate education by operation of RSA 198:40-a. DB 73-74. They contend this is so because the Joint Committee funded some of the services in question, and the legislature adopted the Joint Committee's recommendations and findings when promulgating RSA 198:40-a. *See* DB 73 (citing Laws 2008, ch. 173). But this argument once again conflates the State's distinct obligations to "define an adequate education" and "determine its cost." *Londonderry*, 154 N.H. at 155. The legislature satisfied the first of these obligations through RSA 193-E:2-a, and the definition it adopted does not include the services in question. To the extent the plaintiffs believe that the Constitution required the legislature to include those services within the definition it adopted, they were free to bring a challenge to the definition itself. They did not do so. The mere fact the legislature subsequently chose to fund certain services not mentioned in RSA 193-E:2-a does not mean that those services are imported into the definition.

Nothing in *Londonderry* compels a contrary conclusion. By contrast to this case, the plaintiffs in *Londonderry* brought challenges to both the statutory definition of an adequate education and the cost-funding mechanism. *See* 154 N.H. at 155. The Court reached only the first of these

issues, holding that the State had failed to *define* a constitutionally adequate education. *Id.* In doing so, the Court rejected the State’s argument that the challenged definition exceeded constitutional adequacy. *Id.* at 160. The Court reasoned that, in order to meet its obligation to define an adequate education, the State must “isolate what parts of the scheme comprise constitutional adequacy,” or else individuals and school districts “can[not] determine the distinct substantive content of a constitutionally adequate education.” *Id.*

These concerns are not implicated when, as here, a plaintiff challenges only the *cost* of an adequate education, and not the definition. Indeed, any such claim necessarily assumes the sufficiency of the underlying definition, or else it is not cognizable. *See id.* (noting that “the definition of a constitutionally adequate education is essential to all other issues, including the cost”). *Londonderry* makes clear that it is through the definition, not the cost, that the State must “isolate what parts of the scheme comprise constitutional adequacy.” *Id.* And once that definition is in place, it is possible to determine the substantive content of a constitutionally adequate education even if the State chooses to fund services outside of the definition itself. Thus, contrary to the plaintiffs’ suggestion, *Londonderry* does not support the proposition that services are imported into the definition simply because the State chose to fund them. Accordingly, the services in question here do not fall within the definition

of an adequate education, as explained in the State's opening brief and above.<sup>5</sup>

The plaintiffs are also incorrect that the affidavits they attached to their motion for summary judgment were admissible under Rule 401. The plaintiffs contend that the affidavits were admissible under that rule because they have some tendency to show that the amount of funding the State provides is inadequate. PB 70-73. But the plaintiffs improperly assume that it is possible to infer the cost of a constitutionally adequate education from the total amount a school district chooses to spend. That assumption is based on a false equivalence.

As this Court recognized in *Londonderry*, the cost of an adequate education is an "objective determination" based on the "definition of constitutional adequacy crafted by the political branches." 154 N.H. at 162. In contrast, the amount a particular school district might choose to spend on education depends on any number of subjective considerations unique to that school district, including, among other things, the school district's particularized needs and the preferences of its voters. Thus, to infer the objective cost of an adequate education from an individual school district's actual costs, one must have some idea as to how that school district spends its money. Otherwise, there is no way to isolate how much the school district expends on the core educational program. Indeed, this is no different than trying to determine the cost of an engine based solely on the sticker price of a car. Without additional information, it cannot be done.

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<sup>5</sup> Moreover, even if the legislature did not fully fund some particular component of an adequate education, this does not mean that the per-pupil cost *as a whole* is constitutionally deficient.

No such information exists in the present record. Consequently, this case presents the converse of the problem this Court identified in *Londonderry*. In *Londonderry*, the State had not isolated “what parts of the scheme comprise constitutional adequacy” such that a school district “c[ould] determine the distinct substantive content of a constitutionally adequate education.” *Id.* at 160. Here, *the school districts* have not isolated what they spend on the core educational program such that the State (and the Court) can determine whether that program can be fully funded under RSA 198:40-a. There is accordingly no way to discern from the plaintiffs’ affidavits whether the State is meeting its funding obligation. In other words, those affidavits make it neither more nor less probable that the current per-pupil cost is sufficient.

Unlike in *Londonderry*, the inability in this case to determine whether the State is meeting its funding obligation falls squarely on the plaintiffs. As discussed, the plaintiffs do not challenge the definition of an adequate education set forth in RSA 193-E:2-1. Using that definition, the plaintiffs could have isolated the costs they incur to fund the core educational program and compared them against the total per-pupil cost established in RSA 198:40-a. Indeed, this appears to be the type of analysis that, according to the *amici* school districts, two New Hampshire school districts have attempted to undertake. SAB 13-15.<sup>6</sup> And, notably, it is also

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<sup>6</sup> The studies the *amici* school districts reference are not part of the record and were not tested through the adversarial process. This Court therefore cannot rely on them as evidence that the State is not meeting its funding obligation. They are telling in one respect, however: they suggest that the plaintiffs could have sought to prove their case by attempting to show that they spend more to deliver an adequate education than the State provides in funding. While the State certainly does not concede the soundness of that

the sort of analysis the State envisioned when it repeatedly declared that it needed discovery into how the plaintiff school districts spend their money. *See, e.g.*, Tr. 34, 46, 48, 71-72; DAI 820; DAIII 195-201, 220-225.

The plaintiffs, with the trial court's acquiescence, chose to forgo that analysis in favor of an argument based solely on their actual costs. The plaintiff school districts' actual costs do not bear on the sufficiency of the current per-pupil cost set forth in RSA 198:40-a. The plaintiffs' affidavits were therefore not admissible under Rule 401.

While this is dispositive, the plaintiffs' reliance on Rule 401 is further misplaced because, even under the plaintiffs' view of their affidavits, they did not contain evidence that had a tendency to make a fact that is "of consequence in determining the action" more or less probable. *N.H. R. Ev.* 401(b). Most of the actual costs in the plaintiffs' affidavits reflect expenditures the plaintiff school districts purportedly made on services they contend the State is required to fund. As discussed above, those services do not fall within the definition of an adequate education in the first place. And, regardless, the methodology behind the cost-funding formula does not speak to whether the per-pupil cost, as a whole, is sufficient. Accordingly, the amount the plaintiff school districts spend on specific services or a particular school district's teacher-student ratio is of no consequence in determining whether the State is meeting its funding

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approach, the studies at least reflect a theoretical path available to the plaintiffs that they chose not to take.

## CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court reverse the judgment below.

The State requests a fifteen-minute oral argument.

The State certifies that the appealed decisions are in writing and were included with the filing of the opening brief in a separate appendix, pursuant to *Sup. Ct. R. (3)(i)*.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE,  
NEW HAMPSHIRE DEPARTMENT  
OF EDUCATION,  
CHRISTOPHER T. SUNUNU, and  
FRANK EDELBLUT

By its attorneys,

GORDON J. MACDONALD  
ATTORNEY GENERAL

June 26, 2020

*/s/ Daniel E. Will*  
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New Hampshire Department of Justice  
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**CERTIFICATE OF COMPLIANCE**

I, Daniel E. Will, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,405 words, excluding the table of contents, the table of authorities, and the texts of the pertinent laws and statutes, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

June 26, 2020

/s/Daniel E. Will  
Daniel E. Will

**CERTIFICATE OF SERVICE**

I, Daniel E. Will, hereby certify that a copy of the answering brief for the defendants shall be served through the New Hampshire Supreme Court's electronic filing system on the following parties of record:

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**Gilles R. Bissonnette, Esquire** and **Henry R. Klementowicz, Esquire**, Counsel for *Amicus Curiae* American Civil Liberties Union of New Hampshire

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June 26, 2020

/s/Daniel E. Will  
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