

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS ("NYSER"), MIRIAM ARISTY-FARER, MILAGROS ARCIA, G. CHANGLERTH, KIM DA SILVA, MONA DAVIDS, JANELLE HOOKS, NICOLE JOB, MERCEDES JONES, SONJA JONES, JAMAICA MILES, SAMANTHA PIERCE, SAM PIROZZOLO, HEIDI TESKA-PRINCE, BETHAMY THOMAS, ELIZABETH VELASQUEZ and CORY WOOD,

Plaintiffs,

vs.

THE STATE OF NEW YORK,

Defendant.

Consolidated  
Index No. 100274/2013  
(formerly 650450/2014)

Mot. Seq. No. 15

**Oral Argument Requested**

Hon. Lucy Billings

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY INJUNCTION**

EDUCATION LAW CENTER

David Sciarra  
Gregory G. Little  
Wendy Lecker  
60 Park Place, Suite 3200  
Newark, New Jersey 07102  
(973) 624-1815  
glittle@edlawcenter.org

WHITE & CASE LLP

Alice Tsier  
Michael-Anthony Jaoude  
Laura Garr  
  
1221 Avenue of the Americas  
New York, New York 10020  
(212) 819-8200  
alice.tsier@whitecase.com

*Attorneys for Individual Syracuse  
and Schenectady Plaintiffs*

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT..... 1

ARGUMENT..... 6

    I. A Preliminary Injunction is Warranted Under the Unique Circumstances of This Case..... 6

    II. Plaintiff is Likely to Succeed on the Merits..... 6

        A. The Record Shows that Schenectady’s Educational Inputs Are Inadequate..... 8

            a. The Majority of Schenectady Students Require an Expanded Platform of Services in order to Have an Opportunity to Learn..... 9

            b. Schenectady Cannot Provide its Students with Sufficient Resources That Correspond to their Needs..... 12

                i. Schenectady Lacks Sufficient Teaching Staff and Mental Health Staff..... 12

                ii. Schenectady has Excessive Class Sizes..... 15

                iii. Schenectady Cannot Provide an Expanded Platform of Academic Services for At-Risk Students ..... 17

                iv. Schenectady Cannot Provide Adequate Resources for Students with Extraordinary Needs..... 21

        B. There is No Dispute that Schenectady’s Outputs Are Inadequate ..... 23

            a. Test Scores ..... 23

            b. Graduation Rates..... 24

            c. Drop-Out Rates ..... 25

            d. School Designations..... 25

        C. The State’s Funding System is a Cause of Schenectady’s Inadequate Inputs and Outputs..... 26

            a. State Aid to Schenectady Does Not Provide Enough Funding to Enable Schenectady to Provide its Students with the Opportunity for an Adequate Education..... 27

            b. Increased Funding Has Led to Improved Inputs and Better Student Performance ..... 30

    III. Plaintiff Will be Able to Show Irreparable Harm ..... 32

        A. Courts Across the Country are in Accord that the Loss of Educational Opportunity Constitutes Irreparable Harm..... 33

        B. A 20% Cut to Schenectady’s Budget Will Result in an Irreversible Loss of Educational Opportunity..... 36

            a. Before the Threat of a 20% Cut, Schenectady’s Finances Have Been Uniquely Strained by the Pandemic Due to the High Needs of Its Students..... 36

            b. New York State’s Pandemic Adjustment and Other Cuts Further Strained Schenectady’s Budget..... 37

            c. The Threat of a 20% Cut Has Already Forced Schenectady to Cut Essential Staff and Programs..... 39

    IV. The Balance of the Equities Weigh Heavily in Plaintiff’s Favor..... 45

    V. Only a Nominal Undertaking Should be Imposed ..... 47

CONCLUSION..... 48

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>CASES</b>	
<i>A.T. v. Harder</i> , 298 F. Supp. 3d 391 (N.D.N.Y. 2018).....	35
<i>Aristy-Farar v. State of New York</i> , 29 N.Y.3d 501 (2017) .....	2, 7
<i>Ascentium Capital LLC v. Northern Capital Assoc. XIII, L.P.</i> , 2014 N.Y. Misc. LEXIS 1962 (Sup. Ct. New York Cnty. Apr. 25, 2014).....	46
<i>Barbes Rest. Inc. v ASRR Suzer 218, LLC</i> , 140 A.D.3d 430 (1st Dep’t 2016).....	33
<i>Binder v. Board of Mgrs. of Arris Lofts</i> , 2013 N.Y. Misc. LEXIS 6625 (Sup. Ct. Queens Cnty. Jan. 25, 2013).....	33
<i>Blazejewski v. Bd. of Educ.</i> , 560 F. Supp. 701 (W.D.N.Y. 1983).....	35
<i>Board of Mgrs. of Morton Sq. Condominium v. EQR – 600 Washington, LLC</i> , 2014 N.Y. Misc. LEXIS 4354 (Sup. Ct. N.Y. Cnty. Oct. 1, 2014) .....	7
<i>Borenstein v. Rochel Properties, Inc.</i> , 176 A.D.2d 171 (1st Dep’t 1991) .....	46
<i>Campaign for Fiscal Equity, Inc. v. State of New York (CFE II)</i> , 100 N.Y.2d 893 (N.Y. 2003).....	1, 6, 7, 8, 12, 17, 25, 27
<i>CFE v. State</i> , 187 Misc. 2d. 1 (Sup. Ct. N.Y. Cnty. 2001).....	6, 7, 8, 17
<i>Cipriani Fifth Ave. v. Rpci Landmark Proprs.</i> , 2004 NYLJ LEXIS 2252 (Sup. Ct. N.Y. Cnty. May 20, 2004) .....	34
<i>Clinton v. 695 Jefferson, LLC</i> , 2016 N.Y. Misc. LEXIS 3022 (Sup. Ct. Kings Cnty. Aug. 9, 2016).....	33, 35
<i>Cnty. Charter Sch. v. Bd. of Regents of the Univ. of the State of N.Y.</i> , 2013 N.Y. Misc. LEXIS 6790 (Sup. Ct. Erie Cnty. June 18, 2013).....	34
<i>Cooperstown Capital, LLC v. Patton</i> , 60 A.D.3d 1251 (3d Dep’t 2009).....	7
<i>Cosgrove v. Bd. of Educ.</i> , 175 F. Supp. 2d 375 (N.D.N.Y. 2001).....	35
<i>Daytop Village, Inc. v. Consolidated Edison Co.</i> , 61 A.D.2d 933 (1st Dep’t 1978).....	48
<i>Doe v. Axelrod</i> , 73 N.Y. 2d 748 (1988).....	6
<i>Egan v. New York Care Plus Ins. Co.</i> , 266 A.D.2d 600 (3d Dep’t 1999) .....	7
<i>Gardens Owners Corp. v. 35th Ave. Apt. Corp.</i> , 91 A.D.3d 702 (2d Dep’t 2012).....	48

*Ithilien Realty Corp. v. 180 Ludlow Dev. LLC*, 80 A.D.3d 455 (1st Dep’t 2011).....48

*John T. v. Delaware Cnty. Intermediate Unit.*, 2000 U.S. Dist. LEXIS 6169 (E.D. Pa. May 8, 2000).....34

*L&M Bus Corp. v. New York City Dept. of Educ.*, 873 N.Y.S. 2d 512 (Sup. Ct. N.Y. Cnty. 2008).....47

*Lew Beach Co. v. Carlson*, 57 A.D.3d 1153 (3d Dep’t 2008).....7

*LIJ v. N.Y.C. Bd. of Educ.*, 103 F. Supp. 2d 658 (E.D.N.Y. 2000).....34, 35

*M.W. v. N.Y.C. Dep’t of Educ.*, 2015 U.S. Dist. LEXIS 112832 (S.D.N.Y. Aug. 25, 2015).....35

*Mindel v. Educational Testing Serv.*, 559 N.Y.S.2d 95 (Sup. Ct. N.Y. Cnty. 1990).....34

*Mr. Sound, USA Inc. v. 95 Evergreen Bldg. Invs. III, LLC*, 2016 N.Y. Misc. LEXIS 898 (Sup. Ct. Kings Cnty. Feb. 16, 2016).....33

*Seitzman v. Hudson River Associates*, 126 A.D.2d 211 (1st Dep’t 1987).....47

*VOOM HD Holdings LLC v. Echostar Satellite LLC*, 2008 N.Y. Misc. LEXIS 9855 (Sup. Ct. N.Y. Cnty. Apr. 23, 2008).....34

**STATUTES AND RULES**

N.Y. C.P.L.R. § 6301.....6, 33

N.Y. Comp. Codes. R. & Regs. tit. 8 § 100.2(ee).....18

Pub. L. No. 116-136, § 18003.....38

## PRELIMINARY STATEMENT

There is no doubt that the ongoing pandemic has materially impacted the lives of all New York citizens and has created significant financial burdens and budgeting imponderables for the State of New York. But a pandemic does not provide the State with license to violate the constitutional rights of its citizens with an arbitrary de-funding of its public school system in the name of budget gap filling. As Plaintiff sets out below, that is exactly what the State is doing with respect to the Schenectady City School District. And, there can be no serious doubt that if it is permitted to reduce Schenectady's school budget in an arbitrary and unconstitutional manner, there will be a long lasting, irreparable infringement upon Schenectady public school students' constitutionally guaranteed opportunity for a sound basic education. By this motion, Plaintiff asks the Court to enjoin the State from causing this catastrophic result.

\*\*\*

The New York Constitution requires the State of New York to ensure that every child is provided with the opportunity for a sound basic education—also described as a “minimally adequate education.” *See Campaign for Fiscal Equity, Inc. v. State of New York (CFE II)*, 100 N.Y.2d at 902, 905–09, 914, 917–23, 927–28, 930–31 (2003). A minimally adequate education is an education that provides students with the knowledge and skills necessary to function as civic participants, capable of voting, serving on a jury and competing for jobs. In 2003, the Court of Appeals confirmed that this mandate required the State to ensure, through its education finance system, that school districts across New York had enough money to place that opportunity within the reach of every child, “including those who present with socioeconomic deficits.” *Id.* at 893, 915. Seventeen years later, the State has yet to fulfill its constitutional obligation to the students of Schenectady.

This case was filed in 2013. *Aristy-Farer v. State of New York*, 29 N.Y.3d 501, 510 (2017). Plaintiff joined the litigation on May 23, 2018, with the filing of the Third Amended Complaint (“TAC”).<sup>1</sup> [NYSCEF No. 160]. The TAC alleges, based on research, that Schenectady does not have enough teachers, staff, mental health specialists, trauma services and academic supports necessary to mitigate the impact of entrenched poverty in the District, and give its students a meaningful opportunity to learn. The parties proceeded to take discovery. Discovery has now borne out the allegations in the TAC, including the following facts:

- Children in Schenectady face significant trauma in their lives. Some students have parents who are incarcerated or suffer from substance abuse. Others have had their parents killed by police. Many come to school hungry, with their basic needs unmet.
- Schenectady lacks mental health resources to address even a fraction of the trauma faced by its students.
- Schenectady’s social workers have overwhelming caseloads, making it nearly impossible for them to meet the needs of every student.
- Schenectady cannot afford a core reading program; despite the widespread level of reading deficits, the District can only afford one reading specialist for 150 students.
- Schenectady has identified 8,000 students who need academic intervention. 5,600 of those students receive no formal intervention because the District cannot afford it.
- While Schenectady can afford some effective interventions, it cannot afford enough for all the students who need them. As a result, District officials are placed in the untenable situation of having to engage in triage, being forced to choose which children will get the opportunity to learn. The District regularly faces choices such as deciding whether to hire crisis intervention specialists or math coaches.
- Four Schenectady witnesses, including the director of special education, the director of pupil personnel services, the director of student intervention services, and a recently retired principal, testified unanimously that despite their best efforts, they are unable to provide all of their students the opportunity for an adequate education.

---

<sup>1</sup> The other plaintiffs in this case are parents from New York City and Syracuse, as well as New Yorkers for Students’ Educational Rights (“NYSER”), a non-profit organization.

As a result of these circumstances, Schenectady has some of the worst academic outcomes in the State:

- Each year in the last decade, about a fifth of Schenectady's students dropped out of school entirely, nearly triple the state average.
- Of those who remained in school, 40–50% on average did not graduate.
- Many students in Schenectady cannot meet the learning standards for their grade levels. State assessments have shown that that on average, for the last decade, 80% of third through eighth graders in Schenectady cannot read or perform math at grade level.
- Those numbers are even worse for Schenectady's students with disabilities and English Language Learners (95% and 97% respectively).
- Fifteen out of the sixteen Schenectady schools have been subject to state accountability measures for being in the bottom 5% of lowest performing public schools in the State for at least two consecutive years since 2013. Twelve of Schenectady's schools have been on this list, every year, since 2014.

Prior to the pandemic, the parties were on track to complete discovery and prepare this case for trial. However, recent events have forced Plaintiff to seek this Court's relief immediately in order to preserve even the unacceptable status quo.

In the face of a global pandemic, Schenectady has had to divert its already strained budget to purchase protective equipment, hire additional janitorial staff, and develop remote learning strategies. Unlike more affluent districts, Schenectady has also had to purchase remote learning technology for its students, find ways to provide internet to families who do not have it, and deliver food to its students, most of whom qualify for a free lunch and depended on school for a guaranteed meal each day. While the federal government provided the State with funding to offset those costs, the State reduced Schenectady's State Aid by exactly the amount it would have received under the CARES Act. Schenectady was thus forced to absorb the costs of dealing with the pandemic on its own.

Now, the State threatens to withhold an additional 20% from Schenectady's State Aid in the coming year: a sum of approximately \$30 million, out of a budget of \$130 million. Schenectady does not have the money to absorb such a reduction in its budget. As a result, it has already been forced to take the following measures:

- Lay off 25% of its total workforce including high-quality teachers, social workers, guidance counselors, paraprofessionals, administrative staff, and more;
- Close down and consolidate multiple schools increasing already overfilled class sizes;
- Shift all students grades 7-12 to an all virtual school with the exception of special education students in a self-contained classroom;
- Cut its most successful intervention program, which served over 2,600 students who needed intervention;
- Cut its entire instructional coaching program, which provided trainings to teachers;
- Lay off its entire district behavior specialist team;
- Lay off its entire intensive case management team, which provides services to the most at-risk students; and
- Cut its entire Pre-K program.

This list represents only a fraction of the cuts the District will be forced to make as a result of the State's threat of reducing Schenectady's State Aid by 20%.

In a district where severe and chronic underfunding by the State has already deprived students of the educational resources they need to learn, slashing additional educational resources all but guarantees that a generation of students will be deprived of an opportunity to receive an adequate education. The Court can and should intervene.

Under these extraordinary circumstances Plaintiff will easily meet the three-part test for a preliminary injunction.

*First*, Plaintiff is likely to succeed on the merits. Even before the pandemic, with a booming economy, the State woefully underfunded Schenectady's schools, leaving the District



unable to afford enough services, programs, and staff to support its students—especially the most vulnerable among them. By every measure—from test scores, to graduation and dropout rates—the evidence demonstrates that the State is failing these students, and has been failing them for the last decade.

*Second*, a failure to issue immediate relief will cause irreparable harm by taking away from students’ access to even the minimal mental health and academic support services that the District was able to provide prior to the threatened cuts. The cuts will all but guarantee that Schenectady will not have the resources to support its students remotely, or re-open safely. As a result, children will be denied access to the free public education that the Constitution guarantees them. Because education is cumulative, Schenectady’s children may never catch up to grade level.

*Third*, the balance of equities weighs heavily in favor of injunctive relief. Movant is cognizant and respectful of the budgetary challenges facing the State, but fiscal challenges do not warrant infringing on the constitutional rights of the State’s most vulnerable children in a manner from which they may never recover. Even the mere threat of the proposed reductions has forced Schenectady to fire over 400 educators that the District may not be able to get back. An actual 20% cut would only result in more layoffs. By comparison, any harm to the State is *de minimis* because the injunction would merely compel the State to cut these funds from elsewhere, such that the cut would not result in a violation of the constitutional rights of New York citizens.

## ARGUMENT

### I. A PRELIMINARY INJUNCTION IS WARRANTED UNDER THE UNIQUE CIRCUMSTANCES OF THIS CASE

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do . . . an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual.” N.Y. C.P.L.R. § 6301. In order for a preliminary injunction to be granted, the party seeking relief must demonstrate “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party’s favor.” *Doe v. Axelrod*, 73 N.Y. 2d 748, 750 (1988). Plaintiff satisfies each of these requirements.

### II. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

To succeed on the merits Plaintiff will have to demonstrate that the State has failed to ensure that all students in Schenectady have the opportunity to obtain a sound basic education: one which “prepares [students] to function productively as civic participants” and participate competitively in the work place. *CFE II*, 100 N.Y.2d at 908. The analysis proceeds in two steps:

*First*, Plaintiff must show that students cannot access essential educational resources (“inputs”), and that the district suffers from inadequate academic outcomes (“outputs”). *Id.* at 908. Inputs include, but are not limited to, (i) sufficient numbers of qualified teachers, principals and other personnel; (ii) appropriate class sizes; (iii) adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum; (iv) sufficient and up-to-date books, supplies, libraries, educational technology and laboratories; (v) suitable curricula, including an expanded platform of programs to help at-risk students by giving them “more time on task”; (vi) adequate resources for students with extraordinary needs; and (vii) a safe and orderly environment. *See CFE v. State*, 187 Misc. 2d. 1, 114–15 (Sup. Ct. N.Y. Cnty.

2001), *aff'd*, *CFE II*, 100 N.Y.2d at 932. Outputs include, but are not limited to, (i) low test results; (ii) low graduation rates, and (iii) high dropout rates. *Id.* at 60.

*Second*, Plaintiff must establish “a causal link between the present funding system and any proven failure to provide a sound basic education.” *Aristy-Farer v. State of New York*, 29 N.Y.3d 501, 507 (2017). Causation is established by showing that “increased funding can provide better teachers, facilities and instrumentalities of learning,” which then in turn is shown to improve student performance. *CFE II*, 100 N.Y.2d at 919.

As summarized below, the evidence gathered to date shows that for over a decade Schenectady has been unable to give all of its students the opportunity to gain the essential skills and knowledge that they need to compete for gainful employment based on the “demands of modern society.” *Id.* at 905. That is sufficient for this Court to grant a preliminary injunction. *Egan v. New York Care Plus Ins. Co.*, 266 A.D.2d 600, 601 (3d Dep’t 1999) (obtaining a preliminary injunction “does not compel a demonstration that success on the merits is practically a certitude”); *see also Cooperstown Capital, LLC v. Patton*, 60 A.D.3d 1251, 1252–53 (3d Dep’t 2009) (“success need not be a certainty to obtain a preliminary injunction”); *Lew Beach Co. v. Carlson*, 57 A.D.3d 1153, 1155 (3d Dep’t 2008) (noting that even though “there [was] no doubt that questions of fact exist” the court was allowed to exercise its discretion in issuing a preliminary injunction to preserve the status quo); *Board of Mgrs. of Morton Sq. Condominium v. EQR – 600 Washington, LLC*, No. 152677/14, 2014 N.Y. Misc. LEXIS 4354, at \*4 (Sup. Ct. N.Y. Cnty. Oct. 1, 2014) (“The existence of factual questions for a trial does not prevent a party from establishing a likelihood of success on the merits; success need not be a certainty to obtain a preliminary injunction”).

### A. The Record Shows that Schenectady's Educational Inputs Are Inadequate

A sound basic education requires both that students graduate from high school, and that they do so with the skills they need to compete for jobs and function in the modern workplace. The Court of Appeals has emphasized that the State must put this opportunity in reach of all students, including those experiencing poverty. *CFE v. State*, 187 Misc. 2d at 114–15 (Sup. Ct. N.Y. Cnty. 2001), *aff'd*, *CFE II*, 100 N.Y.2d at 932. The parties agree (and research confirms) that in order to make a living wage in the modern economy, students must obtain some post-graduate training.<sup>2</sup> This has been so for the last 10 years.<sup>3</sup> Accordingly, the State has developed learning standards that break down the minimum skills and knowledge that students need at each grade level in order to graduate with the skills to pursue a job or further training.<sup>4</sup> Without acquiring the skills and knowledge embodied in the learning standards, students cannot graduate.<sup>5</sup>

The parties agree on the following principles: (i) all students can meet the learning standards when provided with adequate supports;<sup>6</sup> (ii) different students may need different

---

<sup>2</sup> Jaoude Aff. Ex. A, Kathleen DeCataldo (Assistant Commissioner of the Office of Student Support Services, New York State Education Department) Dep. Tr., dated Feb. 21, 2020, 163:15–25, 164:1–5 (hereinafter “Feb. 21, 2020 DeCataldo Tr.”) (“[T]he research is pretty clear that in today’s society, . . . most kids need a college education or at least some college experience or, you know, some type of a credential [to be employed at a living wage] . . .”).

<sup>3</sup> *Id.* 163:12–14.

<sup>4</sup> Memorandum from Ken Slentz, *Implementation of the Common Core Learning Standards 3* (Mar. 6, 2013), <https://www.engageny.org/resource/field-memo-transition-to-common-core-assessments> (“If students are to graduate high school fully prepared [for the demands of college and careers], they must meet the benchmarks set by the Common Core – at every grade and in every classroom.”).

<sup>5</sup> *Id.*

<sup>6</sup> Jaoude Aff. Ex. B, Marybeth Casey (Assistant Commissioner for the Offices of Curriculum Instruction and Early Learning, New York State Education Department) Dep. Tr., dated Aug. 18, 2020, 410:15–25 (hereinafter “Casey Tr.”) (“Q. So in order for ELLs and MLLs to have meaningful access to the math learning standards, they would need to have the supports and instruction necessary to access the standards and reach the targeted goals for the lessons that other students are reaching? A. Yes.”); 413:9–19 (“Q. So it would be fair to say that in order to have meaningful access to the learning standards, students with disabilities would need to have the supports necessary and the instruction necessary to access the standards and reach the targeted goals for the lessons the general ed students are reaching? A. Yes, I think that’s fair to say.”).

educational resources in order to acquire the knowledge and skills embodied in the standards, with some students requiring an expanded platform of supports due to the effects of poverty, trauma, disability, or other circumstances; (iii) accordingly, the question of whether educational inputs are adequate can only be answered with reference to the needs of particular students.<sup>7</sup>

As discussed below, the evidence amply shows that due to entrenched poverty and its attendant effects, including trauma, the majority of students in Schenectady require an expanded platform of mental health resources, social and emotional supports, and academic services in order to acquire the skills and knowledge they need to graduate. The evidence further shows that despite the Herculean efforts of District officials and employees, Schenectady cannot meet every student's educational needs, as the Constitution requires. Instead, they are forced to triage and leave some students behind.

**a. The Majority of Schenectady Students Require an Expanded Platform of Services in order to Have an Opportunity to Learn**

Schenectady is home to 9,000 of the United States' most vulnerable and high-needs students, and as of 2012, had the 13th highest concentration of childhood poverty in the *country*.<sup>8</sup> Schenectady's current student population is 31% Black, 21% Hispanic or Latino, 19% Asian, 22%

---

The Court of Appeals has confirmed this principle. *CFE II* 100 N.Y.2d at 915 (stating that the opportunity for a sound basic education must "be placed within reach of all students . . . . This observation follows from the constitutional mandate to provide schools wherein all children may be educated, and is consistent with the official position of the Regents and Education Department . . . that all children can learn given appropriate instructional, social, and health services.").

<sup>7</sup> Jaoude Aff. Ex. C, Brian Cechnicki (Director of Education Finance, NYSED) Dep. Tr., dated Jan. 23, 2020, 102:9–17 (hereinafter "Cechnicki Tr.") (stating that the foundation aid formula "takes into account weightings for certain types of students; students designated as free and reduced price lunch, students designated under census poverty, English language learners, students determined to be in sparsity, which is sort of a measure of rural-ness, and special education status").

<sup>8</sup> According to the 2011 American Community Survey, Schenectady is 13th in the nation for highest childhood poverty rate among cities over 65,000 in population. See Lauren Stanforth, *Census: Most Schenectady Kids Live in Poverty*, Times Union (Oct. 6, 2012), <https://www.timesunion.com/local/article/Census-Most-Schenectady-kids-live-in-poverty-3925563.php>.

White, and 8% multiracial.<sup>9</sup> Four percent of its students are English Language Learners and 18% are students with disabilities. Nearly eight out of ten children attending school in Schenectady come from low income families,<sup>10</sup> and over a fifth of them live in poverty—living on a yearly income less than \$25,750 for a family of four.<sup>11</sup> As a result, 77% of Schenectady’s students are considered economically disadvantaged and eligible for free school lunches. A further 2% of Schenectady students are homeless.

Understanding the effects of poverty on Schenectady’s students is essential to understanding the District’s educational challenges. As Schenectady’s own educators have explained: many students come to school malnourished and unprepared to learn;<sup>12</sup> many also come to school already academically behind due to learning disabilities that parents did not know their children had because their children received no early intervention or preschool special education services;<sup>13</sup> many suffer from trauma caused by having an incarcerated parent or a parent who suffers from substance abuse;<sup>14</sup> some students have had parents killed by police.<sup>15</sup> The effects of

---

<sup>9</sup> Compare this to the State average of 17% Black, 27% Hispanic or Latino, 10% Asian, 43% White, and 3% multi-racial.

<sup>10</sup> In 2018-19, 77% of Schenectady students were economically disadvantaged. NYSED Data Site, *Schenectady City School District Enrollment (2018-19)*, <https://data.nysed.gov/enrollment.php?year=2019&instid=800000038389>.

<sup>11</sup> The rate of economically disadvantaged students in New York State is 57%. NYSED Data Site, *N.Y. State Public School Enrollment*, <https://data.nysed.gov/enrollment.php?year=2019&state=yes>.

<sup>12</sup> Jaoude Aff. Ex. D, Jessica Allen (Director of Special Education, Schenectady City School District) Dep. Tr., dated Nov. 12, 2020, 176:7–13 (hereinafter “Allen Tr.”) (“First and foremost, students in Schenectady, as I mentioned previously, come to school oftentimes with a lot of their basic needs not being met and so when students are coming in hungry, they’re not ready to learn because they’re thinking about being hungry.”).

<sup>13</sup> Allen Tr. 178:25–179:8 (“Now when you couple that with students who may come into school whose parents didn’t realize they had a disability prior to coming to school, so they didn’t receive early intervention or preschool special education services, then they’re even more behind the 8 ball in trying to catch up.”).

<sup>14</sup> Allen Tr. 177:10–15 (“We have a lot of students come to the table whose parents are incarcerated or whose parents have had problems with substance abuse or alcohol abuse and so they’re bringing those needs to the table.”).

<sup>15</sup> Jaoude Aff. Ex. E, Erika MacFarlane (Director of Student Intervention Services, Schenectady City School District) Dep. Tr., dated Oct. 30, 2020, 123:18–25 (hereinafter “MacFarlane Tr.”) (“We live in an urban setting where there is a lot of violence and our students are encountering trauma, we had a student who had a parent –

poverty are compounded by, and inextricable from, the abnormal amount of trauma Schenectady students face in their young lives. This trauma, when not attended to, can cause disruptive behavior in classrooms and prevent students from being able to have a successful school career.<sup>16</sup>

To meet these challenges the District has said that the following resources are essential:

(i) sufficient teaching and mental health staff to provide academic and mental health supports to students;<sup>17</sup> (ii) smaller class sizes to allow educators to give more time to each student that needs it;<sup>18</sup> (iii) supplemental academic programs and supports to help students catch up on basic skills;<sup>19</sup>

---

we've had students who have had parents killed by the police in Schenectady, and when that happens the school is the one, the agency, that wraps around students.”).

<sup>16</sup> Jaoude Aff. Ex. F, Andrea Tote-Freeman (Director of Pupil Personnel Services, Schenectady City School District) Dep. Tr., dated Oct. 28, 2020, 251:14–252:25 (hereinafter “Tote-Freeman Tr.”) (“[I]f a student endures trauma and they don’t have an environment in which it takes that trauma sort of into consideration in how they work with that student, I feel that they might find themselves pretty unsuccessful for their school career.”); *id.* at 249:19–250:14 (agreeing that “[c]hronic exposure to trauma can significantly impair learning and cause physical and emotional distress, affecting a child’s attention, memory, and cognition. Some children are unable to focus, organize or process information, problem solve or plan. Many students who experience [Adverse Childhood Experiences] come to school with feelings of frustration, worry and anxiety. In the classroom this might also present itself or be interpreted as poor behavior.”).

<sup>17</sup> Allen Tr. 223:5–18 (“[W]e need to staff more social workers, social psychologists, and/or have more specialized programs for students so that we’re able to support their needs.”); Tote-Freeman Tr. 288:15–289:24 (“[W]e have a significant number of students who really could benefit from social work support, for example, whether it be mental health, trauma, whatever it may be, but there’s not enough social work support for us to ensure that all of them have the ability to have counseling.”); *id.* at 144:8–145:5 (“All I can say to you, that our trauma-sensitive schools institute that we have in the summertime is really well-received, well-attended, we see a lot of good results from practitioners going back to schools and trying to sort of reimagine the way they do things in a more trauma-informed way. And those seats are very coveted because we can’t afford to hold that training for everyone.”).

<sup>18</sup> Allen Tr. 308:17–309:14 (“I do believe that our class sizes are too large to meet our students’ needs.”); MacFarlane Tr. 330:14–16 (“I also know that we do have pretty large class sizes compared to other districts as well.”).

<sup>19</sup> MacFarlane Tr. 321:9–23 (“If I put it in the context of the fact that we have a lot of students who require additional supports, you know, that are not getting it because we don’t have enough of them . . . . You know, we have students who are struggling and we can only service a certain number of students at a time given the needs of the students.”); *id.* at 46:22–47:3 (“We have such a need for students who require intervention and additional support that there are always students sitting in schools who aren’t getting the reading support or the gen ed continuum support that they need.”).

and (iv) additional resources for students with disabilities.<sup>20</sup> The District’s testimony comports with the State’s own view of what at-risk students need to be able to learn.<sup>21</sup>

As discussed below, Schenectady cannot provide these essential resources to each student that needs them and has not been able to do so for the last ten years.

**b. Schenectady Cannot Provide its Students with Sufficient Resources That Correspond to their Needs**

*i. Schenectady Lacks Sufficient Teaching Staff and Mental Health Staff*

The Court of Appeals has stated that quality teaching is the most important educational input. *CFE II*, 100 N.Y.2d at 909 (“The first and surely most important input is teaching.”) Over the last decade, Schenectady has not had enough properly trained teachers and teaching assistants to enable Schenectady students to learn and, because of a lack of resources, has not been able to recruit, hire, and retain sufficient numbers of experienced teachers, teacher assistants, and paraprofessionals, or to equip those they hire with sufficient resources to meet the needs of Schenectady students.<sup>22</sup>

---

<sup>20</sup> MacFarlane Tr. 331:20–25 (“I can say that we can’t offer AIS to all students in need of it, because the number of students who require AIS support in different subjects far outweighs the number of teachers we have to be able to provide that support.”).

<sup>21</sup> *See, e.g.*, “[Y]ou would really want to get someone who that was their expertise, a mental health counselor, a social worker, a school psychologist if a child is really in crisis.” DeCataldo Tr. 294:16–21; 294:22–295:3 (regarding mental health services); “Addressing staffing shortages was a – was a priority issue as far as being able to recruit and – hire sufficient certified staffing.” Jaoude Aff. Ex. G, Christopher Suriano (Assistant Commissioner of Special Education, NYSED) Dep. Tr., dated July 16, 2020, 43:12–15 (hereinafter “Suriano Tr.”) (regarding staffing shortages); “[W]e recommend that any initial professional learning on social emotional learning starts with teaching the competencies to teachers and support staff and other pupil staff such as your school counselor so that everybody is working with young people around the same framework, and then you start incorporating it into your classroom.” June 23, 2020, DeCataldo Tr.460:14–25 (regarding adequate teacher training).

<sup>22</sup> Allen Tr. 308:17–309:14 (“[F]unding, insufficient funding does create some of these scenarios, which include some inadequate teachers, certainly inadequate paraprofessionals and support staff.”); *id.* at 311:12–20 (“[W]e have, as I mentioned before, very few teaching assistants because our teaching assistant salary is not at all competitive, so we can’t find people who are willing to work for the wages that we’re offering.”); *id.* at 310:12–16 (“I don’t think that what we’re able to provide in terms of our compensation outweighs the amount of strife and stress that it requires to be a teacher in Schenectady.”).



Many Schenectady schools need several adults in each room in order to adequately support students in practicing skills independently, address trauma-based behavior issues that disrupt classroom learning, and provide individualized attention to students who have fallen academically behind and are at risk of disengaging entirely. Schenectady cannot afford to hire enough teachers and assistants to accommodate these circumstances. As a result, teachers cannot support all students who need assistance in the classroom, leaving many students to disengage entirely from their classwork.<sup>23</sup> Teachers are also often left with no choice but to send students with behavioral issues out of the classroom.<sup>24</sup> To equip teachers with the tools to deal with these issues, Schenectady strives to provide them with professional development, including training on trauma sensitivity,<sup>25</sup> but they cannot afford to make this training available to all their teachers.<sup>26</sup>

---

<sup>23</sup> Jaoude Aff. Ex. O, Diagnostic Tool for School and District Effectiveness (DTSDE) – Dr. Martin Luther King, Jr. Magnet School 16 (Apr. 7-9, 2014), NYSER\_DEF\_0000147809 (“Teachers do not use a range of instructional methods to engage students throughout lessons. In a number of lessons, the activities provided where [sic] not challenging or matched to the abilities or needs of students. As a result, in some classes students were not engaged but rather had their heads down on the desk, were having [off-topic conversations] with other students, banking pencils on the desks, or writing on their own or other students’ hands.”).

<sup>24</sup> Allen Tr. 238:16–239:22 (“Oftentimes the way that looks in the school building is, you know, maybe a social worker plus two staff having to restrain one student while another social worker is helping to de-escalate another student, you know, maybe we’ve got several students now missing instruction and in the principal’s office because their teachers are struggling with how to maintain them—those students are struggling to be able to maintain themselves in the classroom. We have got another student running the hallways and so we’ve got another social worker that’s attempting to de-escalate that situation. These are the things that we deal with every single day.”).

<sup>25</sup> Allen Tr. 222:14–25 (“So when you have such high number of students coming into classroom with some severe trauma-based behaviors, that might include tendency to fight or flee or withdraw, that teachers are equipped with the ability to deal with those things in ways that don’t result in the student having to be sent out of the classroom in order to get those needs met, where then the student is missing the learning they need to be in the classroom. So professional development is one of the big things that we have to do to meet those needs.”).

<sup>26</sup> In addition to lacking sufficient numbers of staff, Schenectady has not been able to provide the staff they do have with necessary anti-racism and implicit bias training to help grapple with the root causes behind negative student behavior and address the needs of Schenectady’s diverse population. *See* Tote-Freeman Tr. 142:8–143:10 (When asked whether the district had sufficient resources to provide implicit bias training for its staff, Andrea Tote-Freeman responded “right now absolutely, no.”). This training is necessary to address the disproportionate suspension rates of black students, particularly those with disabilities. *Id.* at 141:7–23; 100:3–101:10.

Even if Schenectady could afford to make this training available, they cannot afford to hire substitute teachers to fill-in for teachers attending professional development.<sup>27</sup>

The lack of teachers means that Schenectady cannot provide Schenectady students—many of whom are academically behind—with sufficient practice, feedback or other support, that would enable them to master the curriculum.<sup>28</sup> The State concedes that teaching students some of the skills they need to acquire in order to graduate (higher-order skills like effective writing) requires more teacher time.<sup>29</sup> But Schenectady does not have enough teachers to provide it.

In addition, and most critically for Schenectady students, Schenectady has not been able to hire enough staff to meet their students' mental health needs—a prerequisite for allowing them to learn.<sup>30</sup> In fact, from 2009-2014, cuts to State funding forced Schenectady to eliminate over 360 staff, including teachers, principals, administrators, social workers, guidance counselors, psychologists, nurses, and librarians, as well as the services and programs that those staff provided.

---

<sup>27</sup> MacFarlane Tr. 117:2–10 (“Even if we were able to pay for that, it’s not mandatory and so I think some of the barriers we have with our professional development is time, to pay teachers to do the training and then, you know, when we do it during the school day, students are without their teachers, they are with a substitute teacher, and that cost [sic] money as well.”).

<sup>28</sup> MacFarlane Tr. 34:23–35:3 (“If we were to give school-based support team to every student who required it, there is not enough hours in the day for us to go through every student for that.”); Allen Tr. 184:3–185:25 (“[W]e don’t have enough certified reading teachers to be able to provide specialized reading to the level that our students need it pick and choose who is able to access specialized reading services.”); MacFarlane Tr. 30:15–17 (“[W]e just don’t have enough reading teachers in order to meet those needs.”).

<sup>29</sup> Casey Tr. 447:24–448:8 (“Q. For example, if the [learning] standards require [] students have a lot of practice writing argumentative essays, wouldn’t that necessarily mean that you need sufficient teacher hours to grade those essays and provide feedback to students on their writing? A. Yes.”).

<sup>30</sup> Research has shown that mental health services are crucial to keeping at risk children in the classroom by lowering dropout rates, suspension rates, increasing graduation rates, and increasing overall academic performance. Nat’l Ass’n of School Psychologists, *Research Summaries: The Relationship Between Mental Health and Academic Achievement* (2020) [https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/MentalHealthAcademicAchievement\\_2020.pdf](https://www.nasponline.org/Documents/Research%20and%20Policy/Research%20Center/MentalHealthAcademicAchievement_2020.pdf) (“Indeed, fostering positive mental health in students has been shown to enhance academic growth and several curricula exist that aim to grow academic competences through social and emotional learning.”). The State even concedes that mental health services are essential. Kathleen DeCataldo, the Assistant Commissioner of the Office of Student Support Services at New York State Education Department, testified that social emotional learning skills are “a critical aspect of a child’s ability to learn.” Jaoude Aff. Ex. H, Kathleen DeCataldo Dep. Tr., dated June 23, 2020, 444:22–445:3 (hereinafter “June 23, 2020 DeCataldo Tr.”).

Accordingly, Schenectady’s mental health professionals could serve only a fraction of the children who need them.<sup>31</sup> In 2015 and for a few years after, increases in school funding allowed Schenectady to hire more staff and improve those numbers slightly. While this led to some students receiving additional services and corresponding improvements in academic outcomes, the increased funding was not nearly enough to meet all of the children’s needs.<sup>32</sup> The District was forced to continue to triage. Students continued to be left behind.<sup>33</sup>

*ii. Schenectady has Excessive Class Sizes*

A lack of teachers and support staff forced Schenectady to put its students into classes that are too large, given the level of student need and the amount of support that teachers must provide. Research shows that large class sizes can have a detrimental impact on student learning—particularly for students with high needs—because they lead to reduced student access to the teacher, less individualized instruction, and more classroom disruptions.<sup>34</sup> Evidence from Schenectady supports the research. It has been well-known for years that keeping class sizes below 20 can lead to higher student achievement.<sup>35</sup>

While there is no magic number for adequate class size<sup>36</sup>, Schenectady officials have testified that the class sizes in Schenectady are too large to meet the learning needs of

---

<sup>31</sup> See Tote-Freeman Tr. 288:15–289:24.

<sup>32</sup> Tote-Freeman Tr. 289:25–291:12 (“[W]e’ve been adding social work the last couple of years and we definitely have increased the number of social workers we have in the department over the last probably three years. And I think that was helping, but I don’t know that we were at that place of saying, okay, it’s adequate, we don’t need to hire anymore social workers.”).

<sup>33</sup> See *id.*

<sup>34</sup> Ivor Pritchard, *Reducing Class Size-What Do We Know?* 4, U.S. Dep’t of Educ. (Mar. 1999), <https://www.classsizematters.org/wp-content/uploads/2012/11/ReducingClassSize.pdf>.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> As CFE has explained, Plaintiff does not have a burden “to prove that some specific number is the maximum class size beyond which children ‘cannot learn.’” Plaintiff can meet its burden by showing that “evidence of the

Schenectady's students.<sup>37</sup> As one witness explained, many Schenectady students come into the earlier grades with significant learning gaps that require individualized attention. In her experience she has witnessed that, "[m]any [Schenectady] students come to the table with never having seen a book before" and not even knowing how to hold one.<sup>38</sup> Thus, class sizes that may be adequate in other districts are not adequate in Schenectady.<sup>39</sup>

Further, Schenectady's official class sizes, which fall within the legal limit, fail to tell the full story. Between 2009 and 2015, Schenectady's staffing shortages were so severe that Schenectady could not maintain the legally required class sizes. Required by law to maintain class sizes that they could not afford to staff, Schenectady was left with no choice but to create split-level classrooms: classrooms that contained two grade levels learning different curricula.<sup>40</sup> Teachers in those classes were forced to cope with teaching two different curricula, to as many as 30 high-need students.<sup>41</sup> Only after Schenectady's funding began to increase in 2015 was the District able to stop holding split-level classes.<sup>42</sup>

---

advantages of smaller class sizes supports the inference sufficiently to show a meaningful correlation between the large classes . . . and the outputs to which we soon turn," *CFE II*, 100 N.Y.2d 893 at 912.

<sup>37</sup> Schenectady witnesses unanimously identify class sizes as one of the biggest barriers to meeting students' needs. *See e.g.*, Allen Tr. 308:22–24 ("I do believe that our class sizes are too large to meet our students' needs."); MacFarlane Tr. 330:14–16 ("I also know that we do have pretty large class sizes compared to other districts as well."); Allen Tr. 178:12–21 ("And then thinking about how we're prescribing services to students, our class sizes are relatively large when you think about most students who would be educated in a preschool environment, the ratios in those classrooms are very small. Students are coming in with no school exposure at five years old with only one teacher to try to teach them with all of the factors that I just mentioned . . ."; *id.* at. 199:9–16 ("But there [are] also barriers to our co-teaching programs. . . one of them being large class sizes.")).

<sup>38</sup> *Id.* at 179:9–180:3.

<sup>39</sup> *Id.* at 178:12–180:3.

<sup>40</sup> Ned Hoskin, *NYSUT Calls for Equitable Increases in School Aid to Lift the Burden on High-Needs Districts*, NYSUT.org (Oct. 28, 2013), <https://www.nysut.org/news/nysut-united/issues/2013/november-2013/nysut-calls-for-equitable-increases-in-school-aid-to-lift-the-burden-on-high-needs-districts>.

<sup>41</sup> *Id.*

<sup>42</sup> Schenectady City School District 2016-17 Budget 12 (Apr. 22, 2016), [http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server\\_412252/File/2016-17\\_Budget.pdf](http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server_412252/File/2016-17_Budget.pdf).

Years of teaching students in classes too large to meet their needs has had a negative impact on Schenectady students, causing them to progress from grade to grade without fully mastering the curriculum. Because education is cumulative, many students in Schenectady fall further and further behind, and significantly increases the need for academic intervention services, which (as discussed below) Schenectady cannot afford to provide to all those who need them.

*iii. Schenectady Cannot Provide an Expanded Platform of Academic Services for At-Risk Students*

As the Court of Appeals has affirmed, for at-risk students a minimally adequate education includes an “expanded platform of academic services to help them learn by giving them ‘more time on task.’” *CFE v. State*, 187 Misc. 2d 1, 114-15 (Sup. Ct. N.Y. Cnty. 2001), *aff’d*, *CFE II*, 100 N.Y.2d at 932. An expanded platform can take the form of multiple interventions including, for example, extended school programs, remedial instruction, after-school, and support services, all of which give students who are struggling more time to master the curriculum. *CFE II* at 942. It also includes preschool, which has been proven to be one of the single most valuable resources that can be provided to at-risk students to ensure they will be prepared to eventually graduate from high school.

New York State Law confirms the importance of academic interventions for assisting students who are struggling. The State tracks students’ performance in standardized tests designed to measure “how well students are mastering the learning standards that guide classroom instruction and help to ensure that students are on track to graduate from high school with the critical thinking, problem solving, and reasoning skills needed for success in college and the modern workplace.”<sup>43</sup> The State requires districts to provide additional instructional time and/or

---

<sup>43</sup> NYSED, *Understanding the Parent Dashboard*, <http://www.nysed.gov/essa/understanding-parent-dashboard>.

student support services to students who score below, or who are at risk of scoring below, State-designated performance levels on State standardized assessments.<sup>44</sup> These legally required interventions are known as Academic Intervention Services (“AIS”).<sup>45</sup> In the alternative, school districts may implement an educational method known as Response to Intervention (“RTI”) to support struggling students.<sup>46</sup> RTI practices are used to determine whether a student is progressing in the classroom as expected. Students in need receive additional instructional support, tailored to their unique circumstances, through a three-tiered instructional model.<sup>47</sup> Ultimately, both AIS and RTI are State-mandated services that support students’ ability to catch-up or remain at grade level, and ultimately graduate from high school.

Schenectady is a district where almost all students consistently struggle to meet essential academic milestones and stay on track for graduation. By way of example (as discussed further below): over the last ten years nearly 80% of Schenectady students in grades three through eight have failed to reach proficiency in English and math State Assessments.<sup>48</sup> Schenectady’s own internal assessments confirm these results.<sup>49</sup> Accordingly, a vast majority of Schenectady students need additional academic interventions, and Schenectady simply cannot afford to help them all.<sup>50</sup>

---

<sup>44</sup> N.Y. Comp. Codes. R. & Regs. tit. 8 § 100.2(ee) (1)–(3) (2020).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at §§ 100.2(ee)(7), (ii).

<sup>47</sup> Learning supports that are provided during regular classroom time to all students are known as “Tier 1” interventions. Supplemental, more individualized interventions are known as “Tier 2” or “Tier 3” interventions. *See Response to Intervention: Guidance for New York State School Districts*, N.Y. State Educ. Dep’t 12–15 (Oct. 2010), <http://www.p12.nysed.gov/specialed/RTI/guidance-oct10.pdf>.

<sup>48</sup> Jaoude Aff. Exhibit I, Schenectady City School District Proficiency Rates (hereinafter “Schenectady Data”).

<sup>49</sup> MacFarlane Tr. 202:2–10 (“[W]e were able to identify that 8,000 students require support . . . and that there [are] 5,600 students who are not get[ting] intervention, formal intervention, that we are monitoring, that we know of.”).

<sup>50</sup> Tote-Freeman Tr. 283:8–13 (agreeing that “Schenectady cannot offer sufficient AIS to all students in need of them and in all the subjects in which students need additional academic support”); MacFarlane Tr. 30:13-21 (“It can also be that the student has not received the intervention that they required due to the fact that we just don’t have enough reading teachers in order to meet those needs and so therefore that responsibility falls on the

Unable to provide all students who are failing to reach proficiency with the academic supports they need, Schenectady educators are faced with untenable choices. As one Schenectady employee discussing the District's literacy needs recalled:

“[W]hen I think of reading, for example, I'm not someone who is in charge of the reading department, but I often remember this sort of battle that would happen around when you get the scores around who needed reading classes or reading supports, there wouldn't be enough reading teachers or reading specialists or reading services for those students, so we were constantly adjusting the bar of where you got that service. And if you're a student with a disability, oftentimes there would be this feeling of, well, they at least have reading with a special ed teacher, so we'd have to kind of battle on the gen ed side to say, no, they deserve to be able to be in a reading class too with gen ed peers, because—that's what comes to mind when I think of this, is that reading debacle.”<sup>51</sup>

And despite wide-spread deficits in reading and literacy, Schenectady has been unable to offer its students a core reading program because it cannot afford to buy the supplies, or train their teachers to deliver the material.<sup>52</sup>

In order to increase efficiencies and reach as many students as possible, in 2017 Schenectady was able to use some of its increased funding to create a Tier-1 academic intervention program called the GenEd Continuum.<sup>53</sup> The GenEd Continuum is a program specifically

---

classroom teacher, which is challenging when they have such a high number of students who are struggling.”); *id.* at 46:22–47:3 (“We have such a need for students who require intervention and additional support that there are always students sitting in schools who aren't getting the reading support or the gen ed continuum support that they need.”).

<sup>51</sup> Tote-Freeman Tr. 283:8–285:2.

<sup>52</sup> MacFarlane Tr. 342:12–343:2 (“And one concrete example I can give you is that we have been looking over the last year at whether or not our reading program is meeting the needs of our students and at this time we do not have a core reading program, we have a literacy plan. And when we looked into a core reading program, just to buy the materials for that for our elementary schools, that would cost us in the ballpark of \$8 to \$10 million. In addition to that, we would need training for staff and other support for that as well.”).

<sup>53</sup> Tote-Freeman Tr. 283:8–284:6 (“I feel like we're trying to look at our programs and practices to see where we can be most efficient with our resources and really bulk up like putting emphasis on tier 1 instruction, because when you are talking about AIS, that's like your tier 2 and tier 3 students and it's much more of a more individualized intervention potentially. So I think we try to look at how do we tighten our tier 1 so that less students need the AIS service.”).

designed to “develop program[s] that would meet the needs of students who are in danger of kind of falling through the cracks”<sup>54</sup> by providing intense targeted wrap-around support over a short period of time allowing the student to eventually be reintroduced into their mainstream classroom and be on track for graduation.<sup>55</sup> Since its inception, the program has helped Schenectady make promising gains.<sup>56</sup> However, despite its efficacy, and the ultimate efficiencies it creates, Schenectady has not been able to make it available to all students who need it.<sup>57</sup> Indeed in 2018-2019, out of the 8,000 students that Schenectady identified as needing access to the GenEd Continuum, 5,220 could not receive it. Not only did these students not get access to the GenEd Continuum, Schenectady was unable to provide them with any formal academic interventions at all.<sup>58</sup>

Schenectady faces similarly difficult choices in determining how to structure its preschool program. Consistent with the research on the impact of preschool on high-needs students, Schenectady’s Pre-K program has directly lead to improved student outcomes. Yet, due to a lack of funding, Schenectady is only able to provide a fraction of their eligible students with Pre-K services. In an attempt to provide more students with access to pre-school, Schenectady often

---

<sup>54</sup> Tote-Freeman Tr. 22:15–23:10.

<sup>55</sup> Tote-Freeman Tr. 23:17–24:6.

<sup>56</sup> Tote-Freeman Tr. 272:14–17 (“I think that there were certain elements of the gen ed continuum that we were seeing as showing growth with kids and had real promise.”)

<sup>57</sup> MacFarlane Tr. 313:16–314:7 (“[GenEd Continuum] is a limited amount of students that we are able to service and that is something that is hard for me every night when I put my head down on the pillow to say we’re doing the best we can as far as quality goes but we’re not giving quality education to every student. You know, we’re not able to, we’re trying, but we’re not able to deliver to every student.”); Tote-Freeman Tr. 286:21–287:24 (“I’ve seen us not be able to offer a gen ed continuum resource, or in particular, reading resource to every student who needed it. I’ve seen that, so that’s why I say that.”).

<sup>58</sup> Tote-Freeman Tr. 230:25–232:25; Tote-Freeman Tr. Ex. 9, slide 16; MacFarlane Tr. 202:2–10 (“[W]e were able to identify that 8,000 students require support, 1,860 of them are getting support through special education, there’s a number of students there that are getting support through the gen ed continuum, and that there [are] 5,600 students who are not get[ting] intervention, formal intervention, that we are monitoring, that we know of.”).



settles for offering more half-day programs as opposed to full-day programs, adding 147 half-day programs in the 2018-2019 school year. But, for most of Schenectady's low-income families, adding additional half-day programs does not actually increase the availability of Pre-K. Many parents cannot take advantage of half-day programs because it would require them to leave work and/or arrange for other daycare to ensure their children get to and from school safely.<sup>59</sup>

*iv. Schenectady Cannot Provide Adequate Resources for Students with Extraordinary Needs*

Eighteen percent of Schenectady's student population is students with disabilities. While students with disabilities face barriers to academic success, for Schenectady's students with disabilities, those barriers are compounded by the effects of poverty. Many Schenectady students lose academic and developmental grounds because they do not have access to early education.<sup>60</sup> Additionally, many are unable to access resources that they may be entitled to and from which they could benefit, because their parents struggle to navigate the special education system.<sup>61</sup> Provided sufficient supports, many of these students would be able to reach the State learning standards, which are designed to be accessible by special education students.<sup>62</sup> But Schenectady does not have the resources to provide those supports.

---

<sup>59</sup> This problem is common in many districts, but is worse in Schenectady where the majority of eligible students come from low-income and/or single family households.

<sup>60</sup> Allen Tr. 178:25–179:8 (noting that many students come into the school system academically behind because their “parents didn’t realize they had a disability prior to coming to school, so [the kids] didn’t receive early intervention or preschool special education services, then they’re even more behind the 8 ball in trying to catch up”).

<sup>61</sup> *Id.* at 76:18–77:7 (“Many of our families have a significant number of barriers to accessing [IEP] services themselves . . . . [O]ur families don’t always have working phones or minutes on their phones to access those, they may not . . . be literate to even know that those are options for their students.”).

<sup>62</sup> Casey Tr. 413:9–19 (hereinafter “Aug. 18 Casey Tr.”) (agreeing that with proper supports and instruction, students with disabilities would be able to reach learning standards); *Id.* at 402:14–19 (acknowledging current learning standards are applicable to students with disabilities and English language learners).

Schenectady cannot afford to provide remedial services to both general education and special education students at once. As a result, educators are faced with stark choices, as articulated by one District employee:

“[T]he need is so intense by general education [students] that any level of service that we’re already giving to students with disabilities, if they then are accessing general support as well, then there are general education students who then can’t access those supports. So it is a capacity and demands difficulty that we are not able to meet the needs of our general education students and then our students with disabilities a result.”<sup>63</sup>

Schenectady cannot hire enough special-education teachers to meet the needs of its students. The teacher shortage is so severe that when asked how many teachers Schenectady would need to meet the children’s needs, the director of special education replied,

“I think it would be difficult to put a number on that answer because we’ve never even gotten close to what I think our students need. We have never even gotten close enough for me to be able to envision what that might look like in a setting that was actually meeting students’ needs, we operate under such deficits that that feels like nearly impossible.”<sup>64</sup>

Schenectady also cannot hire enough qualified teaching assistants for special education classroom because they cannot offer competitive pay, commensurate with the challenges of the job.<sup>65</sup> As a result, teachers—who are spread thin already—are forced to send students with behavioral issues out of the classroom in order to prevent disruption to the rest of the students.<sup>66</sup>

---

<sup>63</sup> Allen Tr. 180:11–22.

<sup>64</sup> Allen Tr. 241:15–20.

<sup>65</sup> *Id.* at 189:24–190:14 (“We were able to create single-grade special classes for middle school but not for elementary school, we still haven’t been able to accomplish that, even though that would be a huge plus for us if we could do that, we just don’t have the resources. We have implemented pro-social skills curriculum and we did hire some teaching assistants for the district, but we have had some difficulty acquiring teaching assistants because our level of pay is not very competitive and so we haven’t been able to secure the number that we would have liked to.”).

<sup>66</sup> *Id.* at 239:5–22 (“Oftentimes the way that looks in the school building is, you know, maybe a social worker plus two staff having to restrain one student while another social worker is helping to de-escalate another student, you know, maybe we’ve got several students now missing instruction and in the principal’s office because their teachers are struggling with how to maintain their -- those students are struggling to be able to maintain themselves

Schenectady is not able to make sufficient progress in decreasing the number of students with disabilities being suspended.<sup>67</sup>

With increased resources to put into special education classrooms Schenectady could improve its student outcomes. Between 2015 and 2019 Schenectady's funding increased consistently, allowing the District to increase its proficiency rates on 3-8 ELA exams for the first cohort of students with disabilities to benefit from four years of the new services.<sup>68</sup> But those gains—impressive as they are—still only get the District at 5% proficiency, far from where the District needs to be to meet the needs of all of its students. And now, as described herein, those gains are threatened.

**B. There is No Dispute that Schenectady's Outputs Are Inadequate<sup>69</sup>**

Given Schenectady's significant resource deficits, it is no surprise that Schenectady's academic outputs are among the lowest in the State. As discussed below, the State cannot dispute this.

**a. Test Scores**

The State tracks students' progress in meeting learning standards through standardized assessments. Students who do not reach the learning standards cannot graduate from high school.<sup>70</sup> The State considers students "proficient" and on track to graduate if a student scores a 3 or 4 on these exams. As recently as 2019, only 24% of students in grade 3-8 were proficient in English

---

in the classroom. We have got another student running the hallways and so we've got another social worker that's attempting to de-escalate that situation. These are the things that we deal with every single day.").

<sup>67</sup> MacFarlane Tr. 277:11–14 ("From what I recall, we are still not where we need to be or making the adequate improvements with students with disabilities being suspended.").

<sup>68</sup> Schenectady Data 1.

<sup>69</sup> *See Generally*, Schenectady Data.

<sup>70</sup> Jaoude Aff. Ex. J, Marybeth Casey (Assistant Commissioner for the Offices of Curriculum Instruction and Early Learning, NYSED), Dep. Tr., dated Feb. 13, 2020, 38:4–10.

Language Arts (“ELA”) and only 16% of students in grades 3-8 were proficient in Math. Meaning that 76% of ELA students and 84% of Math students at Schenectady are not on track to graduate from high school and may never catch up.<sup>71</sup> These proficiency rates are the highest the District has seen in over a decade.<sup>72</sup> The results are even worse for high-needs students. Only 5% of students with disabilities, 3% of ELL students, and 10% of homeless students scored proficient on 3-8 ELA exams. The Math proficiency scores are lower still—1% for students with disabilities, 4% for ELL students, and 4% of homeless students.<sup>73</sup> These scores indicate that students are not receiving a quality education or the supports, resources, and interventions necessary in order to close the gaps.<sup>74</sup>

**b. Graduation Rates**

The Court of Appeals has clearly held that a high school education is a prerequisite for an adequate education. *CFE II* at 914. Schenectady’s graduation rate shows that a significant number of students do not receive a sound basic education. As recently as 2019, Schenectady’s graduation rate was at an all-time high of 68% (after averaging 58% since 2013).<sup>75</sup> Despite being a record high, Schenectady still trails the state average graduation rate by 15%. Even at Schenectady’s

---

<sup>71</sup> The Board of Regents, who presides over the New York State Education Department and is responsible for the general supervision of all educational activities in the State, has even recognized that “[i]n general, students who are behind in third grade may never catch up, which is especially true for children with special needs, those whose first language is not English, those impacted by poverty, and many minority groups.” *Jaoude Aff. Ex. K* (Dwyer ex. 4).

<sup>72</sup> Schenectady Data.

<sup>73</sup> The State is aware that Schenectady has trouble meeting special education indicators. *Tote-Freeman Tr. 98:3–99:19*.

<sup>74</sup> *MacFarlane Tr. 316:24–317:9* (I think that as long as we have reading data that indicates that our 3rd and 8th great [sic] students are reading well below reading level, a majority of them are, we’re not at this time providing the quality education that they deserve because we’re not able to provide them with the supports and resources and interventions that they need in order to close those gaps.”).

<sup>75</sup> Schenectady’s graduation rates were as follows: 2013 (59%); 2014 (56%); 2015 (56%); 2016 (62%); 2017 (57%); 2018 (58%). Schenectady Data 3.

best, one out of every three students does not receive a meaningful high school education. Even worse, graduation rates for ELLs and students with disabilities are significantly lower, 31% and 46% respectively.

**c. Drop-Out Rates**

If a sound basic education “means a meaningful high school education . . . it may, as a practical matter, be presumed that a dropout has not received a sound basic education.” *CFE II* at 914. Because the District cannot afford to meet students’ needs, drop-out rates in Schenectady are significantly higher than the State average. Last year, Schenectady reported its lowest drop-out rate in over 7 years. Despite being its lowest drop-out rate in years, Schenectady’s 15%<sup>76</sup> dropout rate is still nearly triple the State average (6%).<sup>77</sup> In 2019, the District also reported its lowest drop-out rates for students with disabilities (22%) and ELLs (42%), both of which were still nearly double the state average (11% and 27%).<sup>78</sup>

**d. School Designations**

The State concedes that Schenectady students perform significantly lower than the rest of the State. Out of the 15 schools in Schenectady,<sup>79</sup> the State classified 15 of them as “focus” or “priority” schools for at least two consecutive years since 2013, meaning they belonged to a list of 5% lowest performing public schools in the State.<sup>80</sup> In fact, 12 of the District’s schools were

---

<sup>76</sup> Schenectady’s drop-out rates were as follows: 2013 (20%); 2014 (23%); 2015 (20%); 2016 (18%); 2017 (17%); 2018 (20%). Schenectady Data 4.

<sup>77</sup> NYSED, *State Education Department Releases 2015 Cohort High School Graduation Rates* (Jan. 16, 2020), <http://www.nysed.gov/news/2020/state-education-department-releases-2015-cohort-high-school-graduation-rates>.

<sup>78</sup> *Id.*

<sup>79</sup> Schenectady City School District, *Schools*, <http://www.schenectady.k12.ny.us/parents/schools>.

<sup>80</sup> NYSED, *State Education Department Identifies 188 Priority Schools, 84 Focus Districts and 442 Focus Schools Under Federal Accountability Requirements; 70 Schools to be Removed from Receivership Status at End of 2015-2016 School Year* (Feb. 26, 2010), <http://www.nysed.gov/Press/State-Education-Department-Identifies-188-Priority-Schools%2C-84-Focus-Districts-and-442-Focus-Schools-Under-Federal-Accountability->

classified as “focus”<sup>81</sup> or “priority”<sup>82</sup> for the last six consecutive years. In the same period, five Schenectady schools were closed due to lack of performance.<sup>83</sup> Today, Schenectady’s one and only high school remains classified as a Targeted Support and Improvement school, due to its two largest ethnic groups, African American and Hispanic students, underperforming significantly. Over the relevant time period for this lawsuit, Schenectady’s high school has not been in “Good Standing” for a single year. As a result of having a large number of focus or priority schools, Schenectady is held to higher accountability standards and students’ performance is monitored closely by the State.

**C. The State’s Funding System is a Cause of Schenectady’s Inadequate Inputs and Outputs**

“In order to prevail Plaintiff must establish a correlation between funding and educational opportunity,” *i.e.* “a causal link between the present funding system and any proven failure.” *CFE II*, 100 N.Y.2d at 919. The State funding scheme need not be the single cause of the failure of schools. *Id.* at 920 (“[T]he law recognizes that there may be many ‘causal links’ to a single outcome, and there is no reason to think that the Court of Appeals 1995 opinion mandates a search

---

[Requirements%3B-70-Schools-To-Be-Removed-From-Receivership-Status-At-End-Of-2015-2016-School-Year.](#)

<sup>81</sup> A school is defined as a “focus school” where one of its subgroups compose the lowest-performing in the state, such as low-income students, racial or ethnic groups, students with disabilities, or ELL students. NYSED Memorandum, *70 Districts identified Statewide as Focus Districts, with 496 schools identified as Focus Schools, 221 schools identified as Priority Schools, and 249 schools identified as Reward Schools under ESEA Flexibility Waiver for 2012-13 School Year*, <http://www.nysed.gov/common/nysed/files/programs/accountability/2012-13-web-posting-overview.docx>.

<sup>82</sup> A school is defined as a “priority school” where they are among the lowest performing in the state for the combined English Language Arts and mathematics Performance Index or graduation rate and that are not improving, based on their historic results. See NYSED, *State Education Department Identifies 27 Schools to be Removed from Priority School Status, 8 from Receivership Status* (Dec. 1, 2017), <http://www.nysed.gov/news/2017/state-education-department-identifies-27-schools-be-removed-priority-school-status-8>.

<sup>83</sup> Fulton Early Childhood Education Center closed in 2017. Elmer Avenue closed is 2017 and has not reopened. FDR closed in 2017 and has not reopened. Katherine Burr Blodgett Early Child Education Center closed in 2014 and has not reopened. Oneida closed in 2013 and remained closed for four years.

for a single cause of the failure of New York City schools.”). Plaintiff may establish the necessary causal link by showing (1) “that increased funding can provide better teachers, facilities and instrumentalities of learning” and (2) “that such improved inputs yield better student performance.” *Id.* at 919.

**a. State Aid to Schenectady Does Not Provide Enough Funding to Enable Schenectady to Provide its Students with the Opportunity for an Adequate Education**

In *CFE II*, the Court of Appeals held that a constitutionally adequate system of education finance must link the amount of funding to student need. *Id.* at 929.

Following the Court of Appeals decision in *CFE II*, the State enacted the foundation aid funding formula, which was intended, as the State acknowledged, “to provide the funding to support a sound basic education for all students.”<sup>84</sup> The State determined that high needs students need more educational resources than the average student to receive an adequate education.<sup>85</sup> As such, the formula is designed to take into account a district’s demographic and provide additional funding for high-needs students.<sup>86</sup> The foundation aid formula determines approximately 75% of the money allocated by the State to the districts on a yearly basis.<sup>87</sup> For a high-needs district like

---

<sup>84</sup> Memorandum from Commissioner John B. King Jr., *Regents 2011-12 Conceptual Proposal on State Aid to School Districts 5* (Nov. 8, 2010), <https://www.regents.nysed.gov/common/regents/files/documents/meetings/2010Meetings/November2010/1110sad1.pdf>.

<sup>85</sup> See *Cechnicki Tr.*, 104:17–22.

<sup>86</sup> *Cechnicki Tr.* 102:29–103:17 (explaining that the foundation amount for each district is adjusted to provide additional amounts for each student that falls into weighted categories such as poverty, eligible for free or reduced-priced lunch, English language learner, and students with disabilities); *Id.* at 104:17-105:14 (“[T]hose weightings take into account that some of these student designations tend to require additional services beyond the student that doesn’t have those designations.”).

<sup>87</sup> *Cechnicki Tr.* 101:18–102:2.

Schenectady, which is heavily reliant on funding from the State to provide necessary educational opportunities, foundation aid makes up 69% of the District's budget.<sup>88</sup>

To calculate that baseline cost of providing an adequate education, the State relies upon the so-called "Successful Schools Methodology" to "estimate the expenditures needed to ensure that all districts can provide the opportunity for an adequate education to all students."<sup>89</sup> This analysis is at the core of the State's educational funding system because, as Mr. Cechnicki explained at his deposition, it is "essentially the starting point" for calculating foundation aid.<sup>90</sup> The successful schools analysis is intended to be performed every three years to ensure that State funding stays current with increasing mandates, educational requirements, and actual costs of providing an adequate education.<sup>91</sup> Unbeknownst to the public, the State has not updated this analysis since 2012 resulting in a significantly lower foundation aid amount for Schenectady (approximately \$85 million over the last 5 years, an estimated additional \$1,750 per pupil)<sup>92</sup>.

---

<sup>88</sup> Schenectady City School District, Fiscal Update to the Board of Education Re: 2020-21 State Aid Withholdings, Implications & Action Steps, slide 7 (Sep. 2, 2020).

<sup>89</sup> Memorandum from James A. Kadamus, *Regents Proposal on State Aid to School Districts for 2004-05*, 47, 49 (Jan. 2004), [http://www.p12.nysed.gov/stateaidworkgroup/2004-05RSAP/RSAP0405\\_for\\_web.pdf](http://www.p12.nysed.gov/stateaidworkgroup/2004-05RSAP/RSAP0405_for_web.pdf). For the purposes of the methodology the State defined "adequate education" as follows: "If students in a district are receiving an adequate education, it would seem that the vast majority of its students should be capable of achieving the Regents standards. This means, on whatever tests one uses for defining academic outcomes, the vast preponderance of students should be scoring at the equivalent of level 3 or level 4. So for this study, it was believed that if a district had on average 80 percent of its students scoring at level 3 or higher on the specified tests, the district would be considered as providing an adequate education." *Id.* at 51.

<sup>90</sup> *See* Cechnicki Tr. 135:19–136:8, 188:13–21.

<sup>91</sup> *Jaoude Aff. Ex. L*, Mar. 3, 2015 Trial Tr. 4033:5–7, 18–25; 4034:1–4, *Maisto, et al. v. State of New York*, No. 8997-08 (Sup. Ct. Albany Cnty. Oct. 31, 2008).

<sup>92</sup> *Jaoude Aff. Ex. M, Farrie Aff. ¶ 19* (hereinafter "Farrie Aff."). Plaintiff discovered in Mr. Cechnicki's deposition in this litigation, the State *did* in fact perform the successful schools analysis in 2015 but chose not to rely on it. *See* Cechnicki Tr. 215:8–11, 216:3–20; 175:7–15; 176:11–18. By choosing to rely on the 2012 List, the State intentionally ignored that it costs more for districts to help students reach proficiency under the more rigorous Common Core assessments.



Not only has the State relied on an outdated formula that does not accurately account for the increased costs imposed by new educational mandates and requirements on the District – the State does not fully fund the District according to even the *outdated* foundation aid formula. Due to funding gaps and shortfalls, over the last six years the State has provided Schenectady \$288 million less than the amount the State itself estimates it would cost to provide an adequate education.<sup>93</sup> To be clear: given the cumulative educational deficit Schenectady has faced over the past decade, fully funding the foundation aid formula would not provide Schenectady with sufficient funding to ensure its students receive the opportunity for a sound basic education. As Plaintiff’s expert has shown, fully funding foundation aid for Schenectady would increase students outcomes significantly, estimating an increase in: proficiency by 12 percentile points, graduation rates by 13%, and college-going rates by 26%.<sup>94</sup> However, given Schenectady’s low proficiency and graduation rates, that would not be enough to improve outcomes for all students.<sup>95</sup> But even by the State’s own method of the cost of providing an adequate education, State funding to Schenectady falls short.

Even when Schenectady has received increased foundation aid or funding through grants,<sup>96</sup> the State’s inconsistent approach to foundation aid also prevents Schenectady from projecting its budget a few years in advance. As explained by Plaintiff’s expert, an increase in funding sustained over a four year period leads to a positive educational attainment impact more

---

<sup>93</sup> Farrie Aff. ¶ 6. Under the revised formula, this total would be approximately \$365 million.

<sup>94</sup> Jaoude Aff. Ex. N, Expert Report of C. Kirabo Jackson at 7 (hereinafter “Jackson Report”).

<sup>95</sup> Notably, the Board of Regents, the entity that presides over the New York State Education Department and is responsible for the general supervision of all educational activities within the state has stressed the need to both fully fund foundation aid and revisit the successful schools study methodology. To date, the State has done neither.

<sup>96</sup> An amount which is still less than the number they are calculated to receive under the formula.

than 99 percent of the time.<sup>97</sup> But the State's failure thus far to fully fund the formula, let alone for a sustained period, makes it impossible for Schenectady to know what percentage of foundation aid it will be receiving year to year and whether programs they develop will be sustainable over the multiple year period required for the District to begin seeing results. What is clear, and has been confirmed by Plaintiff's expert, is that a lack of adequate funding is a cause of the low student outcomes. As all high-quality studies confirm, money does matter.<sup>98</sup>

**b. Increased Funding Has Led to Improved Inputs and Better Student Performance**

There is overwhelming evidence that policies that increase per-pupil spending improve student outcomes, and that such increased spending has the biggest impact on low-income students. Jackson Report at 3, 9–10.

Research further shows that increased school spending has other meaningful impact outside of simply increasing test scores. *Id.* at 8. Increased per-pupil spending has shown a positive impact on dropout rates, graduation rates, post-secondary enrollment, and overall career earnings for all students. *Id.* This effect is dramatically more pronounced for low-income children. *Id.* at 9–10. The evidence is not only conclusive that increased school spending leads to increased results, but that the opposite is true—a decrease in per-pupil spending leads to lower outcomes including test-scores and post-secondary enrollment. *Id.* at 18. Because education is cumulative, the negative impacts from spending cuts can slow student progress with potentially long-lasting consequences.

That increased school spending leads to better student outcomes has been borne out in Schenectady. From 2015-2020, Schenectady saw increased funding, allowing them to create new

---

<sup>97</sup> Jackson Report at 10.

<sup>98</sup> *Id.* at 3, 7, 8, 20.

programs and initiatives for students.<sup>99</sup> In 2015, the District used the increased funding to rehire staff and restore services and programs that were reduced as part of prior years' budget cuts.<sup>100</sup> This included two ESL teachers, three elementary teachers, two social workers, two licensed psychologists, a nurse practitioner, an instructional coach, eleven full time equivalent staff to support three new special education classes, instructional supervisors, and two attendance deans.<sup>101</sup> In 2016, the District was able to use additional funding to add 40 more essential positions,<sup>102</sup> including elementary teachers, reading teachers, paraprofessional staff, social workers, and psychologists.<sup>103</sup> With increased funding in 2017, Schenectady was able to implement a new academic support system, the General Education Continuum, and added 23 teaching positions, two paraprofessional positions, three foreign language teachers, a psychologist, and three social workers.<sup>104</sup> In 2018, Schenectady was able to provide increased opportunities in Science, Technology, Engineering, Arts and Mathematics education.<sup>105</sup>

As a result of the increased staff as well as new programs and initiatives designed to target students' mental health and academic needs, Schenectady's outcomes were at an all-time high pre-

<sup>99</sup> However, although increased funding helped Schenectady "mak[e] strides in the right direction", the district was unable to ensure that all students were provided with the opportunity for a sound basic education. Tote-Freeman Tr. 263:3–266:8.

<sup>100</sup> 2015-2016 Schenectady City Schools Budget (Apr. 24, 2015), [http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server\\_412252/File/2015-16Budget.pdf.pdf](http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server_412252/File/2015-16Budget.pdf.pdf).

<sup>101</sup> *Id.* at 12-13.

<sup>102</sup> 2016-2017 Schenectady City Schools Budget 3 (Apr. 22, 2016), [http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server\\_412252/File/2016-17\\_Budget.pdf](http://schenectady.ss12.sharpschool.com/UserFiles/Servers/Server_412252/File/2016-17_Budget.pdf).

<sup>103</sup> *Id.* at 12-13.

<sup>104</sup> 2017-2018 Schenectady City Schools Budget 11-12 (Apr. 25, 2017), [http://www.schenectady.k12.ny.us/UserFiles/Servers/Server\\_412252/File/2017-18%20Budget/Budget%20Book.pdf](http://www.schenectady.k12.ny.us/UserFiles/Servers/Server_412252/File/2017-18%20Budget/Budget%20Book.pdf).

<sup>105</sup> 2018-2019 Schenectady City Schools Budget 18 (Apr. 23, 2018), [http://www.schenectady.k12.ny.us/UserFiles/Servers/Server\\_412252/File/2018-19%20Budget/2018-19%20Budget.pdf](http://www.schenectady.k12.ny.us/UserFiles/Servers/Server_412252/File/2018-19%20Budget/2018-19%20Budget.pdf)

pandemic. The Class of 2019 is the first cohort class to have four-year access to the new programs and initiatives created with the increase funding in 2015. As a result of the new programs, the Class of 2019 had a 10% higher graduation rate and a 5% lower drop-out rate than the Class of 2018.<sup>106</sup> Schenectady's grade 3-8 students also posted record high outcomes with increased funding.<sup>107</sup> ELA proficiency scores nearly doubled (from 13% in 2015 to 24% by 2019). Students' overall well-being and safety also improved. For example, after only two years of increased services, Schenectady was able to reduce the number of its patient mental hospitalizations by half.<sup>108</sup> Schenectady has proven the studies true – when given more resources, it is able to provide its students with better educational opportunities that show concrete, conclusive results. Schenectady's current failure is simply a matter of having too few resources, and no sustainable and reliable funding system, to meet the needs of all students.

In sum, Plaintiff has firmly established the final element of its underlying claim—a causal link between the State's lack of adequate funding and the proven academic failures at Schenectady.

### III. PLAINTIFF WILL BE ABLE TO SHOW IRREPARABLE HARM

To warrant a preliminary injunction, the moving party must demonstrate “danger of irreparable injury in the absence of an injunction.” *Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 A.D.3d 430, 431 (1st Dep't 2016) (citation omitted); accord N.Y. C.P.L.R. § 6301. The moving party “must show that harm is imminent, not remote or speculative.” *Clinton v. 695 Jefferson, LLC*, No. 507591/16, 2016 N.Y. Misc. LEXIS 3022, at \*7 (Sup. Ct. Kings Cnty. Aug. 9, 2016)

---

<sup>106</sup> Schenectady's drop-out rates were as follows: 2013 (20%); 2014 (23%); 2015 (20%); 2016 (18%); 2017 (17%); 2018 (20%). Schenectady Data 4.

<sup>107</sup> The increase in 3-8 scores were directly attributable to increased intervention services that helped close gaps for learners. Tote-Freeman Tr. 296:22–298:16.

<sup>108</sup> Tote-Freeman Tr. Ex. 9, slide 10. Additional resources to Schenectady's diversion program also significantly reduced the number of students who required superintendent disciplinary hearings as well as suspension rates overall. Tote-Freeman Tr. 44:12–48:12, 151:4–24.

(quotations omitted); *see also Mr. Sound, USA Inc. v. 95 Evergreen Bldg. Invs. III, LLC*, No. 13485/2015, 2016 N.Y. Misc. LEXIS 898, at \*9 (Sup. Ct. Kings Cnty. Feb. 16, 2016); *Binder v. Board of Mgrs. of Arris Lofts*, No. 702421/2012, 2013 N.Y. Misc. LEXIS 6625, at \*3 (Sup. Ct. Queens Cnty. Jan. 25, 2013). Because Plaintiff alleges that the State's actions will deprive Schenectady's students from their constitutional right to an education, Plaintiff easily meets this standard. *Cnty. Charter Sch. v. Bd. of Regents of the Univ. of the State of N.Y.*, No. 1359/13, 2013 N.Y. Misc. LEXIS 6790, at \*38 (Sup. Ct. Erie Cnty. June 18, 2013) (granting preliminary injunction to prevent a school closure, *inter alia*, because "[w]hen an alleged deprivation of a constitutional right is involved ... no further showing of irreparable injury is necessary") (citations omitted).

**A. Courts Across the Country are in Accord that the Loss of Educational Opportunity Constitutes Irreparable Harm**

Courts throughout the nation have held that irreparable harm exists where students lose educational opportunities because money damages alone cannot compensate the students.<sup>109</sup> *See, e.g., LIJ v. N.Y.C. Bd. of Educ.*, 103 F. Supp. 2d 658, 665 (E.D.N.Y. 2000) ("No level of monetary damages could possibly compensate these students for the educational opportunities they will lose[.]"); *John T. v. Delaware Cnty. Intermediate Unit.*, Civ. A. No. 98-5781, 2000 U.S. Dist. LEXIS 6169, at \*24 (E.D. Pa. May 8, 2000) ("Compensation in money can never atone for deprivation of a meaningful education in an appropriate manner at the appropriate time."); *see also, Mindel v. Educational Testing Serv.*, 559 N.Y.S.2d 95, 98 (Sup. Ct. N.Y. Cnty. 1990) (granting

---

<sup>109</sup> New York courts may look to the federal courts in evaluating the "irreparable harm" prong of the preliminary injunction evaluation. *Cf. VOOM HD Holdings LLC v. Echostar Satellite LLC*, No. 600292/08, 2008 N.Y. Misc. LEXIS 9855, \*7 n.2 (Sup. Ct. N.Y. Cnty. Apr. 23, 2008) (finding that it was appropriate for the Court to look to federal cases that had addressed the precise type of irreparable harm at issue, since New York case law had "seldom addressed" the point directly); *see also Cipriani Fifth Ave. v. Rpci Landmark Props.*, 2004 NYLJ LEXIS 2252, \*3 (Sup. Ct. N.Y. Cnty. May 20, 2004) (stating that "[f]ederal authority is helpful in applying these standards").

injunction where student alleged irregular SAT testing environment and sought to retake exam; finding irreparable harm because of the “loss of the opportunity [to apply for an early decision program] due to the passage of time”).

Irreparable harm includes more than simply losing services a student is entitled to, it also includes the loss of learning time or delays that would cause students to fall behind their peers. *See, e.g., M.W. v. N.Y.C. Dep’t of Educ.*, No. 15cv5029, 2015 U.S. Dist. LEXIS 112832, at \*13 (S.D.N.Y. Aug. 25, 2015) (finding irreparable harm where student stood to lose her extended school year services, which would cause her to “substantially regress” and coloring defendants’ claim to the contrary as “astonishing”); *Cosgrove*, 175 F. Supp. 2d at 393 (finding irreparable harm where school district delayed in providing a FAPE for two years; “The make-whole approach of compensatory education cannot replace that which a student was entitled to receive in earlier life”); *LIH v. N.Y.C. Bd. of Educ.*, 103 F. Supp. 2d 658, 665 (E.D.N.Y. 2000) (stating that causing students with disabilities to repeat a grade by depriving them of educational services constitutes irreparable harm); *Blazejewski v. Bd. of Educ.*, 560 F. Supp. 701, 703–04 (W.D.N.Y. 1983) (granting preliminary injunction where deprivation of literacy services would work irreparable harm).

There is no question that the budget cuts announced by Governor Cuomo are imminent, and not remote or speculative. *See, e.g., A.T. v. Harder*, 298 F. Supp. 3d 391, 417 (N.D.N.Y. 2018); *Clinton*, 2016 N.Y. Misc. LEXIS 3022, at \*7. The State has already withheld 20% of the aid school districts were due to receive in June, July, and August.<sup>110</sup> Governor Cuomo has made

---

<sup>110</sup> Ass’n of Sch. Bus. Offs. & N.Y. State Sch. Bds. Ass’n, *A Lost Generation? The Impact of State Aid Cuts and COVID-19 on Students*, 1 (2020), [https://www.nyssba.org/clientuploads/nyssba\\_pdf/Reports/lost-gen-report-09302020.pdf](https://www.nyssba.org/clientuploads/nyssba_pdf/Reports/lost-gen-report-09302020.pdf) [hereinafter “ASBO Report”]. The Cuomo administration did not take 20% out of the September payment to districts because that payment was earmarked for the Teacher Retirement System (the payment into the pension system), not as cash flow to districts. Susan Arbetter, *New York Schools Face Double Whammy*, Spectrum Local News (Oct. 5, 2020), <https://spectrumlocalnews.com/nys/central-ny/politics/2020/10/05/new-york-schools-face-double-whammy>.

clear that additional cuts in the 2020-21 school year would occur absent federal assistance,<sup>111</sup> despite no prospect of such federal aid.<sup>112</sup> Because districts must make their budgets ahead of time based on anticipated funding, and because Schenectady is so heavily reliant on State Aid and lacks the extra reserves other schools enjoy, the District was forced to cut its budget while Governor Cuomo continues to withhold funds.<sup>113</sup>

As detailed below, the Cuomo Administration's 20% withholding has already caused the District to lay off more than 400 staffers (approximately 25% of its total workforce), including 10% of the District's teachers and social workers.<sup>114</sup> And as a result of these painful cuts, Schenectady cannot provide all of its students with the opportunity for a sound basic education.<sup>115</sup>

Schenectady's harm is imminent and real. This is not the first time the State has massively cut the education budget. During the Great Recession, a massive budget cut resulted in halting a five-decade-long increase in student test scores and college-going rates and caused long-term setbacks in student achievement.<sup>116</sup> The cuts caused disproportionately higher achievement losses

---

<sup>111</sup> ASBO Report at 1.

<sup>112</sup> See Arbetter, *New York Schools Face Double Whammy*, <https://spectrumlocalnews.com/nys/central-ny/politics/2020/10/05/new-york-schools-face-double-whammy>; Emily Cochrane, *Trump Says He Is Pulling the Plug on Stimulus Talks*, N.Y. Times (Oct. 6, 2020), <https://www.nytimes.com/live/2020/10/06/world/covid-coronavirus/trump-says-he-is-pulling-the-plug-on-stimulus-talks>.

<sup>113</sup> The District's cuts are not premature. When a district like Schenectady with high needs "faces a mid-year cut, the further into the year the cut is made, the deeper it has to be." With no confirmation or assurance that future payments will not be impacted by the 20% withholding, the District was left with no choice but to make cuts now.

<sup>114</sup> MacFarlane Tr. 105:3–6 ("Given the 20 percent anticipated budget cuts, we laid off over 400 staff, many of them were social workers and teachers."); Arbetter, *New York Schools Face Double Whammy*, <https://spectrumlocalnews.com/nys/central-ny/politics/2020/10/05/new-york-schools-face-double-whammy>.

<sup>115</sup> Tote-Freeman Tr. 263:3–266:8; 271:18–272:6 ("[W]e reduce one of the clinicians on the crisis prevention team or lay off 14 social workers, which is what I just did, that is the kind of thing that makes it really difficult to say that we are providing that sound basic education for me.").

<sup>116</sup> Jackson Report at 19.

to students of color and students from low-income families.<sup>117</sup> More than a decade later, students are still facing the consequences from these cuts.<sup>118</sup>

Schenectady students will suffer similar, if not greater, harm from the loss of educational opportunities caused by these proposed cuts. Each day students are unable to partake in class because they lack remote learning technology is a day they will not get back in their education. Further, students that are able to attend class are at-risk for safety and health issues given the District's inadequate facilities.

Monetary damages alone cannot cure the injury Plaintiff will suffer because of these lost educational opportunities. Only a restoration of the budget will allow Schenectady to rehire the staff they have lost, provide new remote learning technologies to all students who need it, ensure all students whether remote or in person are receiving the legally mandated educational services they are entitled to, and provide a safe, clean environment for students to learn during this global pandemic.

**B. A 20% Cut to Schenectady's Budget Will Result in an Irreversible Loss of Educational Opportunity**

**a. Before the Threat of a 20% Cut, Schenectady's Finances Have Been Uniquely Strained by the Pandemic Due to the High Needs of Its Students**

The onset of the Pandemic and the attendant school closures imposed significant costs on Schenectady's already strained budget. Like other school districts, Schenectady has had to acquire

---

<sup>117</sup> *Id.* at 5 (noting, for example, a \$1,000 spending cut increases the gap in average test scores between black and white students by around 6 percent).

<sup>118</sup> *Id.* at 19.



personal protective equipment and additional cleaning supplies, and pay for additional janitorial services.<sup>119</sup>

But unlike other districts, Schenectady has also been forced to take on unique costs, occasioned by the high needs of its students. For example, when schools were forced to close in the spring, Schenectady transitioned to remote learning. But, because not all students in the District have internet access, the District had to scramble to find a way to provide its low-income students with Chromebooks, District-owned desktops, and Wi-Fi hotspots. Despite all of these efforts, 283 requests for hotspots remain unfulfilled after a pre-fall semester survey found that 534 parents said they lacked access to the internet.<sup>120</sup> As a result, following the transition to online learning, fewer students in Schenectady were able to attend classes.

**b. New York State's Pandemic Adjustment and Other Cuts Further Strained Schenectady's Budget**

Schools need resources now more than ever to deal with trying to educate students and provide necessary services during a global pandemic. Congress recognized these needs at the outset of the pandemic and allocated \$13.5 billion in emergency relief for school districts as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.<sup>121</sup> The funding was intended to cover "cleaning and sanitizing schools, purchasing educational technology such as

---

<sup>119</sup> Schenectady City School District, *Fall 2020 School Reopening Plan*, [http://www.schenectady.k12.ny.us/UserFiles/Servers/Server\\_412252/File/2020-2021/REOPENING%20PLAN/Reopening%20Plan%20-%2007.31.2020%20submission%20to%20NYS.pdf](http://www.schenectady.k12.ny.us/UserFiles/Servers/Server_412252/File/2020-2021/REOPENING%20PLAN/Reopening%20Plan%20-%2007.31.2020%20submission%20to%20NYS.pdf).

<sup>120</sup> Pete DeMola, *Months after lawmakers spike Wi-Fi funds, Schenectady City Hall renews pitch*, *The Daily Gazette* (Oct. 24, 2020) <https://dailygazette.com/2020/10/24/months-after-lawmakers-spike-wi-fi-funds-city-hall-renews-pitch/>.

<sup>121</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 18003 (2020). The CARES Act was additional funding given to States to provide for school districts in addition to the regular course of federal education funding. Congress allocated the funds to states based on their relative share of grants under Title 1-A of the Every Student Succeeds Act ("ESSA"), a program that funds education for low-income students. The CARES Act also provides Governors with a discretionary fund for emergency education relief (totaling \$3 billion).

laptops and hotspots devices; training educators to use online learning tools, ensuring access to students with disabilities, and providing students emergency funding for food, housing, and other basic essentials.”

However, days after Congress allocated money to states as part of the CARES Act, New York approved a Fiscal Year 2021 Budget that cut districts’ State Aid by the *exact* amount they were entitled to under the CARES Act. The State called this the “pandemic adjustment.”<sup>122</sup> Under the CARES Act, Schenectady received \$5,706,710 in federal funding – but due to the pandemic adjustment, Schenectady’s State Aid was reduced by \$5,706,710.<sup>123</sup> Because the CARES Act targeted most funds to high-needs school districts, districts like Schenectady were the ones who received the largest cuts to their budget. So while the pandemic adjustment reduced Schenectady’s total State Aid by 4%, New York’s 195 wealthiest districts were reduced by only 1% on average.<sup>124</sup> As a result of the pandemic adjustment, Schenectady received no additional funding through the CARES Act but was still required to budget for the additional costs caused by the pandemic that Congress intended to alleviate.<sup>125</sup>

In addition to this cut, Governor Cuomo began rolling back State Aid that was already promised to districts for reimbursement expenses that were still owed to the district from the previous year’s budget. For example, Cuomo withheld \$630,000 from Schenectady in

---

<sup>122</sup> Zachary Matson, *School Aid Flat in Wake of COVID-19 Pandemic; Numbers Mean Budget Cuts Likely*, The Daily Gazette (Apr. 1, 2020), <https://dailygazette.com/2020/04/01/school-aid-flat-in-wake-of-pandemic/>.

<sup>123</sup> Schenectady City School District, 2020-21 Budget Development Presentation, May 20, 2020, slide 10.

<sup>124</sup> Mary McKillip & David Sciarra, *New York’s Pandemic Adjustment: Depriving Resources to Students Impacted by COVID-19 3–4* (Apr. 22, 2020), [https://edlawcenter.org/assets/files/pdfs/publications/NY\\_Pandemic\\_Adjustment\\_final.pdf](https://edlawcenter.org/assets/files/pdfs/publications/NY_Pandemic_Adjustment_final.pdf).

<sup>125</sup> In fact, Governor Cuomo’s pandemic adjustment may result in Schenectady receiving less total aid because the CARES Act mandates that the district set aside a portion of CARES Act funding for equitable services provided in private schools. As a result, Governor Cuomo’s pandemic adjustment would be greater than the money given to Schenectady under the CARES Act.

reimbursement expense-based aids, in special education, transportation, and prekindergarten – that Schenectady had accrued and was owed from the 2019-2020 school year. Because of this deficit, Schenectady was forced to make additional cuts in programs, staff, and services for the upcoming 2020-2021 school year in order to off-set the \$630,000 withheld by the Governor.<sup>126</sup>

**c. The Threat of a 20% Cut Has Already Forced Schenectady to Cut Essential Staff and Programs.**

Because State Aid is paid in installments throughout the year, Schenectady plans its school year budget in advance, prior to receiving aid, based on the State's budget indicating how much aid the District will receive. The threat of a 20% cut to its budget (estimated at \$28.9 million) has forced Schenectady to make significant cuts to its staff and services or risk running an even larger deficit. Originally, Schenectady was scheduled to receive \$144,279,761 in total State Aid, plus \$5,706,710 in CARES aid, for a total of \$149,986,381. But because of the pandemic adjustment and the 20% cut, Schenectady will now receive \$109,673,051.<sup>127</sup>

Already, Schenectady has made significant cuts to its staff and services:

The biggest impact of the cuts is that some of the District's highest-needs students will not receive access to any education at all. Because of the cuts, Schenectady was forced to close down schools and shift all students in grades 7-12 to an all-virtual school, with the exception of special education students in self-contained classrooms.<sup>128</sup> The shift to remote learning is

---

<sup>126</sup> Schenectady City School District, Fiscal Update to the Board of Education Re: 2020–21 State Aid Withholdings, Implications & Action Steps, at 10 (Sep. 2, 2020); Matson, *Schenectady School Board OKs More Layoffs*.

<sup>127</sup> The reduction to foundation aid is especially detrimental to a high-needs district like Schenectady because foundation aid makes up 69% of Schenectady's operating budget. Leanne DeRosa, *Schenectady School District Moves Grades 7-12 to Remote-Only, Because of State Aid Cuts*, <https://cbs6albany.com/news/coronavirus/schenectady-school-district-moves-grades-7-12-to-remote-only-because-of-state-aid-cuts>.

<sup>128</sup> Allen Tr. 67::17–23 (“We had to close down several of our buildings this year and only offer instruction in certain of our buildings and that was one of the decisions that was made, was we could only offer in-person instruction for self-contained students 7 through 12.”).

devastating to many Schenectady students who do not have access to stable internet connection or remote learning devices.<sup>129</sup> Many of these students receive minimal to no instruction at all. For students who are able to access the classroom (virtually or physically), they do not have access to a sufficient number of teachers providing instruction in appropriate class sizes as Schenectady was forced to eliminate 25% of its staff. For students that must attend in person due to special needs, Schenectady cannot provide them with adequate and accessible school buildings that are safe for given the heightened pandemic safety requirements. A district that cannot meet even the most basic safety needs for its students cannot be providing a constitutionally adequate education.

Even the grades 7-12 students who will still receive an education remotely, will have to do so without the new programs and initiatives Schenectady had developed over the years.<sup>130</sup> For example, Schenectady had to cut its GEC Program that was crucial in raising graduation rates for the Class of 2019 and will wipe away gains made for subsequent classes who will no longer receive those services.<sup>131</sup> Similar to the GEC program, Schenectady also cut its “operation graduation program,” which provided wraparound social/emotional support to students severely at risk and

---

<sup>129</sup> Tote-Freeman Tr. 264:22–266:8 (“Q. Do you think in general Schenectady is providing that to its students? A. I would say not to all their students. Q. What does ‘not to all’ mean in that answer? A. I mean there are lots of students that we fall down on with that and I think it's hard for me, I know we keep talking about prepandemic, but in this moment I'm living right now, with all these kids on virtual learning and the worry that I have for them every day, it is hard for me to step outside the pandemic because I feel like it's even more intensified in me right now the worry that I have for the kids and the responsibility that I feel to do better.”).

<sup>130</sup> Tote-Freeman Tr. 37:18–39:18 (“We're always striving for excellence with less and so it's like the last couple of years we had a couple of budget years where we got a little bit more money and we tried to use those resources the most efficient way possible and we were starting to see some gains in some areas. And so this just felt like, honestly, it felt like we desicrated [sic] that, we just took a giant step backwards.”).

<sup>131</sup> Allen Tr. 231:14–18 (“It is disheartening that we’ve had to completely disassemble our gen ed continuum, because those are some areas where I could see doing efforts like that for our students has made a difference.”); Tote-Freeman Tr. 21:8–21 (“[B]ecause of some significant budget issues that we’ve recently had, we laid off a lot of people and had to make a lot of changes recently. So our gen ed continuum had like a program that I would say is designed for more at risk students, but currently we don’t have that. ); *id.* at 286:21–287:24 (“I've seen us not be able to offer a gen ed continuum resource, or in particular, reading resource to every student who needed it. I've seen that, so that's why I say that. . . Right now, especially right now with the pandemic, I know we keep trying to go prepandemic, but it's even worse right now.”) .

had started to show growth for students.<sup>132</sup> These programs only served limited amount of students, but were essential in providing a quality education.<sup>133</sup>

Schenectady also cut its sole transition specialist who provides support to special education teachers to write compliant and high quality IEPs.<sup>134</sup> Before the cut, the specialist was already unable to meet the needs of the students due to a heavy workload.<sup>135</sup> Now, no students will benefit from those services.

In addition, because of the proposed cuts, Schenectady has been forced to eliminate a large chunk of its already inadequate expanded platform that is necessary for so many of their students and cut further from the already insufficient number of social workers who are necessary to provide mental health services to students living in poverty and dealing with traumatic events.<sup>136</sup>

---

<sup>132</sup> Allen Tr. 230:21–231:13.

<sup>133</sup> MacFarlane Tr. 313:16–314:12 (“I believe that we’re striving for the highest quality that we can provide; however, as you saw, our gen ed continuum is one example of how we’re striving to provide the highest quality education to our students, however it is a limited amount of students that we are able to service and that is something that is hard for me every night when I put my head down on the pillow to say we’re doing the best we can as far as quality goes but we’re not giving quality education to every student. You know, we’re not able to, we’re trying, but we’re not able to deliver to every student. If we were, we would have more students graduating and being college- and career-ready, so I think we’re trying and we’re improving slowly, but we’re not where we need to be.”).

<sup>134</sup> Allen Tr. 76:11–77:12 (“Our transition specialists supported special education teachers to write compliant and high quality IEPs and to provide those coordinated set of activities that we were talking about, that person also assisted families with making contacts to those agencies. Many of our families have a significant number of barriers to accessing those services themselves, so interestingly services that they may have had at their disposal, they could have had at their disposal for years that they were just not aware of, you know, we have that person assisting families to make those connections because our families don’t always have working phones or minutes on their phones to be able to access those, they may not have -- be literate to even know that those are options for their students. And so that’s where the school district has to pick up some of that slack, because our students still need those supports but our families don’t always know about them.”).

<sup>135</sup> *Id.* at 79:20–80:2 (“My opinion about that is that even when we had a transition specialist, that person’s responsibilities were so heavy and with so many students in need in the district, that that person wasn’t even able to meet the needs and now we don’t even have anybody.”).

<sup>136</sup> Without this staff, Schenectady cannot provide a sound basic education to its students. Tote-Freeman Tr. 271:5–272:6 (“A. . . But I was going to give you an example of, you know, me thinking about trauma and mental health, and if that’s a thing that we think students need in order to be able to be better prepared to meet those indicators and milestones and then we reduce one of the clinicians on the crisis prevention team or lay off social workers, which is what I just did, that is the kind of thing that makes it really difficult to say that we are providing that

Since the State began withholding 20% of the District's payment, Schenectady has laid off 423.7 Full Time Equivalent positions (approximately 25% of its total work force), wiping *all* the positions they have created in the last five years that have led to record high student outcomes – and still more.<sup>137</sup> These positions included teachers, support staff, paraprofessionals, administrative staff, clerical staff, and more. As a result, class sizes have become even larger than the already excessive class sizes pre-pandemic. Remote learning already poses a challenge to engage students and give them quality access to teachers notwithstanding that there will be more children to engage in every class. Additionally, due to contract and laws requiring that layoffs be tied to years of service, a disproportionate number of Black/Latinx employees have been let go during the most recent staff cuts.<sup>138</sup> These teachers, aids, and administrative staff were selected particularly due to their credentials and to serve the most advanced needs of Schenectady's students. As they are highly competitive applicants, they will likely move to nearby private schools or better funded schools before Schenectady will have a chance to rehire them in the event the 20% cuts are not rescinded soon.

The teachers that will continue to remain with the District have will be required to do so with major cuts to their professional development. Schenectady was forced to cut their entire

---

sound basic education for me."); MacFarlane Tr. 313:11-15 ("I don't think we're meeting the needs of every student in our district because I don't know that we're able to at this time, but that we are trying to do that.").

<sup>137</sup> MacFarlane Tr. 105:3-6 ("Given the 20 percent anticipated budget cuts, we laid off over 400 staff, many of them were social workers and teachers.").

<sup>138</sup> Recently, Schenectady had made an initiative to increase workforce diversity as research has shown that minority students with at least one-same race teacher tend to have better standardized test scores, improved attendance, and are suspended less frequently. Dave Figlio, *The Importance of a Diverse Teaching Force*, Brookings Institute (Nov. 16, 2017) ("Research indicates that minority students do better contemporaneously in school – and likely in the long run as well – when they are exposed to teachers of their same race or ethnicity."), <https://www.brookings.edu/research/the-importance-of-a-diverse-teaching-force/>. Many of the employees that were laid off represented highly competitive applicants that may never return to the district in the event that funding is restored.

coaching program which provided training to teachers in providing services to students.<sup>139</sup> Similarly, the District can no longer provide its designated RTI training program for teachers that it had designed over the last few years, which was slated to launch for this academic school year.<sup>140</sup> This program was essential in ensuring that intervention plans are universally provided to all staff who need access to them to ensure students are provided with key services.<sup>141</sup>

The layoffs decimated Schenectady's mental health services, the most critical input for its student demographic.<sup>142</sup> The District was required to lay off their entire district behavior team, which was responsible for creating behavior plans to target students social emotional needs, which had been proven to improve student outcomes.<sup>143</sup> The District also laid off social workers, guidance counselors, elementary counselors; educator liaisons, and other mental health

---

<sup>139</sup> Tote-Freeman Tr. 177:21–178:22; MacFarlane Tr. 52:23–53:8 (“I also had a coach that supported teachers, a general continuum coach, that we were unable to continue with. And this was prior to our – this was in last year’s budget, this was prior to our concern for this year with the 20 percent cut. I lost those supports, so those were my two direct supports.”).

<sup>140</sup> Tote-Freeman Tr. 206:25–208:16.

<sup>141</sup> *See id.*

<sup>142</sup> Allen Tr. 244:19–24 (“Do you know how many social workers are employed by the school district, Schenectady School District? A. I don't know that, but I know we had to lay a large number of them off this year.”); Tote-Freeman Tr. 288:15–289:24 (“I would say that we have a significant number of students who really could benefit from social work support, for example, whether it be mental health, trauma, whatever it may be, but there's not enough social work support for us to ensure that all of them have the ability to have counseling.”).

<sup>143</sup> Tote-Freeman Tr. 130:16–132:22.

professionals.<sup>144</sup> The District no longer has any intensive case managers for their students.<sup>145</sup> As a result, Schenectady has inadequate amounts of mental health staff to provide services despite students needing it now more than ever.<sup>146</sup>

For many of Schenectady's students, school served as the only place they would receive a meal.<sup>147</sup> When the District was forced to close schools in the spring of 2020 due to the pandemic, the District began distributing five days' worth of breakfasts and lunches per week to all of its students.<sup>148</sup> To accomplish this the District bussed meals to bus stops three days per week. However, due to the cuts, the District will have to require that families travel to the District to pick up meals from school facilities, despite knowing that this will depress participation.

---

<sup>144</sup> Tote-Freeman Tr. 30:19–33:10 (“And with our recent budget stuff, as we've made gains, we've had to take some steps backwards and I just lost a social worker to that team and recently had to lay off four team social workers in the district. So it just feels like we start to make a little bit of progress and then something happens and we kind of have to step back and reprioritize.”); *id.* at 292:4–293:24 (“[W]e should be ensuring that there is access for elementary students to counselors as well and we had intended to start adding a few elementary counselors this year and then the same thing, that kind of went out the window with the budget.”); *id.* at 35:16–23 (“So we were going to have those counseling positions start to impact our ability to have elementary counselors this year, but, again, with the recent situation we're in with the budget, all of that kind of got -- we don't have the educator liaisons or the elementary counselors now.”).

<sup>145</sup> MacFarlane Tr. 109:16–110:8 (“A. Last year we had two intensive case managers who were school counselors at the high school. Q. But it turned out that because of the pandemic, there is zero, is that what you're saying? A. Correct.”).

<sup>146</sup> Tote-Freeman Tr. 301:12–3012:11 (agreeing with the statement that that “Schenectady has inadequate social workers” and stating “looking at the first line of inadequate social workers and knowing I just laid off of them, so my answer would be yes, we have an inadequate number of social workers. I laid off guidance counselors and psychologists and administrators, so it has made all these things really hard to do.”).

<sup>147</sup> Even the meals Schenectady was able to provide before the cuts was insufficient to meet basic students need. Allen Tr. 176:14–17 (“And the food that we're able to provide to students is not – it's not really satisfactory to what the students need.”); *Id.* at 213:12–24 (“What I meant by that is that the portions that are given to students in the lunches that are given are the same for a kindergartener as for a fifth grader, for example, and so while that might satisfy a kindergarten student, a 5th grader and older students remain hungry even after they are given their lunch portion. When we send home meals on the weekends as well, it appears evident that the meals don't last them the weekend and so they're coming in starving on Mondays.”).

<sup>148</sup> MacFarlane Tr. 119:12–20 (“We have many students who are homeless, we have students who are – families who are struggling, especially during COVID, we have a weekend backpack program where we have students who have chosen virtual this year and their parents aren't able to get to the schools and so we have to come up with solutions as to how to get the food to the students.”).



Because of the cuts, no students within Schenectady School District will attend prekindergarten this semester. Although the State initially approved Schenectady's 2020-2021 grant application for universal Pre-K, the State subsequently announced that it planned to withhold *at least* a portion of these funds from Schenectady – but has yet to inform the District of the withholding amount.<sup>149</sup> As a result, Schenectady cannot offer Pre-K until the extent of the State's budget cuts are clear.<sup>150</sup> The lack of Pre-K will cause students to be further behind when entering kindergarten and disproportionately impact low-income students who need access to Pre-K to develop basic skills necessary to succeed in K-12 schooling.

These cuts are merely a snapshot of the impact of the 20% withholding of foundation aid. The withholding has wreaked havoc over Schenectady schools. Each day that funding is withheld causes irreparable harm to the students and seeks to erase every gain that Schenectady has worked tirelessly for in the last five years.

#### **IV. THE BALANCE OF THE EQUITIES WEIGH HEAVILY IN PLAINTIFF'S FAVOR**

The court should grant Plaintiff's preliminary injunction because on balance it is clear that the equities tip in favor of the Plaintiff. *Ascentium Capital LLC v. Northern Capital Assoc. XIII, L.P.*, No. 650481/12, 2014 N.Y. Misc. LEXIS 1962 (Sup. Ct. New York Cnty. Apr. 25, 2014).

*First*, New York courts agree that when the comparative harm to the plaintiffs is greater than the harm to the defendants the balance of equities falls in plaintiffs' favor. *Borenstein v. Rochel Properties, Inc.*, 176 A.D.2d 171, 172 (1st Dep't 1991). Plaintiff is not indifferent to the

---

<sup>149</sup> WGRZ Staff, *NYS Approves Universal Pre-kindergarten funding, but amount is in limbo*, 2WGRZ (Aug. 14, 2020), <https://www.wgrz.com/article/news/education/new-york-state-approves-universal-prekindergarten-funding-with-changes/71-b82d12cf-9531-4d4a-b54d-665b99d299f7>.

<sup>150</sup> Schenectady City School District, *Fiscal Update to the Board of Education Re: 2020-21 State Aid Withholdings, Implications, & Action Steps* (Aug. 31, 2020), slide 9 (stating that Schenectady would be “[p]ostponing the start of Pre-Kindergarten until at least January”); slide 10 (recommending that 26 Pre-K paraprofessionals and 13 Pre-K teachers be laid off).

difficult decisions the State has to make as it grapples with the budget gaps caused by the pandemic and its fallout. However, there can be no serious disagreement that the comparative harm that will be visited on Schenectady children if the State goes forward with the 20% cut will far outweigh any harm to the State, in having to adjust its budget to account for these funds. A loss of approximately \$28.5 million<sup>151</sup> for New York State would amount to a mere sliver in the State's over \$175 billion budget. A loss of \$30 million would eviscerate any chance Schenectady has to provide an opportunity for a sound basic education to its students.

Clearly, the balance of equities falls in favor of giving Schenectady a shot at meeting its constitutional mandate. *L&M Bus Corp. v. New York City Dept. of Educ.*, 873 N.Y.S. 2d 512, 512 (Sup. Ct. N.Y. Cnty. 2008) (finding that courts “must weigh the interests of the general public as well as the interests of the parties to the litigation”) (citations omitted). By contrast, the State will not be harmed by having to cut these funds from somewhere else, where the cuts will not infringe on the constitutional rights of New York children.

*Second*, a court balancing the equities in the context of a preliminary injunction must consider “the enormous public interests involved.” *Seitzman v. Hudson River Associates*, 126 A.D.2d 211, 214-15 (1st Dep’t 1987). In *Seitzman*, the First Department considered the health care interests of New York residents and the healthcare policy of the State in granting a preliminary injunction. *Id.* Similar, this Court should consider the education policy of New York State and particularly the educational interests of some of New York’s most vulnerable children. This court must consider the public interests involved in the destruction of the Schenectady school system. Students’ education and safety are of the utmost priority and part of the basic constitutional

---

<sup>151</sup> See Schenectady City Schools, *Fall 2020 Reopening Plan*, [http://www.schenectady.k12.ny.us/reopening\\_plan\\_2020](http://www.schenectady.k12.ny.us/reopening_plan_2020).

minimum. However, for Schenectady students, both of those continue to be in jeopardy pending a preliminary injunction.

#### V. ONLY A NOMINAL UNDERTAKING SHOULD BE IMPOSED

CPLR 6312(b) directs the court to fix an undertaking in an amount that will compensate the defendant for damages incurred “by reason of the injunction” in the event that the injunction is later determined to be unwarranted. *Gardens Owners Corp. v. 35th Ave. Apt. Corp.*, 91 A.D.3d 702, 703 (2d Dep’t 2012). The fixing of the amount of an undertaking is a matter within the sound discretion of the Supreme Court. *Id.* The precise amount of the undertaking should be “rationally related” to the potential damages the enjoined party would sustain in the event that the injunction is later determined to be unwarranted. *Ithilien Realty Corp. v. 180 Ludlow Dev. LLC*, 80 A.D.3d 455, 455 (1st Dep’t 2011) (citations omitted).

Plaintiff respectfully submits that a nominal undertaking is appropriate in this case. Plaintiff is a resident of Schenectady who has brought this case in the public interest, to vindicate the constitutional rights of children in Schenectady. Further, the State will suffer no damages in the event that Plaintiff does not prevail on her claims. *Daytop Village, Inc. v. Consolidated Edison Co.*, 61 A.D.2d 933, 934–35 (1st Dep’t 1978) (finding that the supposed damage of attempting to force an immediate payment, “obviously beyond the present capacity” of the institution was not the “kind of damage” embraced by CPLR 6312(b)). Under such circumstances Plaintiff should only be required to post a nominal bond.

**CONCLUSION**

For the foregoing reasons, Plaintiff asks that the Court grant this motion for preliminary injunction.

Dated: December 11, 2020

New York, N.Y.

WHITE & CASE LLP

/s/ Alice Tsier

Alice Tsier

Michael-Anthony Jaoude

Laura Garr

1221 Avenue of the Americas

New York, New York 10020

(212) 819-8200

alice.tsier@whitecase.com

*Attorneys for Individual Syracuse  
and Schenectady Plaintiffs*