

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

*Steven Rand, et al.,*

Plaintiffs,

v.

*The State of New Hampshire,*

Defendant.

**PLAINTIFFS' OBJECTION TO STATE'S MOTION TO EXCLUDE OPINIONS  
AND TESTIMONY OF DR. JOHN FREEMAN**

Plaintiffs, by and through their undersigned counsel, respectfully submits this objection to the Defendant State of New Hampshire's (the "State") *Motion to Exclude Opinions and Testimony of Dr. John Freeman* (the "Motion" or "Mot.>").

**PRELIMINARY STATEMENT**

Dr. John Freeman, one of Plaintiffs' experts in this case, has been a public servant of New Hampshire's education system for decades. He holds a Ph.D. in Educational Administration, spent fifteen years as a school district superintendent, and has worked in education for over fifty years. Dr. Freeman is patently qualified to opine on what educators need to deliver an adequate education to New Hampshire's students. His opinions, based on his professional experience drafting school budgets for New Hampshire schools, are reliable and will illustrate how base adequacy funds and differentiated aid are insufficient for providing students with a constitutionally adequate education, even under a bare bones school budget.

The State moved for summary judgment on Plaintiffs' school funding claims in July 2023, and the Court largely denied that motion in April 2024. The State files the instant Motion to exclude Dr. Freeman in an attempt to relitigate arguments it raised (and which the Court

rejected) in its failed summary judgment motion. Further, the Motion suffers from the following defects: (i) including cherry-picked and mischaracterized testimony from Dr. Freeman; (ii) failing to engage with New Hampshire's standards for admitting expert testimony; and (iii) misinterpreting the Court's April 25, 2024 summary judgment and case status Order (the "SJ Order"). The objections raised in the Motion are ultimately challenges to his credibility, not to the reliability of his methodology, and are more appropriately resolved at trial, not in a pre-trial motion. The State's Motion must fail.

### **BACKGROUND**

Dr. John Freeman served as the superintendent for three New Hampshire school districts, including more than a decade as the superintendent of schools in the Pittsfield school district. As a superintendent, he oversaw the annual drafting of the school district's budget, hiring of teachers and other school personnel, and the school district's adherence to state standards regarding educational adequacy for students.

Based on his extensive expertise, Mr. Freeman's testimony will demonstrate that the State's determined cost of an adequate education, which has not materially changed in 14 years, is insufficient. *See* Dr. Freeman Expert Rep. at 2 (attached to this Objection as **Exhibit 1**) ("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"). Notably, although Dr. Freeman disagrees with the State's interpretation of its definition of adequacy, he relies upon the State's definition for this conclusion. *See* Dr. Freeman Expert Rep. at Ex. B. He will also argue that the State's provision of differentiated aid to students meeting certain criteria is inadequate, and that the State should fund the cost of the essential resources that special education children need to access a *Free and Appropriate Public Education* ("FAPE"), as detailed in Individual Education Plans ("IEPs"). *See* Dr. Freeman Expert Rep. at 6-7.

## ARGUMENT

### I. Legal Standard

The admissibility of expert testimony is governed by New Hampshire Rule of Evidence 702, and “Rule 702 has been interpreted liberally in favor of the admission of expert testimony.” *Mosicki v. Leno*, 173 N.H. 121, 125 (2020) (quoting *Stachulski v. Apple New England, LLC*, 171 N.H. 158, 164 (2018)); *see generally* N.H. R. EVID. 702. This is even more true in a bench trial, where a court has broader discretion to admit expert testimony than in a jury trial. *See New Eng. Tel. Ops., LLC v. Town of Acworth*, No. 220-2012-CV-100, 2018 N.H. Super. LEXIS 4, at \*9 (Sup. Ct., Merrimack Cty. Mar. 12, 2018); *see also Warford v. Indus. Power Sys.*, 553 F.Supp.2d 28, 31 (D.N.H. 2008) (reaching same conclusion under federal *Daubert* standard). It is well-settled that “[o]bjections to the basis of an expert’s opinion go to the weight to be accorded the opinion evidence, and not to its admissibility. The appropriate method of testing the basis of an expert’s opinion is by cross-examination of the expert.” *Goudreault v. Kleeman*, 158 N.H. 236, 248 (2009) (quoting *Baker Valley Lumber, Inc. v. Ingersoll-Rand Co.*, 148 N.H. 609, 615-16 (2002)) (internal citation omitted). Additionally, courts should not exclude expert witness testimony based on the credibility or weight they attribute to the expert’s conclusions, as “[t]he proper focus for the trial court is the reliability of the expert’s methodology or technique.” *Baker Valley Lumber*, 148 N.H. at 616 (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592–95 (1993)). A qualified expert does not need to use any strictly defined methodology or perform testing to reach her conclusions; instead, it is sufficient that she consider the underlying facts in the case and apply her expertise in reaching a conclusion based on those facts. *Szewczyk v. Cont’l Paving, Inc.*, 176 N.H. 148, 158 (2023). The factual basis of an expert’s opinion goes to its credibility, not its admissibility, and courts should not exclude expert testimony on the grounds that its factual

basis is flawed unless no reasonable fact-finder could conclude that the facts it relies on are true. *Id.* at 159.

## **II. Dr. Freeman's Expert Opinions Are Admissible**

By the Motion, the State seeks to preclude Dr. Freeman from testifying at all, in any capacity. The Court should deny that relief.

### **A. Dr. Freeman is Qualified to Opine on Adequacy Funding**

The State cannot seriously contend that that Dr. Freeman is unqualified to opine on what educators need to deliver an adequate education to New Hampshire's students. Dr. Freeman is qualified to opine on adequacy funding based on his experience in creating school budgets for governing bodies and negotiating salaries with school employees. *See* Dr. Freeman Expert Rep. at 1. He has a Ph.D. in Educational Administration alongside his M.Ed. in Elementary Education, M.A. in English, and B.A. in Elementary Education. *See id.* at Ex. A (resume). Dr. Freeman was a school superintendent for fifteen years and an educator for over fifty. *Id.* Alongside his work experience as a superintendent, he was also a building administrator (namely, a school principal) and a classroom teacher. *Id.* Despite the State's argument that Dr. Freeman does not have an economics or statistics degree (Mot. at 4, 12), he has the appropriate expertise for analysis relating to school budgeting. Dr. Freeman's conclusions are based on an application of his expertise and experience, which is legally sufficient for admissibility of his testimony. *See Szewczyk*, 176 N.H. at 158.

### **B. Dr. Freeman's Opinions Are Relevant**

The State argues that Dr. Freeman's opinions are "not relevant to the cost of adequacy" for two reasons: (1) he did not isolate the components of adequacy in his expert report and (2) he did not calculate a specific, alternative base adequacy per pupil cost at his deposition. Mot. at 3; *id.* at 6 ("[H]e has no opinions regarding a specific amount necessary to achieve adequacy for any cost considerations he believes to be 'unclear and arbitrary.'"); *id.* at 12 ("Dr. Freeman

[sic] has not attempted to calculate the cost of an adequate education under RSA 193-E:2-a and his opinion is based on nothing more than his own say so.”). Both contentions are based off a mischaracterization of Plaintiffs’ burden.

First, as to the State’s first contention that Dr. Freeman failed to isolate components of adequacy, that argument was previously made at summary judgment, and the Court already rejected it. *See* Mem. of Law in Supp. of the State of New Hampshire’s Mot. for Summ. J. at 9, Doc. 71 (“[T]he plaintiffs have made no attempt to isolate what portions of a school district’s total expenditures are attributable to providing a constitutionally adequate education, as defined in RSA 193-E:2-a, I.”); SJ Order (“The plaintiffs’ specification of relevant costs undermines the State’s characterization that the plaintiffs seek to require State funding for all school district expenditures.”). To the extent that Dr. Freeman’s opinions reflect inputs that the State disagrees are part of adequacy, that goes to the weight of the evidence, not to its admissibility. The Court can determine relevance at trial; this is not a basis for wholesale exclusion of the Plaintiffs’ experts. *See Johnston v. Lynch*, 133 N.H. 79, 88 (1990).

Second, Plaintiffs are not required to calculate, or prove, the cost of a constitutionally or statutorily adequate education in New Hampshire. The Plaintiffs are only required to provide sufficient evidence that the State’s designated adequacy funding is insufficient to meet its definition of adequacy. *See* Order at 7, 41–42, *Contoocook Valley Sch. Dist. v. State*, No. 213-2019-CV-00069 (N.H. Super. Nov. 20, 2023) (“*ConVal* Trial Order”). Again, this criticism of his conclusions goes to the weight, and not the admissibility, of his testimony. *See Baker Valley Lumber*, 148 N.H. at 616 (holding that exclusion of expert testimony must not “be based upon the credibility or weight the court attributes to the expert’s conclusions.”). Dr. Freeman will show that the current adequacy cost is insufficient to fund a constitutionally adequate education, which is all that Plaintiffs’ burden requires. His opinion should not be excluded because it fails to answer a question which the law does not ask.

### **C. Dr. Freeman’s Opinions Are Admissible and Helpful to the Court**

#### **i. The State’s Criticisms Are Based on a Fundamental Misunderstanding of the Court’s SJ Order**

Throughout the Motion the State contends that Dr. Freeman’s opinions should be excluded because it is contrary to the Court’s SJ Order. *See* Mot. at 20 (“[T]his Court has already held that ‘it would be inappropriate to set an education funding level based solely on the simple mathematical exercise of determining statewide per pupil average of all school district expenditures’ . . . and has excluded that theory from this case.”). But this is based on a fundamental misunderstanding of both the Court’s order and the allegedly contrary testimony. The State wholly ignores that the Court emphasized the word “solely.” SJ Order at 8 (“It would be inappropriate to set an education funding level based *solely* on the simple mathematical exercise of determining the statewide per pupil average of all school district expenditures.”) (emphasis in original). The Order simply states that the adequate funding level cannot be “*exclusively* derived” from the “simple mathematical exercise” of averaging statewide per-pupil expenditures. *Id.* (emphasis in original).

Dr. Freeman’s opinion goes far beyond mathematics. He opines that both the Pittsfield school district’s and statewide expenditures are relevant indicators demonstrating that the State’s current funding level is deeply inadequate given the monumental difference between the State’s base adequacy cost and what districts actually spend. In essence, Dr. Freeman argues that the average is a more appropriate barometer of costs than the State’s unjustified number. *See, e.g.*, Dr. Freeman Expert Rep. at 2 (“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.”).

While the SJ Order found that average expenditures cannot be the sole input in determining an adequate funding level, the SJ Order cannot be read to find that those averages are not helpful. Indeed, the 2008 New Hampshire Joint Legislative Oversight Committee on Costing an Adequate Education relied on average expenditures in several categories of expenses. *See, e.g.*, Final Rep. & Findings of the Joint Legis. Oversight Comm. Pursuant to 2007 Laws Chapter 270 at 19 (Feb. 1, 2008) (“The committee determines that the cost of adequacy should be calculated using a teacher salary calculated at the state average for a teacher with a bachelor’s degree and three years of experience plus benefits at 33% of salary.”). And the State’s expert, Dr. Greene, agreed that the Committee’s process was reasonable. Greene Dep. at 126:20–127:4. Accordingly, by the State’s own admission, average expenditures are relevant.

**ii. Dr. Freeman’s Opinion That Adequacy Funding Is Insufficient Is Based on Both Experience and Analysis.**

Throughout the Motion, the State criticizes the methodology behind Dr. Freeman’s budgetary analysis and argues that he should have performed a data analysis. But this criticism entirely ignores that Dr. Freeman did, in fact, conduct a budgetary analysis and that his opinions reflect and incorporate his extensive experience and expertise.

Dr. Freeman was the superintendent of the Pittsfield School District for twelve years. *See* Dr. Freeman Expert Rep. at Ex. A (resume). In 2019, Dr. Freeman performed a budgeting analysis to determine how much of his budget he would need to cut to reduce his overall spend just to the amount provided by the State as adequacy aid (defined as base plus differentiated aid). *See id.* at Ex. B (Pittsfield Adequacy Exercise). He determined that he could not provide anything but regular education teachers with total adequacy costs, let alone provide any teachers or resources for special education. There is no dispute that a school district that only provides teachers is legally inadequate. Dr. Freeman determined that given his teacher salaries were near the bottom of salaries statewide (based on public state data), it is clear that no school

district can meet adequacy as defined by RSA 193-E:2-a solely based on adequacy funding. The State, which hasn't yet submitted a single piece of evidence to the contrary, ignores this.

The State also argues that “Dr. Freeman offered no opinions regarding what he might consider to be appropriate levels of teacher salaries and benefits to achieve an adequate education.” Mot. at 6. This mischaracterizes Plaintiffs’ burden. *See ConVal* Trial Order at 7, 41–42. Dr. Freeman utilized Pittsfield salaries in his analysis, and those salaries are significantly below the average salary statewide, so his report offers conservative numbers. Which, given that the 2008 Legislative Committee relied on average expenditures for teacher salaries, is a more conservative approach. *See* Greene Depo. Tr. 217:5–220:07. Despite the State’s protestations to the contrary, Dr. Freeman’s methodology is sound and should not be subject to exclusion.

**iii. The State’s Argument that Dr. Freeman Did Not Consider Other Sources of Funding Is Irrelevant**

The State’s criticism that Dr. Freeman did not take into account other sources of funding (i.e., state, federal, and private grants) in his expert report is simply irrelevant and is an argument about the weight, not the admissibility, of his opinions. The fact that school districts use other sources of funding as a stopgap to provide a constitutionally adequate education to students does not relieve the State of its duty to fund an adequate education. How school districts fund their operations in spite of the State’s inadequate financial support is irrelevant to the constitutional question as to whether the amount identified and provided by the State under RSA 198:40-a is sufficient to provide adequacy as defined by RSA 193:E-2-a. *See* Order on Mots. in Limine at 17–18, *Contoocook Valley Sch. Dist. v. New Hampshire*, No. 213-2019-CV-00069 (N.H. Super. Apr. 6, 2023).

Further, testimony at trial will show that other such sources of funding are variable and unreliable. *See, e.g.*, Freeman Depo. Tr. at 75:18–76:7 (noting an annual reduction in stabilization grant funding had a “significant impact on [the] local school budget”). These

other sources of funding are not guaranteed to renew on an annual basis or to renew at the same level. And these other sources often come with spending requirements that limit the district's ability to use those funding sources towards adequacy components. If an input is part of adequacy under New Hampshire law, it cannot depend on a funding source that is subject to change from year to year. Such a reliance would be unsustainable and unconstitutional. *See Claremont Sch. Dist. v. Governor* ("Claremont I"), 138 N.H. 183, 193 (1993) (outlining that the Legislature must define the specifics of an adequate education and must provide the appropriate means to fund it).

Nonetheless, even if other funding sources should be counted alongside adequacy costs (which they should not), such additional funding is still inadequate to provide a constitutionally adequate education. In the Pittsfield study outlined in his expert report, Dr. Freeman added additional State-provided funds (a stabilization grant,<sup>1</sup> special education aid, and Medicaid reimbursement) to Pittsfield's base adequacy funding. *See* Dr. Freeman Expert Rep. at Ex. B (Pittsfield Adequacy Exercise) at 1. This increase in funding still forced Dr. Freeman to cut mandated adequacy inputs such as teacher salaries for adequacy subject areas such as arts and physical education (under RSA 193:E-2-a) as well as other necessary resources for students. Therefore, the State's argument that other sources of State funding mitigate the insufficient base adequacy cost is unavailing. Dr. Freeman's testimony should therefore not be disqualified for disregarding such non-adequacy, variable sources of funding in his analysis.

## **CONCLUSION**

Plaintiffs respectfully request that this Court deny the State's Motion in its entirety.

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<sup>1</sup> Stabilization grants from the State decrease in cost each year and are designed to phase out entirely, therefore they cannot reasonably be considered adequacy. *See* Dr. John Freeman Depo. Tr. at 75:18–76:7.

Dated: August 30, 2024

Respectfully submitted,

/s/ John E. Tobin, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection has been served via the court's electronic filing system to all parties of record on this 30<sup>th</sup> day of August 2024.

/s/ John E. Tobin, Jr.  
John E. Tobin, Jr.

# **Exhibit 1**

November 30, 2022

Andru Volinsky,  
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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.

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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**



**John J. Freeman**

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**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?”