

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

The State of New Hampshire

CONSOLIDATED STATEMENT OF MATERIAL FACTS

Pursuant to Superior Court Civil Rule 12(g), the State submits this Consolidated Statement of Material Facts, consisting of (1) the State's Statement of Material Facts and the Plaintiffs' Responses thereto, and (2) the Plaintiffs' Statement of Additional Material Facts and the State's Responses thereto.

The State's Statement of Material Facts and the Plaintiffs' Responses

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

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

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

Plaintiffs' Response: Agreed.

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

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

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

Plaintiffs’ Response: Agreed.

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

Plaintiffs’ Response: Agreed.

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

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

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

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

Plaintiffs’ Statement of Additional Material Facts and the State’s Responses

I. Adequacy Aid from 2007-Present

1. In 2008, the State allocated \$3,450 per student as adequacy aid. RSA 198:40-a (2008) (“Beginning July 1, 2009, and for every biennium thereafter, the annual cost of providing the opportunity for an adequate education as defined in RSA 193-E:2-a shall be \$3,450 per pupil attending a public school . . .”)

State’s Response: Undisputed that the plaintiffs’ accurately quote an excerpt of RSA 198:40-a (2008). Disputed that this is the total cost of an adequate education provided under that statute. RSA 198:40-a (2008) (“ . . . shall be the \$3,450 per pupil attending a public school, plus any applicable differentiated aid for which a pupil is eligible.”).

2. As of the filing of the Complaint, adequacy aid was \$3,786.66 per student. N.H. Dep’t of Educ., *FY 2022 Adequate Education Aid* (Apr. 1, 2022), available at

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

State’s Response: Undisputed that “the base per pupil rate” at the time this action was initiated was \$3,786.66. Disputed that this remains the “base per pupil rate.” See RSA 198:40-a (2023) (“A cost of \$4,100 per pupil in the ADMR, plus differentiated aid as follows: . . .”).

3. The adequacy amount as of the filing of the Complaint reflected the mandated cost of living adjustments aid and has not been raised outside of that adjustment. *See* RSA 198:40-d.

State’s Response: Undisputed that the difference in the base per pupil rate between 2008 and the time this action was filed was the result of adjustments under RSA 198:40-d. Undisputed that this remains the case. See RSA 198:40-a (2023).

4. Differentiated aid also remained stagnant during this time, with no increases beyond CPI adjustments. RSA 198:40-d; Defendant’s Response to Plaintiffs’ First Request for Admissions ¶ 11 (Attachment 1).

State’s Response: Undisputed that increases between per pupil differentiated aid between 2008 and the time this action was filed were the result of adjustments under RSA 198:40-d. Disputed that this remains the case. RSA 198:40-a (2023). Also disputed that either differentiated aid or the base per pupil rate remained “stagnant” during that period. See *Stagnant*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/stagnant> (last visited Sept. 20, 2023).

5. The State has not analyzed whether these CPI adjustments accurately reflect the changing educational needs or the cost of providing an education. Defendant’s Objections and Responses to Plaintiffs’ First Set of Interrogatories ¶ 5 (Attachment 2).

State’s Response: Undisputed that the New Hampshire Department of Education has not conducted the analysis described in this statement, as described in the discovery response cited in this statement. To the extent this statement implies that the State is under an obligation to conduct such an analysis, this is a legal conclusion, not a statement of fact. Nevertheless, the State disputes any contention that it bears the burden to disprove the plaintiffs’ claims. See State’s Mem. Supp. Mot. Summ. J. at 5–8.

6. Effective July 1, 2023, adequacy aid increased from \$3,866 to \$4,100. RSA 198:40-a(II)(a) (2023).

State’s Response: Undisputed that the base pupil rate increased in the manner described in this statement. Disputed that this is the total cost of an adequate education provided under RSA 198:40-a. RSA 198:40-a (2023),

7. The State increased the amount of differentiated aid as follows: (i) from \$1893.32 to \$2,300 for each student eligible for a free and reduced lunch; (ii) from \$740.87 to \$800 for each

student who is an English Language Learner; and (iii) from \$2,037.11 to \$2,100 for each student receiving special education services. RSA 198:40-a(II)(b-d) (2023).

State's Response: Undisputed.

8. At the same time, the State discontinued differentiated aid for 3rd grade students who failed to reach reading proficiency. *Compare* RSA 198:40-a(II)(e) (2022) (providing \$697.77 for each student scoring below proficiency level on state literacy assessment) *with* RSA 198:40-a(II)(a-d) (2023)(including no differentiated aid for 3rd grade students who failed to reach reading proficiency).

State's Response: Undisputed that the 2023 version of RSA 198:40-a no longer contains a separate differentiated aid amount tethered to reading proficiency.

9. No school district in the state expends less than \$14,000 a year per student. *See* Defendant's Response to Plaintiffs' First Request for Admissions ¶ 7 (Attachment 1); *see also* N.H. Dep't of Educ., *Cost Per Pupil Increases By District From 2000 to 2022*, available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-increases-by-district-2000-2022.pdf>.

State's Response: Undisputed that the data contained at the website cited in this statement reflects that in 2021-2022, no school district had total education expenditures of less than \$14,000 per pupil. Disputed that this is a material fact, because the State is not required as a matter of law to cover the total amount school districts expend on education. *See* State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

10. On average, school districts spent \$19,399.97 during the 2021-22 school year per pupil, not including any capital expenditures, such as building or transportation. *See* N.H. Dep't of Educ., *Cost Per Pupil By District, 2021-2022*, available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-fy2022.pdf>.

State's Response: Undisputed that the data contained at the website cited in this statement reflects that in 2021-2022 the statewide average per pupil expenditure, not including capital expenditures, was \$19,399.97. Disputed that this is a material fact, because the State is not required as a matter of law to cover the total amount school districts expend on education. *See* State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

11. No district spends an amount equal to or less than the total amount per pupil received as adequacy aid, confirming the mismatch between expenditures and available aid. Defendant's Response to Plaintiffs' First Request for Admissions ¶¶ 2, 3 (Attachment 1).

State's Response: Undisputed that the State is not aware of any public school district that spends a total amount per pupil 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. Disputed that this is a material fact, because the State is not required as a matter of law to cover the total amount school districts expend on education. *See* State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

12. In 2019 and 2022, the State added new learning areas to RSA 193-E:2-a. *See* RSA 193-E:2-a(I) (2019), RSA 193-E:2-a(I) (2022) (including personal finance literacy and computer science as new learning areas).

State's Response: Undisputed that the legislature added personal finance literacy and computer science to the list of learning areas in RSA 193-E:2-a, I, in 2019 and 2022, respectively.

13. The State has not determined the cost of complying with the new learning areas added to RSA 193-E:2-a in 2019 or 2022. *See* Defendant's Response to Plaintiffs' First Request for Admissions ¶ 6 (Attachment 1).

State's Response: Undisputed that the New Hampshire Department of Education has not independently analyzed what it would cost to provide an adequate version of a personal finance and computer science curriculum, as set forth in the discovery response cited in this statement. To the extent this statement implies that adding these learning areas to RSA 193-E:2-a would necessarily increase the cost of complying with that statute, the plaintiffs have cited no supporting pleading, deposition, answer to interrogatories, response to requests for admission, affidavit, or other evidentiary document that supports this implication. Super. Ct. Civ. R. 12(g)(2)(a). The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

14. The State does not require school districts to report data in a manner to allow them to break down expenditures consistent with the legislative definition of an adequate education. *See* Defendant's Response to Plaintiffs' First Request for Admissions ¶ 13 (Attachment 1); *see also* Defendant's Objections and Responses to Plaintiffs' First Set of Interrogatories ¶ 2 (Attachment 2).

State's Response: Undisputed that the New Hampshire Department of Education does not require school districts to report that breaks down school district expenditures consistent with the legislative definition of an adequate education the Legislature adopted in RSA 193-E:2-a, as reflected in the discovery responses cited in this statement. To the extent this statement implies that the State is required to do so, this is a legal conclusion, not a statement of fact. Moreover, the plaintiffs have cited no supporting pleading, deposition, answer to interrogatories, response to requests for admission, affidavit, or other evidentiary document that supports this implication. Super. Ct. Civ. R. 12(g)(2)(a). The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

15. The State has never asserted in writing, outside of litigation, that school districts are offering more educational services than are required to meet the definition of constitutional adequacy. *See* Defendant's Objections and Responses to Plaintiffs' First Set of Interrogatories ¶ 23 (Attachment 2).

State's Response: Undisputed that the New Hampshire Department of Education has not identified any instance in which it made a written assertion of the type described in this statement outside of litigation. To the extent this statement implies that school districts do not provide educational services beyond those required to meet the definition of constitutional adequacy, that implication is inconsistent with the undisputed evidence in this case. State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

II. Plaintiffs' Expert Evidence

16. Plaintiffs' expert, Dr. John Freeman, was deposed in connection with this case on July 13, 2023. *See* Freeman Deposition Transcript (Attachment 3) [hereinafter Freeman Dep. Tr.].

State's Response: Undisputed.

17. His expert report was introduced as Freeman 1 at his deposition. Freeman Dep. Tr. at 7:17–8:7; Freeman Report (Exhibit 1 to Freeman Deposition) (Attachment 4) [hereinafter Freeman Report].

State's Response: Undisputed.

18. From 2021–2022, Dr. Freeman served as the Superintendent of Schools for the Strafford School District. Prior to that, Dr. Freeman served as Superintendent of Schools for the Pittsfield School District for 12 years. In addition to his roles as a Superintendent, Dr. Freeman has also worked as a classroom teacher, a building administrator, and a principal. Freeman Resume (Exhibit A to Freeman Report) at 1–3 (Attachment 4).

State's Response: Undisputed.

19. For the purposes of his report, Dr. Freeman relied upon the State's definition of an adequate education. Freeman Report at 1–2.

State's Response: Disputed. Dr. Freeman's report reflects that he bases his opinion that the State is failing to fund an adequate education at least in part on the notion that the amount of funding the State provides under RSA 198:40-a does not cover the total amount school districts spend on public education. *See, e.g.,* Freeman Report at 2 ("No school district in New Hampshire of which I am aware provides a K-12 education while spending approximately \$3,786.66 or less per pupil. Even the lowest spending school district in New Hampshire spends three times that amount, and the average per pupil spending in the state is approximately \$21,000."). The definition of an adequate education the Legislature has adopted does not encompass everything a school district spends money on. *See* State's Mem. Supp. Mot. Summ. J. at 9–19.

20. The State has defined an adequate education in RSA 193-E:2, which also references certain school approval standards promulgated by the New Hampshire Department of Education as Ed. 306. Freeman Report at 1.

State's Response: Disputed that this is a statement of fact. Identifying the definition of an adequate education the Legislature adopted is reflected presents a question of statutory and regulatory interpretation, which is a legal question. *Rankin v. S. St. Downtown Holding, Inc.*, 172 N.H. 500, 502 (2019). The State nevertheless does not dispute, as a general legal matter, the Legislature has defined an adequate education through RSA 193-E:2, which incorporates certain sections of Ed 306.

21. Dr. Freeman concluded that the State's adequacy aid amount is insufficient to provide an opportunity for an adequate education as defined by the State. Freeman Report at 2.

State's Response: Undisputed that Dr. Freeman states this conclusion in his report. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Sections B and C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment. Conclusory assertions—even those made by expert witnesses—will not satisfy a nonmoving party's burden in opposing summary judgment. *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 454 (1996).

22. Dr. Freeman further concluded that the State also does not provide sufficient funding for the cost of special education services that school districts must provide to students in order to provide the opportunity for an adequate education. Freeman Report at 6–7. Even with differentiated aid supplements, the amount provided to school districts is not nearly sufficient to provide an adequate education. Freeman Report at 3.

State's Response: Undisputed that Dr. Freeman states these conclusions in his report. Disputed that these conclusions are material or admissible evidence for the reasons set forth in Sections B and C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment. Conclusory assertions—even those made by expert witnesses—will not satisfy a nonmoving party's burden in opposing summary judgment. *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 454 (1996).

23. In 2019, Dr. Freeman conducted an analysis (the “Pittsfield Study”) which attempted to reduce Pittsfield's then \$10,302,402 budget to the \$2,690,333 in state funding for the “Total Cost of an Adequate Education” that Pittsfield received that year. Pittsfield Study (Exhibit B to Freeman Report) at 1 [hereinafter Pittsfield Study] (Attachment 4).

State's Response: Undisputed that Dr. Freeman states in his report that “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 budget . . . to the \$2.7 million per year that Pittsfield received in adequacy aid from the state.” Freeman Report at 3. Disputed that this “exercise” is material or admissible evidence for the reasons set forth in Section C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment. Conclusory assertions—even those made by expert witnesses—will not satisfy a nonmoving

party's burden in opposing summary judgment. *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 454 (1996).

24. The result of Dr. Freeman's analysis was a non-functioning school district that failed to meet student needs, failed to meet the minimum standards as set out in Ed 306, violated both state and federal laws, and violated the terms of collective bargaining agreements. Pittsfield Study at 1.

State's Response: Undisputed that the document cited in this statement contains this conclusion. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Section C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment.

25. Despite using a budget that was double the adequacy amount, the district would be required to cut all art, music, and physical education classes in all grades. Pittsfield Study at 1. Instruction in these courses is required by RSA 193-E:2-a. *See* RSA 193-E:2-a(I)(a)(5),(8).

State's Response: Undisputed that the document cited in this statement contains this conclusion. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Section C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment.

26. The district would further be required to eliminate personnel required by state and federal laws, including school nurses, counselors, and medical support staff. Pittsfield Study at 1.

State's Response: Undisputed that the document cited in this statement contains this conclusion. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Section C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment.

27. Dr. Freeman concluded that to further reduce this budget to only the State's cost of an adequate education, the district would then have to eliminate nearly half of the remaining teaching staff, leading to classroom sizes of 60 students to 1 teacher (double the legal limit) and all other resources (such as textbooks, learning materials, facilities, any non-teaching personnel). Pittsfield Study at 2–5.

State's Response: Undisputed that the document cited in this statement contains this conclusion. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Section C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment.

28. Additionally, Dr. Freeman's report highlights that the cost of providing necessary services for children who qualified for Special Education services in the Pittsfield School District during the year he studied, on average, was \$32,031. Freeman Report at 4. The State's differentiated aid for these students defrayed \$1,995.21 of this cost per child. *Id.*, RSA 198:40-a, II(b).

State's Response: Undisputed that Dr. Freeman's report contains the assertion in the first sentence of this statement. Undisputed that Dr. Freeman's report contains the assertion in the second sentence of this statement. The factual assertion in the second sentence is disputed. See RSA 198:40-a, II(d). Disputed that either of these assertions are material, because the State is not required as a matter of law to cover the total amount school districts expend on education. See State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

29. Dr. Freeman is unaware of any school district in New Hampshire that is able to provide a constitutionally adequate education at the base adequacy amount plus the differentiate aid amounts. Freeman Report at 3.

State's Response: Undisputed that Dr. Freeman's report contains this assertion. Disputed that the assertion is material, because the State is not required as a matter of law to cover the total amount school districts expend on education. See State's Mem. Supp. Mot. Summ. J. at 9–19. The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

30. Plaintiffs' expert, Dr. Corinne Cascadden, was deposed in connection with this case on July 14, 2023. Cascadden Deposition Transcript [hereinafter Cascadden Dep. Tr.] (Attachment 5).

State's Response: Undisputed.

31. Her report was introduced as Cascadden 1 at her deposition. Cascadden Dep. Tr. 8:21–23, Cascadden Report (Exhibit 1 to Cascadden Deposition) [hereinafter Cascadden Report] (Attachment 6).

State's Response: Undisputed.

32. Dr. Cascadden has held positions as a classroom teacher aide, elementary school teacher, principal, and superintendent. She has worked in the Berlin, Littleton, and Lyme public school districts. Cascadden Report at 1.

State's Response: Undisputed.

33. As a school superintendent, she directly supervised school district business managers, special education administrators, grant managers, project managers, and others. Cascadden Report at 1.

State's Response: Undisputed.

34. For purposes of her expert report, Dr. Cascadden relied on the State's definition of an adequate education. Cascadden Report at 1–2.

State's Response: Disputed. Dr. Cascadden's report reflects that he bases his opinion that the State is failing to fund an adequate education at least in part on the notion that the amount of funding the State provides under RSA 198:40-a does not cover the total amount school districts spend on public education. *See, e.g., Freeman Report at 2* ("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.") The definition of an adequate education the Legislature has adopted does not encompass everything a school district spends money on. *See State's Mem. Supp. Mot. Summ. J. at 9–19.*

35. Dr. Cascadden concluded that the State's amount of per-pupil adequacy aid at the time of the filing of this case (\$3,786.66 per year) is not sufficient to provide an opportunity for an adequate education. Cascadden Dep. Tr. 76:3–20.

State's Response: Undisputed that Dr. Cascadden stated this conclusion during her deposition. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Sections B and C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment. Conclusory assertions—even those made by expert witnesses—will not satisfy a nonmoving party's burden in opposing summary judgment. *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 454 (1996).

36. Dr. Cascadden testified that that no school or school district in which she has worked in New Hampshire is able to provide a constitutionally adequate education at a cost of approximately \$3,786.66 per child plus the appropriate "differentiated aid" amount for children who qualify for such aid. Cascadden Report at 3.

State's Response: Undisputed that Dr. Cascadden stated this conclusion in her report. Disputed that this conclusion is material or admissible evidence for the reasons set forth in Sections B and C of the State's Reply to the Plaintiffs' Objection to the State's Motion for Summary Judgment. Conclusory assertions—even those made by expert witnesses—will not satisfy a nonmoving party's burden in opposing summary judgment. *New England Tel. & Tel. Co. v. City of Franklin*, 141 N.H. 449, 454 (1996).

37. Dr. Cascadden is not aware of any New Hampshire school or school district that is able to provide a constitutionally adequate education at a cost of \$3,786.66 per child. Cascadden Report at 2.

State's Response: Undisputed that Dr. Cascadden's report contains this assertion. Disputed that the assertion is material, because the State is not required as a matter of law to cover the total amount school districts expend on education. *See State's Mem. Supp. Mot. Summ. J. at 9–19.* The State further disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See State's Mem. Supp. Mot. Summ. J. at 5–8.*

III. The State's Expert Evidence

38. State's expert, Dr. Jay Greene, was deposed in connection with this case on July 20, 2023. *See* Greene Deposition Transcript [hereinafter Greene Dep. Tr.] (Attachment 7).

State's Response: Undisputed.

39. Dr. Greene has never worked as a superintendent for a school. Greene Dep. Tr. 245:22–24.

State's Response: Undisputed.

40. Dr. Greene has never worked as a school administrator. Greene Dep. Tr. 245:25–246:2.

State's Response: Undisputed.

41. Dr. Greene has never worked on a school budget. Greene Dep. Tr. 246:3–6.

State's Response: Undisputed.

42. Dr. Greene has never worked as a kindergarten through twelfth grade (“K-12”) teacher. Greene Dep. Tr. 246:7–9.

State's Response: Undisputed.

43. Dr. Greene has never offered an opinion or done any research on whether a certain amount of funding is sufficient to provide an adequate education. Greene Dep. Tr. 246:10–20.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

44. Dr. Greene is not offering an opinion on what amount of spending is required for adequacy. Greene Dep. Tr. 107:13–18.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

45. Dr. Greene is not offering an opinion on whether the current amount of State spending on adequacy is sufficient. Greene Dep. Tr. 82:22–83:4.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

46. Dr. Greene is not offering an opinion as to the sufficiency of the State's definition of adequacy. Greene Dep. Tr. 242:5–8.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

47. Dr. Greene is not offering an opinion on what minimum school standards fall within the definition of adequacy. Greene Dep. Tr. 242:9–12.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

48. Dr. Greene testified that the Joint Legislative Oversight Committee, in its 2008 report on costing an adequate education, reasonably relied upon actual, existing expenditures in its analysis. Greene Dep. Tr. 175:10–18; *see also* Greene Dep. Tr. 182:3–14.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8. The State further disputes that the Joint Committee's methodology is relevant to the plaintiffs' adequacy claim. See *Contoocook Valley Sch. Dist v. State*, 174 N.H 154, 166 (2021).

49. State's expert, Dr. James Shuls, was deposed in connection with this case on August 2, 2023. *See* Shuls Deposition Transcript [hereinafter Shuls. Dep. Tr.] (Attachment 8).

State's Response: Undisputed.

50. Dr. Shuls is not offering an opinion on whether the State's level of adequacy funding was sufficient to provide an adequate education (as defined by the State). Shuls Dep. Tr. 193:23–194:4.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

51. Dr. Shuls is not offering an opinion on the State's definition of adequacy. Shuls Dep. Tr. 193:8–10.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

52. Dr. Shuls is not offering any opinions as to what minimum school standards fall within the scope of adequacy. Shuls Dep. Tr. 193:11–14.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. See State's Mem. Supp. Mot. Summ. J. at 5–8.

53. Dr. Shuls is not offering any opinion as to what the cost components of providing an adequate education under the State's definition of adequacy are. Shuls Dep. Tr. 193:15–18.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

54. Given New Hampshire's funding model, to the extent adequacy aid is insufficient to fund an adequate education, it results in differing local taxes to raise the same level of funding. Shuls Dep. Tr. 115:9–116:5.

State's Response: It is undisputed that Dr. Schuls stated the following during his deposition at the pages and lines cited in this statement:

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

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

A: That's correct.

55. The State has not produced any other evidence justifying its defined cost of adequacy.

State's Response: Undisputed. But the State disputes any contention that it bears the burden to disprove the plaintiffs' claims. *See* State's Mem. Supp. Mot. Summ. J. at 5–8.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: September 20, 2023

/s/ Samuel Garland

Anthony J. Galdieri, No. 18594

Solicitor General

Samuel R.V. Garland, No. 266273

Senior Assistant Attorney General

N.H. Department of Justice

33 Capitol Street

Concord, NH 03301

(603) 271-3650

anthony.j.galdieri@doj.nh.gov

samuel.rv.garland@doj.nh.gov

Certificate of Service

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic-filing system to all parties of record.

Date: September 20, 2023

/s/ Samuel Garland

Samuel R.V. Garland.