

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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LARRY J. AND MARY FRANCES MAISTO, et al.,

Plaintiffs,

-against-

Index No. 8997-08

STATE OF NEW YORK,

Defendant.

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DEFENDANT'S ADDITIONAL PROPOSED FINDINGS OF FACT

Pursuant to paragraph "3" of the stipulation & order dated March 12, 2015, defendant hereby submits the following Additional Proposed Findings of Fact:

I. NEW YORK STATE'S EDUCATION SPENDING

1. New York spends more on public education, on a per pupil basis, than any other state in the union. (T. 1513-14, 3151, 4109-10, 5042, 5044; D.X. P-2 p. 8).¹

2. Low wealth districts receive six times more State aid per pupil than the highest wealth districts. (T. 4116-20, 4168-69, 4171-72; D.X. H-2; D.X. X-1 p. 19).

¹"T." refers to the trial transcript followed by a page reference. "P.X." refers to plaintiffs' exhibits in evidence. "D.X." refers to defendant's exhibits in evidence. "C.X." refers to court exhibits.

II. GOVERNOR PATAKI'S EDUCATION REFORM PLAN

3. In the Court of Appeals' 2003 decision in Campaign for Fiscal Equity v. State ("CFE"), the court directed the State to ascertain the actual cost of providing a sound basic education in New York City and invited the State to ascertain the actual cost of providing a sound basic education statewide. (T. 3009-10, 3178-79).

4. In response to that directive, Governor Pataki created the New York State Commission on Education Reform, also known as the Zarb Commission. (T. 3010, 3179)

5. Governor Pataki charged the Zarb Commission with recommending to the executive and the legislature education financing and other reforms that would ensure that all children in New York State have an opportunity to obtain a sound basic education. (T. 3010-11, 3179).

6. The Zarb Commission retained Standard and Poor's School Evaluation Services ("S&P") to calculate the additional spending required to provide a sound basic education. (T. 3011-13, 3179-80).

7. In its March 2004 Resource Adequacy Study (D.X. T-1 pp. 1037-1135), S&P used various criteria to identify alternate spending targets. (T. 3015, 3181).

8. In its March 29, 2004 Final Report (D.X. T-1 pp. 965-1035), the Zarb Commission recommended a five year phase-in of a statewide amount ranging from 2.5 to 5.6 billion dollars from state, local, and federal sources. (T. 3015-17, 3181-84; D.X. T-1 p. 988).

9. In his August 12, 2004 State Education Reform Plan (D.X. T-1 pp. 940-1035), Governor Pataki concluded that \$2.5 billion in additional combined state, local, and federal revenues statewide, including \$1.9 billion in New York City, to be phased in over five years, was a valid determination of the cost of providing a sound basic education in New York City. (T. 3017-18, 3023, 3185, 4020-22, 4159-60; D.X. T-1 p. 953).

10. In the Court of Appeals' 2006 decision in CFE, the court concluded that the methodology used to calculate the \$2.5 billion was not unreasonable. (T. 3186, 3319).

III. ENACTMENT OF FOUNDATION AID

11. In 2007, newly elected Governor Spitzer proposed a new funding formula known as Foundation Aid as part of his four year educational investment plan. (T. 4012).

12. Governor Spitzer's proposal called for, among other things, a \$4.8 billion dollar increase in what would be foundation aid, to be phased in over four years, as well as various measures to strengthen educational accountability by establishing measureable performance targets, promoting strong

educational leadership, and raising standards. (T. 3058-60, 3132-33, 4131, 4137; P.X. 111 pp. 5-6).

13. In his January 31, 2007 press release entitled "Unprecedented Expansion of School Aid Tied to Accountability", Governor Spitzer stated, "[t]he Budget provides more than sufficient funds to address the school funding needs highlighted by the Campaign for Fiscal Equity lawsuit...." (T. 3032-34, 3085-86, 4027-28; D.X. U-1 p. 2).

14. In its February 2007 Staff Analysis of the 2007-08 Executive Budget, the Senate noted that "the Executive far surpasses the funding requirements of [CFE]..." and "[t]he Executive's approach goes far beyond the November 2006 Court of Appeals ruling..." (D.X. V-1 pp. 7, 66; T. 3039-42, 3087-90, 4023-26).

15. In 2007, the Legislature enacted, and the Governor signed into law, Governor Spitzer's four year educational investment plan. The enacted 2007 foundation aid formula called for an increase of \$5.5 billion in what would be foundation aid, rather than the \$4.8 billion proposed by Governor Spitzer, also to be phased in over four years, in addition to other state aids such as high cost excess cost aid, transportation aid, hardware and technical aid, software aid, textbook aid, building aid, BOCES aid, and universal pre-kindergarten aid. (T. 3021, 3049, 3058-61, 3187, 4015-20, 4063-79, 4129, 4131, 4137; P.X. 19).

16. The enacted 2007 Foundation Aid formula calculates a "foundation amount" for all school districts that represents the average per pupil cost, adjusted for inflation, of the lower half spending "successful" school districts, i.e., those districts which achieve an 80 percent passing rate on selected examinations and assessments. (T. 4031-33, 4039-41, 4121-23).

17. The foundation aid amount per pupil for each district is calculated as follows: The foundation amount is multiplied by the district's pupil needs index, which applies a weighting factor based on the number of students in the district who have certain identified needs. The product of that calculation is then multiplied by the district's regional cost index, which adjusts for the cost of living in the region of the State where the district is located. The product of that calculation is the total adjusted foundation amount, from which the expected local minimum contribution is subtracted to arrive at the amount of the district's foundation aid per pupil. The district's total foundation aid amount is then calculated by multiplying the per pupil foundation aid amount by an enrollment count (known as total aidable foundation pupil units or "TAFPU"), which includes an additional weighting for students designated with special education needs. (T. 4031, 4051-62; D.X. L-2; D.X. M-2).

IV. IMPLEMENTATION OF FOUNDATION AID

18. As originally enacted in 2007, the Foundation Aid legislation provided for a four year phase in with the full Foundation Aid increase scheduled for 2010-11. (T. 4044-45, 4123).

19. During 2007-08 and 2008-09, Foundation Aid was implemented substantially as originally enacted. D.X. X-1 p. 22.

20. Beginning in 2009-10, the State faced significant budget gaps as a result of declining overall revenues caused by the Great Recession, which had a profound nationwide impact on state education revenues. Consequently, the State became unable to continue the level of State education aid aspired to by the 2007 legislation. (T. 2247, 2250, 3189-90, 4099-4101).

21. The 2009-10 enacted budget extended the Foundation Aid phase in to 2013-14 and froze 2009-10 and 2010-11 payable Foundation Aid at the 2008-09 level. The 2009-10 budget also contained a deficit reduction assessment, which reduced the general fund payments in the school aid formulas; however, these reductions were made up for by education aid paid by the federal government pursuant to the American Recovery and Reinvestment Act ("ARRA"). (T. 3191-92, 4047, 4101-02, 4123-24; D.X. X-1 p. 22).

22. In 2010-11, the Legislature enacted the gap elimination adjustment ("GEA") which provided for a reduction of the total amount of State aid payable to school districts. In 2010-11, ARRA funds partially offset the GEA. Each year since 2011-12, the Legislature has enacted a GEA restoration to reduce the amount of the GEA. (T. 3191-92, 4102-05).

23. The 2011-12 enacted budget extended the Foundation Aid phase in to 2016-17 and froze 2011-12 payable Foundation Aid at the 2008-09 level. (T. 4047-48, 4123-24; D.X. X-1 p. 22).

24. The 2012-13 enacted budget phased in 2012-13 Foundation Aid at 1.7 percent. In 2012-13, Foundation Aid represented 1/4 of total school district revenue in New York State. (T. 4010; D.X. X-1 p. 22; D.X. I-2).

25. The 2013-14 enacted budget provided no phase in of 2013-14 Foundation Aid except for the New York City School District at 5.23 percent. (D.X. X-1 p. 22).

26. The 2014-15 enacted budget phased in Foundation Aid at a minimum of 4.31 percent. D.X. X-1 p. 22.

27. Despite the GEA and the modifications to the Foundation Aid phase in enacted by the Legislature, in 2014-15, the Poughkeepsie City School District ("Poughkeepsie"), the Utica City School District ("Utica"), the Jamestown City School District ("Jamestown"), the Kingston City School District ("Kingston"), the Niagara Falls City School District ("Niagara

Falls"), the Newburgh Enlarged City School District ("Newburgh"), the Port Jervis City School District ("Port Jervis"), and the Mount Vernon City School District ("Mount Vernon") (collectively "the plaintiff districts") received substantially more State aid and had significantly higher revenues than they did in 2006-07. (T. 4105-09, 4113-16; D.X. J-2; D.X. N-2). See also Section V, **Appendix "A"**.

V. FINANCIAL INFORMATION ABOUT THE PLAINTIFF DISTRICTS

28. **Appendix "A"** annexed hereto reflects: (1) the amounts of the enacted budget, state aid received, federal aid received, tax levy, local revenues, general fund revenues, total revenues, general fund expenditures, total expenditures, and general fund balances for the plaintiff districts, as reported to the State by the plaintiff districts, for 2006-07 through 2013-14; and (2) the enacted budget; proposed tax levy; and estimated general fund state aid, federal aid, general fund revenues, and general fund expenditures for 2014-15.

VI. INSTRUCTIONAL EXPENDITURES

29. **Appendix "B"** annexed hereto reflects the general and special education instructional expenditures for the plaintiff districts, as reported to the State Education Department ("SED") by the plaintiff districts, for the years listed in **Appendix "B"**.

VII. DTSDE ACCOUNTABILITY SYSTEM

30. In 2012-13, pursuant to the No Child Left Behind Act, SED began implementing a new accountability system known as the Diagnostic Tool for School and District Effectiveness ("DTSDE"). (T. 4767-68, 4808).

31. Prior to the DTSDE system, SED operated a differentiated accountability system pursuant to which schools identified as in need of improvement, corrective action, or restructuring received a school quality review ("SQR"), curriculum audit, or a joint intervention team ("JIT") visit. (T. 4768). P.X. 13, 14, 15, 47, 49, 58, 76, and 81 are JIT and SQR reports for Poughkeepsie, Utica, Jamestown, Kingston, Port Jervis, Niagara Falls, Newburgh, and Mount Vernon. (T. 9-10, 668, 832, 1013, 1664, 1868).

32. Under the DTSDE system, a school that performed in the bottom ten percent for one or more of its accountability groups in 2010-11 and has not shown improvement is designated as a focus school. A school that performed in the bottom five percent in English language arts or math in 2010-11, or had graduation rates below 60 percent for three consecutive years, and failed to make progress is designated as a priority school. (T. 4764-65).

33. A district that has at least one priority or focus school is designated as a focus district. (T. 4764). Every

focus district that has Title I schools receives school improvement grant funds. (T. 4238, 4242-43, 4789-91, 4793). Jamestown, Poughkeepsie, Utica, Newburgh, Kingston, and Mount Vernon are currently designated as focus districts. (T. 4763-65, 4848; P.X. 27).

34. A school can be identified as a local assistance plan school if it fails to meet adequate yearly progress for three consecutive years on a particular accountability measure for a particular subgroup, there is a large performance gap between members of a subgroup and students who are not members of a subgroup and that gap is not declining, or the school is not in a focus district but is performing at a level that would have caused the school to otherwise be identified as a focus school. (T. 4765-66). Although Port Jervis and Niagara Falls are in good standing, they have local assistance plan schools. (T. 4763, 4765, 4848). P.X. 48 and 57 are local assistance plans for Port Jervis and Niagara Falls. (T. 832, 1013).

35. Once a focus district is identified, SED begins the DTSDE process and the district is visited by a team, composed of, among other people, SED staff members and outside educational experts, and district personnel are trained in the diagnostic tool methodology so that they can visit the focus and priority schools that the State team is unable to visit each year. (T. 4766-67). Each focus and priority school must be

annually reviewed either by an SED team, which consists of an outside educational expert, SED staff members, and a representative of the district, or by a team from the district itself. These reviews result in a DTSDE report. (T. 4779-81).

36. The DTSDE report is organized into six tenets. The first tenet, which applies only at the district level, is district leadership and capacity. The remaining five tenets, which apply to the individual schools, are school leader practices and decisions, curriculum development and support, teacher practices and support, student social and emotional developmental health, and family and community engagement. Each tenet is broken up into statements of practice for which the district or the school is rated highly effective, effective, developing, or ineffective. The DTSDE report contains narratives describing the school or district's strengths and areas of improvement followed by the review team's recommendations. (T. 4774-85; P.X. 30, January 2013 DTSDE for Kennedy Middle School).

37. After the district receives a DTSDE for the district as a whole, it prepares a district comprehensive improvement plan ("DCIP"). After the district receives a DTSDE for an individual school, it prepares a school comprehensive education plan ("SCEP"). The DCIP and SCEP are the district's plans for

the district and the individual schools based on the recommendations contained in the DTSDE's. (T. 4767, 4784-86).

38. The districts' DCIP's and SCEP's are supported by resources that SED will provide to the districts, including professional development. SED will then assess the progress of the districts and determine whether the district or any of its schools can be removed from their accountability status or whether they may need more intrusive interventions. (T. 4767).

39. P.X. 29, 30, 31, 46, 75, and 80 are DTSDE's, DCIP's, and SCEP's for Poughkeepsie, Utica, Jamestown, Kingston, Newburgh, and Mount Vernon. (T. 13-15, 667, 1664, 1868).

VIII. 2012-13 COMMON CORE ASSESSMENTS

40. In 2010, the New York State Board of Regents adopted the Common Core state standards. (D.X. CC p. 2).

41. In 2013, Common Core Assessments in grades three through eight English Language Arts ("ELA") and Math were administered. (D.X. CC p. 2).

42. Unlike prior years, in 2012-13, proficiency in grades three through eight ELA and Math was based on the Common Core, a more demanding set of knowledge and skills targeted to 21st century college and careers. (D.X. CC p. 3; T. 1302, 1373-74, 2638-39, 3474).

43. As a result, there was a significant decline in the performance of third through eighth grade students on the New

York State ELA and Math assessments. Accordingly, the 2012-13 grades three through eight ELA and Math proficiency percentages should not be compared directly with prior year results. (D.X. CC p. 3; T. 1302-03, 3322, 1374, 2639, 3949).

IX. SMART SCHOOLS BOND ACT

44. The 2014-15 enacted State budget contained a general obligation bond program known as the Smart Schools Bond Act. That act, which was subject to the approval of the voters in the 2014 general election and obtained such voter approval, provides that the State will borrow \$2 billion and distribute those funds to school districts throughout the State to be used for a wide variety of purposes. These purposes include the purchase of computers, computer hardware, and technology infrastructure as well as the expansion of classroom space for pre-kindergarten programs, security upgrades, and construction of classroom space to replace temporary classroom units. (T. 4094-95).

45. The \$2 billion will be distributed among school districts based on the percentage of the total amount of state aid that each district receives. In accordance with this distribution methodology, the plaintiff districts will receive the following amounts:

Poughkeepsie: \$5,708,639

Utica: \$9,678,419

Jamestown: \$4,930,918

Kingston: \$5,315,977

Niagara Falls: \$8,865,240

Newburgh: \$12,831,056

Port Jervis: \$3,185,814

Mount Vernon: \$7,961,129

(T. 203, 371, 548, 1000, 1158-59, 1388, 1649, 1811, 2080-81, 2183-84, 2389, 2753, 4096-99; P.X. 19, 2014-15 state aid runs).

X. EXTENDED LEARNING TIME GRANT

46. The Extended Learning Time Grant is a program that provides, on a competitive basis, funding for school districts to extend the school day, week, or year by 25 percent for the period including July 1, 2014 to June 30, 2016. (T. 4085-86, 4090; P.X. 23).

47. On June 23, 2014, Utica was awarded a \$4,104,000 Extended Learning Time Grant, as well as a \$10,000 planning grant. On October 22, 2014, Utica withdrew its Extended Learning Time Grant application. (T. 509-10, 595-96, 608-09, 4088-92, P.X. 23).

48. After having applied for a \$6 million Extended Learning Time Grant, on March 13, 2014, Kingston withdrew its application. (T. 1117-19, 2882; D.X. F; C.X. 37 p. 24).

49. Niagara Falls, Jamestown, Mount Vernon, Port Jervis, and Poughkeepsie did not apply for the Extended Learning Time Grant. (T. 168, 976, 1404, 1650, 4093-94).

XI. COMMUNITY SCHOOLS INITIATIVE GRANT

50. The Community Schools Initiative Grant is a program that provides, on a competitive basis, up to \$500,000 for a district to create a school building as a community hub in which to provide programs such as health, dental, and mental health services; additional after school time; and meal plans for the period including July 1, 2014 to June 30, 2017. (T. 3974, 4086-88; P.X. 22; P.X. 60; P.X. 77).

51. On June 13, 2014, Jamestown was awarded a \$455,465 Community Schools Initiative Grant. (T. 976-78; P.X. 22).

52. On June 13, 2014, Niagara Falls was awarded a \$500,000 Community Schools Initiative Grant. (T. 1633-34, 1706-07; P.X. 60).

53. On June 13, 2014, Newburgh was awarded two \$500,000 Community Schools Initiative Grants for a total of \$1 million. (T. 2035, 2610-11; P.X. 77).

54. Port Jervis, Kingston, and Poughkeepsie did not apply for the Community Schools Initiative Grant. (T. 172, 1116-17, 4094).

XII. STATEWIDE UNIVERSAL PRE-KINDERGARTEN GRANT

55. The Statewide Universal Pre-Kindergarten Grant is a program that provides, on a competitive basis, funding for pre-kindergarten programs for the period from July 1, 2014 to June 30, 2015, in addition to the funds that each district receives as part of its universal pre-kindergarten state aid. (T. 4077-80, 4081-83; P.X. 59; P.X. 78).

56. On August 18, 2014, Niagara Falls was awarded a Statewide Universal Pre-Kindergarten Grant in the amount of \$289,131. (T. 1614-15, 4082-83; P.X. 59).

57. On August 18, 2014, Newburgh was awarded a Statewide Universal Pre-Kindergarten Grant in the amount of \$2,859,484. (T. 1961-62, 1977-78, 4082-83; P.X. 78).

58. Jamestown, Kingston, Mount Vernon, Port Jervis, and Utica did not apply for the Statewide Universal Pre-Kindergarten Grant. (T. 516-17, 978-80, 1116, 2222, 2887, 4084).

XIII. 2014-15 FEDERAL EDUCATION AID TO THE PLAINTIFF DISTRICTS

59. In 2014-15, the plaintiff districts received the following amounts in federal education aid, which must be spent within 27 months (T. 4232, 4235-36):

Mount Vernon: \$6,825,094

Kingston: \$4,289,184

Niagara Falls: \$6,236,873

Poughkeepsie: \$7,264,217

Jamestown: \$5,207,097

Port Jervis: \$1,579,994

Newburgh: \$9,648,750

Utica: \$11,484,476

(P.X. 26; T. 4266).

60. These amounts included:

Title I funds: These are for supplemental education for at risk students and can be used for enrichment programs, tutoring, and extra staff including teachers and other classroom staff. (T. 4237-40, 4789).

IDEA funds: These are for supplemental education services for students with disabilities and can be used to hire additional staff. (T. 4245-46).

Title IIA funds: These are for recruitment, training, and retention of highly qualified teachers and can be used to hire more teachers and provide them with professional development. (T. 4249-51).

Title IIIA funds: These are for language instruction for limited English proficient and immigrant students and can be used for bilingual classroom staff and professional development. (T. 4253, 4261). In November 2014, SED gave all districts the opportunity to update their limited English proficient and immigrant student counts from January to determine whether the districts were entitled to additional Title IIIA funds. Utica

and Mount Vernon did not report an increase in their enrollments. (T. 4255-56, 4259-60).

ARRA RTT Strengthening Teacher and Leader Effectiveness funds: These are to enhance the comprehensive system of supports for teachers and principals in districts which exceed the 25 percent poverty threshold. (T. 4265, 4792, 4866, 4928).

61. In 2013-14, the plaintiff districts did not use the following amounts of available federal aid, which were carried over to 2014-15:

Mount Vernon: \$1,572,767

Kingston: \$843,098

Niagara Falls: \$967,684

Poughkeepsie: \$213,203

Jamestown: \$298,898

Port Jervis: \$94,042

Newburgh: \$1,515,154

Utica: \$708,470

(D.X. U-2; T. 4236). These funds could have been used in 2013-14 for, among other things, tutoring, special education and limited English proficiency services, and professional development. (T. 4242, 4248, 4252, 4262-63).

XIV. RACE TO THE TOP FUNDS

62. In August 2010, New York secured nearly \$700 million in federal Race to the Top ("RTT") funds to reform assessments and standards to align them with college and career readiness standards; prepare, retain, and develop great teachers and principals; enhance data systems; and turn around the lowest performing schools. As a condition of the RTT grant, the federal government required initiatives on preparing, recruiting, and retaining great teachers and principals as well as the evaluation system. Half of the \$700 million was allocated to the districts and 91 percent of them, including the plaintiff districts, signed memoranda of understanding to participate in RTT, in which they acknowledged their commitment to undertake the RTT initiatives. This included implementing new evaluation systems, with measures of student learning as a significant factor, and using the evaluations for employment decisions. (T. 4233-34, 4272-73, 4790, 4799-4800, 4869-73, 4876-81, 4928).

63. After the initial RTT awards to the districts in 2010, SED did two reallocations of unused RTT funds, the first of which was in 2013. RTT was originally intended to be a four year grant, but New York received a fifth year extension from the federal government so that districts which applied for an extension could have RTT funds available until September 30,

2015. Niagara Falls, Poughkeepsie, Newburgh, and Utica applied for a fifth year and received a second reallocation in 2015.

(T. 4233-34, 4271-75; D.X. T-2).

64. The plaintiff districts received the following initial allocation and reallocations of RTT funds:

Mount Vernon

Original Grant Amount: \$770,111

Reallocation No. 1 (2013): \$5,818

Reallocation No. 2 (2015): 0

Kingston

Original Grant Amount: \$543,794

Reallocation No. 1 (2013): \$4,108

Reallocation No. 2 (2015): 0

Niagara Falls

Original Grant Amount: \$923,100

Reallocation No. 1 (2013): \$6,974

Reallocation No. 2 (2015): \$8,085

Poughkeepsie

Original Grant Amount: \$580,621

Reallocation No. 1 (2013): \$4,386

Reallocation No. 2 (2015): \$5,085

Jamestown

Original Grant Amount: \$603,610

Reallocation No. 1 (2013): \$4,560

Reallocation No. 2 (2015): 0

Port Jervis

Original Grant Amount: \$159,260

Reallocation No. 1 (2013): \$1,203

Reallocation No. 2 (2015): 0

Newburgh

Original Grant Amount: \$900,363

Reallocation No. 1 (2013): \$6,802

Reallocation No. 2 (2015): \$7,886

Utica

Original Grant Amount: \$2,111,315

Reallocation No. 1 (2013): \$15,950

Reallocation No. 2 (2015): \$18,492

(D.X. T-2; T. 4234, 4272-73).

XV. STRENGTHENING TEACHER AND LEADER EFFECTIVENESS, DISTRICT DEMONSTRATION PROJECT, AND TEACHING IS THE CORE GRANT FUNDS

65. There were four rounds to the Strengthening Teacher and Leader Effectiveness ("STLE") grant program. (T. 4928, 4944-45). The original STLE grant ("STLE 1") was for the period from October 31, 2012 through June 30, 2014. STLE 2 was for the period from October 1, 2013 through June 30, 2015. STLE 3 was for the period from March 3, 2014 through June 20, 2015. (P.X. 155 p. 4). STLE rounds 1 through 3 focused on training, recruiting, developing, and retaining educators. The fourth

STLE round ("STLE D") distributed unused STLE funds to existing grantees and focused on principals. (T. 4944-51).

66. The District Demonstration Project ("DDP") grant was a joint fund from the New York State Teachers Union and the Regents Research Foundation to fund technical assistance, training, and professional development. (T. 4929-30, 4951-52).

67. The Teaching is the Core grant ("TC") provided funds to districts for technical support in developing quality assessments. (T. 4954-55).

68. Jamestown was eligible to apply for \$2,226,000 in STLE 1, 2, and D funds, but failed to do so. Jamestown received \$623,125 in STLE 3 funds, but did not use \$83,000. Jamestown received DDP funds, of which the district did not use \$34,000. Jamestown was eligible for up to \$400,000 of TC funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44, 4949, 4952-54).

69. Kingston was eligible to apply for \$1,640,375 in STLE 2 and 3 funds, but failed to do so. Kingston received DDP funds, of which the district did not use \$29,000. (D.X. Y-2; T. 4929-30, 4943-44, 4950).

70. Mount Vernon was eligible to apply for \$2,560,125 in STLE 1 and D funds, but failed to do so. Mount Vernon received STLE 2 funds, of which the district did not use \$48,000. Although eligible to apply for DDP funds, Mount Vernon did not

do so. Mount Vernon was eligible for up to \$400,000 of TC funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44).

71. Newburgh was eligible for \$1,395,875 in STLE 2 funds, but did not apply. Although eligible to apply for DDP funds, Newburgh did not do so. (D.X. Y-2; T. 4929-30, 4943-44).

72. Niagara Falls was eligible for \$1,659,500 in STLE 2 and 3 funds, but did not apply. Niagara Falls was eligible for up to \$400,000 of TC funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44).

73. Port Jervis was eligible for \$1,728,625 in STLE 1, 2, and D funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44).

74. Poughkeepsie was eligible for \$1,631,625 in STLE 1, 2, and 3 funds, but did not apply. Although eligible to apply for DDP funds, Poughkeepsie did not do so. Poughkeepsie was eligible for up to \$400,000 of TC funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44).

75. Utica received STLE 1 funds, but did not use \$23,063. Utica was eligible for \$3,916,000 in STLE 2, 3, and D funds, but did not apply. Although eligible to apply for DDP funds, Utica did not do so. Utica was eligible for up to \$400,000 of TC funds, but did not apply. (D.X. Y-2; T. 4929-30, 4943-44).

XVI. ANNUAL PROFESSIONAL PERFORMANCE REVIEW

76. The Annual Professional Performance Review ("APPR") program went into effect in 2010 with 2011-12 as its pilot year. The purpose of APPR is to ensure that educators receive feedback about their strengths and weaknesses and improve instruction, student outcomes, and the quality and diversity of the work force. Unlike the old subjective satisfactory/unsatisfactory evaluation systems, APPR employs a four level evaluation system whereby teachers and principals are rated highly effective, effective, developing, or ineffective based on evidence and practice using rubrics tied to standards developed by teachers. APPR is a multiple measuring system which requires that student growth be used as a significant factor in the evaluations and that the evaluation system be used for employment decisions. When there is a misalignment between the student outcomes and the overall ratings, SED is required to take corrective action, such as providing additional Professional Development or retraining evaluators. (T. 4873-74, 4887, 4896, 4900, 4913, 4916, 5014).

77. By letter dated October 21, 2013, Poughkeepsie advised SED that only three of the district's 312 teachers had been evaluated in 2012-13, that the former Superintendent had failed to oversee the implementation of the 2012-13 APPR evaluations despite repeated assurances to the Board of Education that he

was doing so, and that there was an utter lack of oversight by the former Superintendent and former Assistant Superintendent for Curriculum and Instruction as well as gross negligence during the 2012-13 school year. (D.X. Z-2; T. 4914-21).

XVII. STATE REIMBURSEMENT OF COSTS OF CAPITAL PROJECTS

78. The costs of general capital maintenance and new construction incurred by school districts are eligible for reimbursement by the State at the district's building aid ratio, which can be up to 98 percent and is computed by analyzing the wealth of the district in relation to the other districts in the State. Renovations are reimbursed over a period of 15 years, additions over 20 years, and new construction over 30 years. (T. 4307-11).

79. The building aid ratios for the plaintiff districts are as follows:

Poughkeepsie: 78.5 percent (P.X. 28; T. 372)

Utica: 98 percent (P.X. 28; D.X. W-2; T. 642)

Jamestown: 98 percent (P.X. 28; D.X. W-2; T. 997-96)

Kingston: 60 percent (P.X. 28; T. 1161)

Niagara Falls: 98 percent (P.X. 28; D.X. W-2)

Newburgh: 83.5 percent (P.X. 28)

Port Jervis: 84.7 percent (P.X. 28; T. 2820)

Mount Vernon: 70.3 percent (P.X. 28; D.X. W-2; T. 4470-71)

XVIII. EXCEL FUNDS

80. In 2006, all school districts received an allocation of Expanding Our Children's Education and Learning ("EXCEL") funds which could be used to make up the district's local share of the costs of capital projects relating to physical capacity expansion, health and safety, technology, and handicapped accessibility. In other words, these funds can be used to improve a district's capital facilities with potentially 100% State funds and 0% local contribution. (T. 4074-76, 4312-13).

81. The original EXCEL allocation amount and the remaining available EXCEL funds (as of December 30, 2014) for the plaintiff districts is as follows:

| <u>District</u> | <u>Original EXCEL Allocation</u> | <u>Amount Remaining</u> |
|-----------------|----------------------------------|-------------------------|
| Poughkeepsie | \$3,584,481 | \$823,846 |
| Utica | \$7,035,887 | \$4,202,034 |
| Jamestown | \$3,902,773 | \$2,347,478 |
| Kingston | \$6,002,410 | \$0 |
| Niagara Falls | \$6,214,864 | \$1,259,516 |
| Newburgh | \$9,546,424 | \$0 |
| Port Jervis | \$2,498,864 | \$0 |
| Mount Vernon | \$7,653,793 | \$4,294,610 |

(D.X. W-2; T. 370, 4432-33, 4440-41, 4436, 4438, 4470).

XIX. CAPITAL PROJECTS

82. The following is a summary of some of the major capital projects approved by the voters of the plaintiff districts over the past ten years.

Poughkeepsie

83. In 2009, the voters approved a \$22.835 million project which included the reconstruction of and installation of improvements to enhance energy efficiency in various district buildings and improvements to athletic facilities. (C.X. 67 pp. 96-97, 105; C.X. 68 p. 19; C.X. 44 pp. 3, 18-19; C.X. 46 p. 27; T. 104, 368-70).

Utica

84. In 2008, the voters approved a \$187.6 million project which included technology systems and infrastructure improvements, roof replacements, and improvements to athletic fields and facilities. (C.X. 67 pp. 84, 86-87, 93; C.X. 68 pp. 17-18; D.X. E; D.X. HH; C.X. 40 pp. 3, 18-19, 36; C.X. 42 pp. 2-3, 24, 30; T. 504-08, 540, 543-47, 549-51, 1383-86, 1388-94, 1487-88, 4514).

Jamestown

85. In 2005, the voters approved a \$59 million project that included additions and/or renovations to most instructional facilities. (C.X. 67 p. 75, 82; D.X. Q; C.X. 64 pp. 18-19; T. 994-95).

86. In 2011, the voters approved a \$68 million project that included improvements to the district's HVAC, hot water, lighting, and other energy systems; roof replacements; and updates to security systems and instructional technology infrastructure. (C.X. 67 p. 75-76, 82; D.X. Q; C.X. 64 pp. 18-19; T. 995).

Kingston

87. In 2007, the voters approved a \$21.133 million renovation project. (C.X. 67 p. 32; C.X. 34 p. 27).

88. In 2009, the voters approved a \$3.58 million project which included renovations to the Carnegie Library. (C.X. 67 p. 32; C.X. 34 p. 27; T. 1161-62).

89. In 2012 and 2013, the voters approved an \$8 million and a \$6.95 million project which included roof, boiler, and electrical system replacements and ADA upgrades. (C.X. 67 p. 32; C.X. 68 pp. 6, 8; D.X. W p. 4; C.X. 34 p. 27; T. 1162-64).

90. In 2013, the voters approved a \$137.5 million project which included major renovations to the high school. (C.X. 67 p. 43; C.X. 68 p. 6; C.X. 37 pp. 11, 75; T. 1164-65, 2859, 4339, 4490, 4534).

Niagara Falls

91. In 2012, the voters approved a \$66.7 million project which included construction and reconstruction of and improvements to school buildings, improvements to athletic

facilities, and technology upgrades in classrooms. (C.X. 67 pp. 108-09; C.X. 68 pp. 20-23; C.X. 49 pp. 22-23; T. 1635-44, 1646-47; 3907, 4521-22).

Newburgh

92. In 2005, the voters approved a \$50 million project which included major building renovations throughout the district at all levels tied into the district's master plan including grade level changes in several buildings. (C.X. 67 p. 10; C.X. 68 p. 3; C.X. 14 p. 2; C.X. 28 pp. 24-25; T. 2580-82).

93. In 2007, the voters approved a \$68 million project, which included further improvements, renovations, alterations, and additions to upgrade district facilities, and an \$8.5 million project, which included improvements to the district's outdoor facilities and site changes to convert Newburgh Free Academy to a grades 9 through 12 structure at two campuses. (C.X. 67 p. 10; C.X. 68 pp. 2-3; C.X. 14 ¶14; C.X. 28 p. 25; T. 2580).

94. In 2013, the voters approved at \$1.1 million project which included improvements to security measures in various schools. (C.X. 67 p. 10; C.X. 68 p. 3; C.X. 28 pp. 3, 24; T. 2582).

Port Jervis

95. In 2006, the voters approved a \$14.6 million project which included improvements to all four schools. (C.X. 67 p. 49; C.X. 53 p. 23).

96. In 2010, the voters approved a \$14.6 million project which included security enhancements, replacement of heating and ventilation systems, and renovation of high school science labs. (C.X. 67 p. 50; C.X. 53 p. 24).

97. In 2011, the voters approved a \$1.8 million project which included repairs and improvements to energy efficiency at both elementary schools. (C.X. 67 p. 50; C.X. 53 p. 24).

98. In 2011, the voters also approved a \$1.85 million project which included a roof replacement at the middle school and the installation of a wireless network at the high school. (C.X. 67 p. 50; C.X. 53 p. 24).

99. In 2014, the voters approved a \$5.24 million project which included safety and instructional upgrades. (C.X. 68 pp. 9-10; C.X. 54 p. 6; D.X. MMMM; T. 2204, 2820-21).

Mount Vernon

100. In 2009, the voters approved a \$20 million project which included renovations and upgrades in buildings throughout the district. (C.X. 67 p. 59; C.X. 68 p. 13; C.X. 56 p. 19; T. 2267).

XX. BUILDING CONDITION SURVEYS

101. Since 2000, each district in the State has been required to submit to SED every five years a building condition survey in which the district rates the condition of each school and its components. (T. 4305-06, 4330-31; C.X. 67 p. 3).

102. The purpose of the building condition survey is for districts to identify conditions to be rectified through their upcoming capital projects. (T. 4334-35, 4461, 4470; C.X. 67 p. 4).

103. A building may be rated excellent, good, satisfactory, or unsatisfactory. An individual system in a building may be rated excellent, good, satisfactory, unsatisfactory, or failing. An unsatisfactory rating does not imply that there is an unsafe or unhealthy condition. An unsatisfactory system is one that is not operating as it was designed to do or has exceeded its useful life. If any health, safety, or structural system is rated unsatisfactory, the building must receive an overall rating of unsatisfactory. (T. 4332-33, 4346, 4465; C.X. 67 p. 4).

104. The most recent building condition surveys submitted to SED were in 2010. (T. 4344). The 2010 building condition surveys submitted by the plaintiff districts did not contain any failing ratings. (P.X. 16, 17, 18, 39, 40, 41, 42, 43; T. 4529-30; C.X. 67 p. 4).

105. SED also conducts annual fire and safety inspections of every instructional facility in the State. If SED finds a school building to be unsafe or unhealthy, SED revokes the building's certificate of occupancy. (T. 4334, 4466).

106. The only time that SED has ever revoked a certificate of occupancy for any building in any of the plaintiff districts was after a wall collapsed in the Mount Vernon High School in 2010. As a result of this incident, SED directed that the impacted area of the building be temporarily closed off. The condition was found to be the result of improper construction in the early 1960's and was repaired in 2010. (T. 4466-67, 4500, 4504, 4534-35; C.X. 67 pp. 67-68; C.X. 68 p. 15).

XXI. THE PLAINTIFF DISTRICTS HAVE ADEQUATE RESOURCES/INPUTS TO PROVIDE THEIR STUDENTS WITH THE OPPORTUNITY FOR A SOUND BASIC EDUCATION

Poughkeepsie

107. Poughkeepsie has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 44 pp. 7, 9, 40, 42, 118-20; C.X. 46 pp. 22, 30; T. 3570, 3598).

108. The school facilities, including classrooms, library-media centers, gymnasiums, computer labs, cafeterias, auditoriums, athletic facilities, and spaces devoted to special subject areas are adequate and provide a safe, secure, and

orderly learning environment. (C.X. 44 pp. 3-6, 18-20, 23, 40, 118).

109. The facilities and infrastructure in Poughkeepsie are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 95-105, 122; C.X. 68 pp. 19-20, 24).

110. Poughkeepsie has adequate instrumentalities of learning including textbooks, workbooks, supplies, materials, furniture, equipment, and space required for teachers to teach and students to learn. (C.X. 44 pp. 4-5, 34, 40, 36, 118; C.X. 46 p. 27).

111. Poughkeepsie has adequate technology resources including computers, smart boards, and LED projectors. (C.X. 44 pp. 3-5, 18-19, 35-36, 40, 118; C.X. 46 p. 27; T. 122, 224-25, 299-32, 545-47).

112. The classrooms in Poughkeepsie are not crowded and the class sizes are low relative to State averages. (C.X. 44 pp. 4, 34, 40, 118; C.X. 46 pp. 13, 26-27; P.X. 12).

113. Poughkeepsie has an adequate number of experienced and adequately trained classroom, special education, academic intervention services ("AIS"), and English as a second language ("ESL") teachers to serve Poughkeepsie's high need student

population. (C.X. 44 pp. 5, 23-24, 40, 118; C.X. 46 pp. 6-7, 23; P.X. 11).

114. Poughkeepsie has an adequate number of social workers, psychologists, speech pathologists, academic coaches, nurses, librarians, guidance counselors, and other professionals required to support students. (C.X. 44 pp. 23, 40, 118-19; P.X. 11).

115. Poughkeepsie provides a level of administrative staffing at both the district and building levels which is adequate to lead a district of its size. (C.X. 44 pp. 41, 119; P.X. 11).

116. Poughkeepsie has enough security personnel to ensure a safe and orderly environment. (C.X. 44 pp. 23, 40, 118-19).

Utica

117. Utica has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 40 pp. 8, 10, 36, 38-39, 138, 140; C.X. 42 p. 25).

118. The school facilities, including classrooms, library-media centers, gymnasiums, computer labs, cafeterias, auditoriums, athletic facilities, and spaces devoted to special subject areas are adequate and provide a safe and secure learning environment. (C.X. 40 pp. 3-5, 19, 23, 31-32, 36, 138; C.X. 42 pp. 3, 30, 33).

119. The facilities and infrastructure in Utica are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 83-94, 122; C.X. 68 pp. 17-18, 24).

120. Utica has adequate instrumentalities of learning including textbooks, workbooks, supplies, materials, furniture, equipment, and space required for teachers to teach and students to learn. (C.X. 40 pp. 3-5, 19, 31-32, 36, 138; C.X. 42 p. 33).

121. Utica has adequate technology resources including computers, smart boards, and electronic digital microscopes. (C.X. 40 pp. 3-5, 19, 31-32, 36-37, 138; C.X. 42 p. 30).

122. The classrooms in Utica are not crowded and the class sizes compare favorably to State averages. (C.X. 40 pp. 4-5, 22, 31, 37, 138; C.X. 42 pp. 14-15, 24, 28-29; P.X. 12).

123. Utica has an adequate number of experienced and adequately trained classroom, special education, AIS, ESL, and reading teachers to serve Utica's high need student population. (C.X. 40 pp. 5-6, 21-23, 37, 138-39; C.X. 42 pp. 6, 24; P.X. 11).

124. Utica has an adequate number of social workers, psychologists, speech teacher/pathologists, guidance counselors, occupational and physical therapists, and other professionals

required to support students. (C.X. 40 pp. 6, 22-23, 37, 138-39; P.X. 11).

125. Utica provides a level of administrative staffing at both the district and building levels which is adequate to lead a district of its size. (C.X. 40 pp. 6, 28-29, 37, 139; P.X. 11).

126. Utica has enough security personnel to ensure a safe and orderly environment. (C.X. 40 pp. 6-7, 23, 37, 139).

Jamestown

127. Jamestown has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 64 pp. 4, 6, 34, 113; C.X. 65 pp. 29-30, 46; T. 3721-22, 3743).

128. The school facilities, including classrooms, common spaces, libraries, gymnasiums, computer labs, cafeterias, auditoriums, athletic facilities, and spaces devoted to special education subject areas are adequate, clean, and appropriately equipped and provide a safe and orderly learning environment. (C.X. 40 pp. 4, 19, 24, 34, 113; C.X. 65 p. 41).

129. The facilities and infrastructure in Jamestown are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning

environment that enables students to focus on their educational experiences. (C.X. 67 pp. 72-82, 122; C.X. 68 pp. 16-17, 24).

130. All Jamestown schools employ uniform security measures to ensure the safety of students and staff members, including in-session lockout; remote entry controls, visitor sign in, sign out, and pass procedures; and security cameras. (C.X. 64 p. 19, 113).

131. Jamestown has adequate instrumentalities of learning including classroom supplies, textbooks, workbooks, libraries, furniture, equipment, instructional technology, and supplies needed to carry out the educational mission. (C.X. 64 pp. 4, 19, 24-25, 34, 113; C.X. 65 pp. 41-42).

132. Jamestown has adequate technology resources including computers and digital projection units. (C.X. 64 pp. 4, 24-25; C.X. 65 pp. 41-42; T. 772-73, 998-1000).

133. The classrooms in Jamestown are not crowded and the class sizes are manageable and compare favorably to state averages. (C.X. 64 pp. 24, 113; C.X. 65 p. 29, 41; P.X. 12).

134. Jamestown has an adequate number of highly qualified and experienced classroom, special education, and ESL teachers to serve Jamestown's high need student population. (C.X. 64 pp. 5, 22-23, 113; C.X. 65 pp. 8-9, 42; P.X. 11).

135. Jamestown has an adequate number of ancillary personnel, such as guidance counselors and psychologists, to

support student needs and programs. (C.X. 64 pp. 5, 113; P.X. 11).

136. The level of Jamestown's administrative staffing at both the district and building levels is adequate to lead a district of its size and complexity. (C.X. 64 p. 5; P.X. 11)

Kingston

137. Kingston has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 34 pp. 3, 8, 42, 49, 255; C.X. 37 pp. 1, 17, 24, 26, 75-76, 87; T. 3501).

138. Kingston has adequate school facilities, including classrooms, cafeterias, library media centers, gymnasiums, art and music rooms, auditoriums, computer labs, playgrounds, and athletic facilities, which are clean, well maintained, and provide a safe and orderly learning environment. (C.X. 34 pp. 3, 26-29, 42, 49, 255; C.X. 37 pp. 1, 17, 25).

139. The facilities and infrastructure in Kingston are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 26-45, 122; C.X. 68 pp. 6-9, 24, 49).

140. Necessary security measures are in place and enforced at all Kingston schools. (C.X. 34 pp. 29, 49, 255).

141. Kingston has adequate instrumentalities of learning, including basic materials and classroom supplies, textbooks, library resources, equipment, furniture, and access to technology. (C.X. 34 pp. 3-4, 26, 32, 42, 49, 255; C.X. 37 pp. 1, 17, 25).

142. Kingston has adequate technology resources, including computers, smart boards, elmos, and LCD projectors. (C.X. 34 pp. 4, 26; C.X. 37 p. 1; T. 1156-58).

143. The class sizes in Kingston are reasonable and manageable and compare favorably to State averages. (C.X. 67 pp. 4, 31, 42, 49, 255; C.X. 37 pp. 1, 16-17, 25, 86; P.X. 12).

144. Kingston has an adequate number of highly qualified, experienced, and well trained regular and special education teachers to serve Kingston's high need student population. (C.X. 34 pp. 30, 42, 49, 255; C.X. 37 pp. 1, 14-16, 24; P.X. 11).

145. Kingston has an adequate number of ancillary personnel, such as guidance counselors, social workers, and psychologists, to support student needs and programs. (C.X. 34 pp. 49, 255; C.X. 37 pp. 1, 24-25; P.X. 11).

146. Kingston has an adequate number of administrators at the central office and building levels. (C.X. 34 p. 42; P.X. 11).

Niagara Falls

147. Niagara Falls has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 49 pp. 5, 7, 187, 189; C.X. 51 pp. 66, 68, 77; T. 3880).

148. Niagara Falls has adequate school facilities, including classrooms, library media centers, gymnasiums, art and music rooms, auditoriums, playgrounds, and athletic facilities, which are well maintained, conducive to learning, and provide a safe and orderly learning environment. (C.X. 49 pp. 6-8, 22, 47, 187-89; C.X. 51 pp. 14-15, 66).

149. The facilities and infrastructure in Niagara Falls are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 106-120, 122; C.X. 68 pp. 20-23, 24).

150. Appropriate and consistent security measures and staff are in place at all Niagara Falls schools. (C.X. 49 pp. 8, 187, 189; C.X. 51 p. 66).

151. Niagara Falls has adequate instrumentalities of learning, including access to current technology; fully automated, well supplied, and well staffed library and media centers with internet access; basic classroom, art, music, physical education, and laboratory materials and supplies; and

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textbooks and other reading materials. (C.X. 49 pp. 8, 23-24, 187, 189; C.X. 51 pp. 15, 66).

152. Niagara Falls has adequate technology resources, including computers and other electronic devices to enhance learning; classrooms wired for the internet and external video/audio broadcasts; smart boards; LCD televisions; classroom FM sound amplification systems; and state of the art science, technology, engineering, and mathematics ("STEM") classrooms in every school. (C.X. 49 pp. 8, 24, 189; C.X. 51 pp. 15, 66; T. 1622, 1640, 1643-49, 1810).

153. The class sizes in Niagara Falls are reasonable and manageable and compare favorably with State averages. (C.X. 49 pp. 6, 21, 187; C.X. 51 pp. 11-12, 66, 70-71; P.X. 12).

154. Niagara Falls has an adequate number of highly qualified, well trained, and experienced regular and special education teachers to serve Niagara Falls' high risk student population. (C.X. 49 pp. 6, 8, 18-19, 187; C.X. 51 pp. 10, 66, 70; P.X. 11). Niagara Falls has chosen to have a large non-teaching staff. The district could redeploy those resources to increase the number of teachers. (C.X. 49 pp. 187-88; C.X. 51 pp. 12-13, 71; T. 1603-08, 1736-39, 1748, 1777-82, 1790-95, 1826, 3912, 3916, 3921-22, 3945-47).

155. Niagara Falls has an adequate number of professional support personnel, including guidance counselors, psychologists,

aides, monitors, and nurses to work with high risk populations and support student needs and programs. (C.X. 49 pp. 6, 8, 187; C.X. 51 pp. 66, 73; P.X. 11).

156. Niagara Falls has sufficient building administrative and other support staffing based on individual building size and demographics as well as adequate central office staffing based on the district's size. (C.X. 49 pp. 6, 187; P.X. 11).

Newburgh

157. Newburgh has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 28 pp. 2, 4, 44-46, 214-15; C.X. 31 pp. 1, 39, 53; T. 3367, 3369-71, 3373, 3400, 3402-03).

158. Newburgh has adequate school facilities, including air conditioned classrooms, which are clean, well maintained, conducive to learning, and provide a safe and orderly learning environment. (C.X. 28 pp. 3, 23-24, 31, 44-46, 215-16; C.X. 31 pp. 1, 46).

159. The facilities and infrastructure in Newburgh are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 8-25, 122; C.X. 68 pp. 2-5, 24).

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160. All Newburgh schools have the necessary security personnel and systems to ensure school safety, including surveillance equipment in all schools and metal detectors at the secondary level. (C.X. 28 pp. 3, 24, 46, 215-16; C.X. 31 pp. 46-47).

161. Newburgh has adequate instrumentalities of learning, including basic materials and classroom supplies, textbooks, library resources, equipment, furniture, and access to technology. (C.X. 28 pp. 3-4, 24, 31, 44, 46, 216; C.X. 31 pp. 1, 46-47).

162. Newburgh has adequate technology resources, including computers and smart boards. (C.X. 28 pp. 3, 31-32; C.X. 31 p. 1; D.X. EEEE p. 3; T. 2106-08, 2124-26, 2129).

163. The class sizes in Newburgh are adequate and manageable and compare favorably to State averages. (C.X. 28 pp. 3, 27, 44, 46, 215-16; C.X. 31 pp. 21, 51-52; T. 3394; P.X. 12).

164. Newburgh has an adequate number of highly qualified, experienced, and well trained regular and special education teachers to serve Newburgh's high need student population. (C.X. 28 pp. 2-3, 28, 46, 215; C.X. 31 pp. 1, 9-12; P.X. 11).

165. Newburgh has an adequate number of ancillary personnel, such as guidance counselors, nurses, psychologists, psychiatrists, social workers, speech teachers/pathologists, and

librarians and to support student needs and programs. (C.X. 28 pp. 3, 28-29, 46, 215; C.X. 31 p. 1; P.X. 11).

166. Newburgh has an adequate number of administrators at the central office and building levels. (C.X. 28 p. 3, 44; C.X. 31 pp. 9-10; P.X. 11).

Port Jervis

167. Port Jervis has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 53 pp. 4, 6, 10, 48, 50, 101; C.X. 54 pp. 1, 16, 21-23, 40, 50-51).

168. Port Jervis has adequate school facilities, including classrooms, computer labs, cafeterias, well equipped library media centers, art and music rooms, gymnasiums, and auditoriums, which are clean, well maintained, well equipped, and provide a safe environment conducive to learning. (C.X. 53 pp. 4-6, 10, 27, 40, 50, 101; C.X. 54 pp. 1, 21-22, 43).

169. The facilities and infrastructure in Port Jervis are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 47-55, 122; C.X. 68 pp. 9-13, 24).

170. Security measures were in place at all schools to ensure a safe and orderly environment, including surveillance

cameras and monitors and administrative staff at main entrances and hallways during school hours. (C.X. 53 pp. 22, 27, 51, 101; C.X. 54 pp. 21-22).

171. Port Jervis has adequate instrumentalities of learning, including instructional and creative materials and supplies, textbooks, library books, furniture, and access to technology. (C.X. 53 pp. 4-6, 10, 27, 40, 50-51, 101; C.X. 54 pp. 1, 21-22, 40).

172. Port Jervis has adequate technology resources, including computers, smart boards, Alphasmarts, CPS systems, and projectors. (C.X. 53 pp. 4-5, 26-29, 40; C.X. 54 pp. 1, 40, 47; D.X. JJJJ pp. 3-4, 6-7, 9-13; T. 2176-77, 2179-83, 2817-18).

173. The class sizes in Port Jervis are manageable and compare favorably to State averages. (C.X. 53 pp. 5, 10, 29, 50, 101; C.X. 54 pp. 1, 13, 21-22, 40, 48; P.X. 12).

174. Port Jervis has a sufficient number of highly qualified, well trained, and experienced regular and special education teachers to serve the needs of Port Jervis' students. (C.X. 53 pp. 6, 10, 28, 31, 50, 101; C.X. 54 pp. 1, 14, 21-22; P.X. 11).

175. Port Jervis has an adequate number of ancillary personnel, such as guidance counselors, social workers, and psychologists to support student needs and programs. (C.X. 53 pp. 50, 101; C.X. 54 pp. 1, 21-22; P.X. 11).

176. Port Jervis has an adequate number of central office and building level administrators given the number of schools, teachers, and students in the district. (C.X. 53 pp. 33-34; P.X. 11).

Mount Vernon

177. Mount Vernon has adequate resources/inputs to provide its students with the opportunity for a sound basic education. (C.X. 56 pp. 11, 146; C.X. 58 pp. 27-29, 38).

178. Mount Vernon has adequate school facilities and classrooms, which provide a safe environment that is conducive to learning. (C.X. 56 pp. 6, 8, 18-19, 146; C.X. 58 pp. 27-28).

179. The facilities and infrastructure in Mount Vernon are sufficient in their condition and quantity to provide the students with the opportunity for a sound basic education. The buildings are safe and provide a healthy and orderly learning environment that enables students to focus on their educational experiences. (C.X. 67 pp. 56-71, 122; C.X. 68 pp. 13-16, 24).

180. As a result of a substantial decline in enrollment over the past several years, Mount Vernon is operating facilities capable of housing approximately 700 more students than are presently enrolled. A restructuring of the district would significantly reduce the cost of operating the school system without any reduction in the quality of education. (T.

2285, 2289, 2291-93, 2354-55, 2754-57, 4545-48; D.X. AAAA p. 34).

181. Mount Vernon employs adequate security measures and staff in all schools to ensure a safe and orderly environment. (C.X. 56 pp. 8, 146).

182. Mount Vernon has adequate instrumentalities of learning, including textbooks; workbooks; library books; classroom furniture, supplies, and equipment; and access to technology. (C.X. 56 pp. 6-7, 20, 37, 146; C.X. 58 pp. 27-28).

183. Mount Vernon has adequate technology resources, including computers, smart boards, document cameras, interactive white board, and other technological education aids. (C.X. 56 pp. 7, 20; C.X. 58 pp. 27-28; D.X. ZZZZ p. 1; D.X. AAAAA p. 24; T. 2263-64, 2351-52, 2387-88, 2752). However, there has been an inconsistent allocation of technology resources among the schools. (C.X. 56 pp. 7, 20, 24, 27, 37).

184. The class sizes in Mount Vernon are manageable and compare favorably to State averages. (C.X. 56 pp. 7-8, 20, 37, 146; C.X. 58 pp. 21, 28; P.X. 12).

185. Mount Vernon has an adequate number of highly qualified and experienced classroom, special education, English as a second language, and reading teachers to support the teaching and learning required to educate Mount Vernon's high

need student population. (C.X. 56 pp. 7-8, 22-24, 146; C.X. 58 pp. 27-28; P.X. 11).

186. Mount Vernon has a sufficient number of ancillary personnel, such as psychologists, social workers, and guidance counselors, to support Mount Vernon's high need student population. (C.X. 56 pp. 8, 37, 146; P.X. 11).

187. Mount Vernon has an adequate number of administrators, at both the district and building levels, to lead a district of Mount Vernon's size. (C.X. 56 pp. 8, 27, 37; P.X. 11).

XXII. THE PLAINTIFF DISTRICTS' DISAPPOINTING STUDENT ACHIEVEMENT IS NOT THE RESULT OF INADEQUATE RESOURCES/INPUTS

Poughkeepsie

188. Poughkeepsie's disappointing student achievement is not the result of inadequate resources/inputs. It is the result of other factors including too little attention on the part of the district to improve and monitor the teaching and learning that takes place in the classrooms; insufficient engagement on the part of the school and community to change the culture to one of high expectations for all students, teachers, and school leaders and to direct all available resources to that end; too little variety in the use of instructional strategies; limited development of higher order thinking skills, student engagement in meaningful activities, and differentiated instruction; and underutilization of available technology. Poughkeepsie has not

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consistently used research-based instructional practices that are known to be effective, particularly given Poughkeepsie's diverse and high-need student population. Nor have all district and building leaders embraced the findings and recommendations contained in the reports of the SED mandated review teams.

(C.X. 44 pp. 7-10, 25, 41-42, 119-20; C.X. 46 pp. 22, 28-29; T. 3598-3601).

189. Over the past 12 years, Poughkeepsie has had four superintendents, four high school principals, and five middle school principals. (T. 366-67). As noted above, Poughkeepsie has advised SED that the district's former Superintendent had failed to oversee the implementation of the 2012-13 APPR evaluations despite repeated assurances to the Board of Education that he was doing so, and that there was an utter lack of oversight by the former Superintendent and former Assistant Superintendent for Curriculum and Instruction as well as gross negligence during the 2012-13 school year. (D.X. Z-2; T. 4914-21). In July 2013, Nicole Williams became Poughkeepsie's new superintendent and she has made significant leadership changes in the district. (T. 83, 237, 1411-12; C.X. 46 p. 13). These leadership changes, together with Poughkeepsie's implementation of the specific steps to address the teaching and learning challenges identified in the DCIP's and SCEP's (P.X. 29), are the types of interventions that should result in improvements in

academic outcomes. (C.X. 46 pp. 13-17). In fact, Poughkeepsie made notable increases in student achievement on the July 2014 Regents examinations. (D.X. C; T. 238-40).

Utica

190. Utica's disappointing outputs are not the result of inadequate resources/inputs. Rather, they are the result of other factors including too little attention on the part of the district to improve and monitor the teaching and learning that takes place in the classrooms; insufficient engagement on the part of the school and community to change the culture to one of high expectations for all students, teachers, and school leaders and to direct all available resources to that end; too little variety in the use of instructional strategies; limited development of higher order thinking skills, student engagement in meaningful activities, and differentiated instruction; and underutilization of available technology. Utica has not consistently used research-based instructional practices that are known to be effective, particularly given Utica's diverse and high-need student population. Nor have all district and building leaders embraced the findings and recommendations contained in the reports of the SED mandated review teams. (C.X. 40 pp. 8-10, 24-25, 38-39, 140; C.X. 42 pp. 18, 25, 31-32; T. 3629-30).

191. Over the past twelve years, Utica has had four superintendents and a large turnover of principals. (C.X. 40 p. 29). In the past two years, there have been seven changes in the principalships of the 13 Utica schools. (C.X. 42 p. 19; T. 3692). In its DCIP's and SCIP's (P.X. 30), Utica has recognized the need for change in leadership practices and identified specific action plans to address deficiencies. If the district's leaders demonstrate higher expectations and improve monitoring of instruction, those are the types of actions that should cause outcomes to improve. (C.X. 42 pp. 20-21, 25).

Jamestown

192. Jamestown's disappointing outputs are not the result of inadequate resources/inputs. Rather, Jamestown's disappointing student achievement is the result of other factors including too little commitment on the part of the district to improve the teaching that takes place in the classrooms; an insufficient variety of instructional strategies; too little development of higher order thinking skills; not enough student engagement in meaningful activities; too limited an array of differentiated instructional methods; not enough utilization of available technology; and a general lack of commitment by teachers and school leaders to ensure success for all students and the failure of the district leadership to direct all available resources to achieve that end. Jamestown's outputs

could be improved through the reallocation of its available resources to programs that would improve the teaching and learning experience and provide a renewed commitment to the district's educational mission. (C.X. 64 pp. 5-7, 35, 113; C.X 65 pp. 18, 29, 46).

193. Since becoming Superintendent in the summer of 2013, Timothy Maines has instituted numerous initiatives to make teaching more effective and improve student performance. This includes the development of a strategic plan, an early intervention plan, a reading recovery program, an out of school suspension program, the use of teaching coaches, and substantial additional resources devoted to professional development. Mr. Maines has also made several changes in the administration of the Jamestown schools. Mr. Maines expects that these initiatives and changes in building administration will improve the quality of teaching and student outcomes in Jamestown. (T. 786, 810, 813-15, 817, 876-77, 898-99, 906, 932-35, 958-63, 968-70, 972-94).

Kingston

194. When student performance in Kingston fell below state averages, it did not stem from inadequate resources/inputs. Rather, such outputs were often the result of other factors, including not enough attention being given to improve and monitor the teaching and learning process in all classrooms and

the need to establish clear goals and maintain higher expectations, exert stronger leadership among principals in curriculum and professional development, initiate processes to develop higher order thinking skills among students, use data to drive instruction, provide opportunities for more active learning activities involving greater engagement of students, and effectively implement professional learning communities to support student improvement. Kingston can improve its outputs with its existing resources through more stable and focused instructional leadership and faculty cohesion and teamwork to address student interventions, school-wide systematic responses in tracking student achievement and progress, timely action to identify children who need additional time and support, and a directive plan which requires students to receive additional help and more time on task. (C.X. 34 pp. 4, 43-44, 50, 256; C.X. 37 pp. 25, 75, 87-88; T. 3501, 3520).

195. Since his arrival in January 2012, Kingston's current superintendent, Paul Padalino, has exhibited strong and effective leadership and instituted numerous initiatives to improve outputs. This includes the use of instructional coaches, a credit recovery program, the creation of a ninth grade academy, tracking the progress of high school students towards graduation, and increased professional development. Dr. Padalino has also made leadership changes in several schools and

restructured the central office to provide more support to the schools. Dr. Padalino's initiatives and leadership changes are the types of actions that should improve student performance in Kingston. In fact, Kingston has already "made remarkable strides in increasing student achievement...." (T. 1015, 1055-56, 1125-27, 1131-32, 1135-40, 1145, 1148-50, 2880, 2885, 3536-37, 3538; D.X. W p. 8).

Niagara Falls

196. Niagara Falls' disappointing achievement is not the result of inadequate resources/inputs. (C.X. 49 pp. 8, 190; C.X. 51 p. 67). Niagara Falls' poor test performance results from other factors such as a low student attendance rate, consistent student tardiness, and excessive student suspensions. Other factors influencing student performance are inconsistency in teacher effectiveness to actively engage students in the learning process, inconsistent quality of principal evaluative and supervisory skills, and inconsistent support for building leadership. (C.X. 49 pp. 8-9, 190; C.X. 51 pp. 30, 67).

197. In the five year period between 2008-09 and 2012-13, every Niagara Falls school building witnessed a change in principals and two of the buildings were assigned three different principals. In 2012-13, nine of the 11 Niagara Falls schools had a new principal. Such significant leadership turnover makes it difficult to establish trust, vision, and

commitment among students, parents, and staff. (C.X. 51 pp. 14, 31, 38, 41, 44, 47, 49, 55, 58, 62). Niagara Falls has a professional development plan in place, has created a strategic plan to address the district's weaknesses, and has developed local assistance plans for several of its schools. (C.X. 49 pp. 6, 188; P.X. 57; D.X. MM; T. 1594-95, 1601-02, 1641, 1717-18, 1721-22, 1731-32). Assuring effective leadership and quality instruction in every school and improving teachers' abilities to actively engage students in the learning process are the types of interventions that should improve student success in Niagara Falls. (C.X. 49 p. 9, 191-92).

Newburgh

198. Newburgh's disappointing student performance is not the result of inadequate resources/inputs. Rather, such outputs were often the result of other factors, including the need for strong stable administrative leadership at the building and district levels, more successful implementation and execution of professional learning communities with an emphasis on collaboration, and a stronger commitment to change and a focus on raising expectations for all students as well as among teachers and administrators throughout the district. Newburgh needs to establish clear goals and maintain higher expectations, exert stronger leadership among principals in curriculum and professional development, initiate processes to develop higher

order thinking skills among students, establish uniform grading policies, use data to drive instruction, provide opportunities for more active learning activities involving greater engagement of students, and effectively implement professional learning communities to support student improvement. Newburgh can improve its outputs with its existing resources through more stable and focused instructional leadership as well as faculty cohesion and teamwork to address student interventions, school-wide systematic responses in tracking student achievement and progress, timely action to identify children who need additional time and support, and a directive plan which requires students to receive additional help and more time on task. (C.X. 28 pp. 4-8, 44-46, 214; C.X. 31 p. 39; T. 3386, 3400).

199. Between 2010 and 2013, there were numerous changes in school leadership in Newburgh, including the termination of the high school principal based upon her inability to work collaboratively with other administrators. (T. 1996-2008). In July 2014, Newburgh hired Robert Padilla as its new Superintendent since he has a great deal of experience turning around underperforming schools. Since becoming Superintendent, Dr. Padilla has conducted several studies and instituted numerous initiatives to turn Newburgh around. These include a coaching model whereby an Assistant Superintendent partners with two schools, building a community partnership, developing a

strategic blueprint, the use of instructional coaches, and revising the professional development plan. While it takes time for such initiatives to result in improvement, Dr. Padilla expects that these initiatives will improve test scores and graduation rates. (T. 1870, 2019-20, 2025-26, 2065, 2066-67, 2070-71, 2087-89, 2115-20, 2634).

Port Jervis

200. Port Jervis' disappointing outputs are not the result of inadequate resources/inputs. Rather, they derive from other factors such as not enough attention being given to improve and monitor the teaching and learning process in all classrooms. (C.X. 54 p. 51; T. 4613).

201. Kuhl Elementary School, the lower performing of the two elementary schools in Port Jervis, has had six principals since 2006-07. In 2012-13, the principals of two of the four schools were in their first year. (C.X. 53 pp. 7-8, 34-35). In 2013, Thomas Bonjiovi was appointed Superintendent. (T. 2143-44; C.X. 54 p. 5). Following an extended period of short term principals, longer term leadership stability is now developing. (C.X. 54 p. 5).

202. Port Jervis is now focusing on teacher training initiatives with the goal of raising student achievement levels and has ongoing plans and programs to improve student achievement, including a strategic plan score card, a

professional development plan, and the development of local assistance plans. (C.X. 53 pp. 6-7, 31-33, 101-02; C.X. 54 pp. 14-15, 22-23, 38, 40; P.X. 48). With additional time, strong and stable leadership, honest and direct feedback through the newly developed APPR process, continued emphasis on professional development, better utilization of existing resources, continued implementation of the district's student performance improvement plans, and implementation of the strategies contained in the local assistance plans are the types of actions that should cause student performance to improve. (C.X. 53 pp. 10, 36-37, 48, 102; C.X. 54 p. 51).

Mount Vernon

203. Mount Vernon's lackluster student achievement is not due to a lack of resources. Rather, its is the result of insufficient efforts to enhance the teaching and learning that takes place in the classrooms; too little active student engagement, differentiation of instruction, higher order thinking and questioning strategies, flexible grouping, and student to student discourse; the lack of a consistent use of research based instructional practices; and the failure of all district and building leaders to embrace the findings and recommendations in the state mandated reports. (C.X. 56 pp. 10-11, 12, 24, 26, 37-38; C.X. 58 pp. 27-28). The district leadership needs to change the culture within all the schools to

one of high expectations for students, teachers, and school leaders and direct all available resources to that end; strengthen the principals' instructional leadership role to include setting high expectations, goal setting, and more complex monitoring of teacher effectiveness; and establish consistent and effective leadership at the district and school level. (C.X. 56 pp. 12, 26-27; C.X. 58 pp. 24, 27-28).

204. Since 2010-11, Mount Vernon has had four Superintendents. (C.X. 56 p. 27; T. 2747). Over the past twelve years, there have been four principal changes at Longfellow Middle School and five at Mount Vernon High School. (C.X. 56 p. 29). Since August 2013, new principals have been appointed in an elementary school and two middle schools. (C.X. 58 p. 23). In August 2014, Mount Vernon hired Kenneth Hamilton, who did his thesis in improving fourth grade literacy, as its new Superintendent. (T. 2314-15). In an effort to improve student achievement, Dr. Hamilton has created the Office of Innovation and School Improvement and the position of Assistant Superintendent for Accountability, Innovation, and School Improvement. (C.X. 58 p. 23). In preparing its DCIP's and SCEP's, the district has developed an array of priorities and action plans to support its improvement efforts. (C.X. 58 pp. 19-20, 29). Implementation of Mount Vernon's stated goal oriented activities is the type of activity that should result

in improved student learning and achievement. (C.X. 58 pp. 20-21, 29).

XXIII. INCREASES IN SPENDING DO NOT MEANINGFULLY IMPROVE STUDENT OUTPUTS

205. In New York and nationwide, given current incentives and spending behavior, there is no consistent improvement in achievement with added resources. (C.X. 62 p. 5).

206. New York currently spends more on education than any state in the United States; only the District of Columbia spends more. (C.X. 62 p. 5, Chart 6).

207. In 2011, New York spent \$19,708 per pupil (in 2013 dollars), which was 77% more than the national average of \$11,153. (C.X. 62 p. 5).

208. Between 2000 and 2011, New York's spending on education increased by 46% (adjusted for inflation). (C.X. 62 p. 5).

209. New York's 46% spending increase from 2000 to 2011 was the fifth highest in the nation and was dramatically higher than the national average increase of 18%. (C.X. 62 p. 5).

210. Despite New York's significant and increasing investment in education, eighth grade student outcomes in reading and fourth and eighth grade student outcomes in math lag behind those of states spending less, as well as the national average. (C.X. 62 p. 6, charts 7-10).

211. The pattern of New York's underachievement also holds true for low income students (as measured by participation in the free and reduced price lunch ("FRPL") program) where New York again consistently lags behind lower spending states and the national average. (C.X. 62 p. 6, charts 11-14).

212. Students in New York are consistently outperformed by students from states spending significantly less. (C.X. 62 p. 6).

213. To determine whether and to what extent school resources can affect the achievement gap, researchers use statistical regressions to differentiate the impact of those resources from the impact of other environmental factors. (C.X. 62 p. 7).

214. Even when unadjusted for differences between students and districts, the magnitude of the relationship between spending and achievement for 4th, 6th, and 8th grade reading and math is small. (C.X. 62 p. 7, charts 16-21).

215. The small relationship between spending and achievement grows even weaker when statistical regressions are employed to take into account student characteristics such as poverty, English language proficiency, and special education students within the districts. (C.X. 62 pp. 7-8, charts 22-27).

216. The relationship between spending and achievement grows still more tenuous when the achievement paths of

individual students are tracked to see if those paths are being influenced by school resources. (C.X. 62 p. 9, charts 28-33).

217. The effect of spending on achievement is essentially the same for students in poverty as it is for all students. (C.X. 62 p. 9, charts 34-39).

218. Across New York's schools, there is little to no relationship between how much money is spent per pupil and student results, either for all students or disadvantaged students. (C.X. 62 p. 9).

219. For the last half century, the United States has reduced class size, reduced pupil-teacher ratios, doubled the number of teachers with master's degrees, significantly increased median teacher experience, and quadrupled spending, yet student outcomes have remained essentially flat. (C.X. 62 p. 3, charts 1-3).

220. Statistical value-added studies confirm that teacher-pupil ratios, teacher education levels, and teacher experience are either statistically indistinguishable from zero or significantly negative, *i.e.*, the studies show that these factors have no impact (or a negative impact) on how effectively a teacher instructs students. (C.X. 62 p. 4, chart 4).

221. If school funding is increased, but then driven to reduce class size and increase teacher salaries, there is no

reason to believe that increased achievement will follow. (C.X. 62 p. 5, chart 1).

222. The experience in New Jersey, where over 20 State Supreme Court decisions have addressed school funding, further demonstrates that more funding will not close the achievement gap. (C.X. 62 p. 10).

223. New Jersey is a useful comparison to New York because the states are geographically close and demographically similar. (C.X. 62 p. 10).

224. Since 1990, New Jersey's spending has significantly eclipsed the national average (although not New York), but New Jersey's student performance has not outpaced student performance nationwide. (C.X. 62 p. 10, charts 40-46).

225. The study known as the Tennessee STAR study does not show that smaller class sizes will lead to sustained achievement growth. (C.X. 62 p. 5).

226. No one has ever replicated the extremely expensive STAR study and its results are contradicted by various studies showing that smaller class sizes have little to no impact on student achievement. (C.X. 62 p. 5).

227. One of the most, if not the most, important ways in which districts can impact student performance is ensuring that students are taught by effective teachers. (C.X. 62 p. 11).

228. Common measures of teacher quality such as years of experience and/or the highest degree achieved, are not reliable predictors of actual effectiveness in the classroom. (C.X. 62 pp. 11-13).

229. The existing research evidence suggests that teacher salaries are almost completely unrelated to teacher effectiveness. (C.X. 62 pp. 1, 5, 13).

230. Thus, spending on schools is not systematically related to improved student outcomes. (C.X. 62 pp. 2-4).

XXIV. DIFFERENCES IN EDUCATIONAL OUTCOMES ARE NOT DRIVEN BY DIFFERENCES IN EXPENDITURES

231. A rigorous statistical analysis of New York data shows that there is no statistically significant relationship between total expenditures by school districts and test scores.² (C.X. 60 p. 1; T. 4689).

232. An analysis of New York data reveals that there is no statistically significant relationship between teacher experience, percentage of teachers with Master's degrees, the percentage of uncertified teachers and the percentage of teachers teaching outside their area of certification and

²The term "statistical significance" should not be confused with relationship strength. A "statistically significant" relationship means that the relationship did not occur by chance, but that does not mean that it is a strong relationship. Here, given the very large number of New York students and schools in the data set, statistical significance may occur even when the relationship between two factors is incredibly weak. (C.X. 60 p. 1 n. 2.)

elementary/middle school outcomes, when socio-economic factors are controlled. (C.X. 60 p. 1).

233. There is also no statistically significant relationship between per capita expenditures, teacher salaries, average class size, teacher experience and/or teacher education and high school graduation/dropout rates, when socio-economic factors are controlled. (C.X. 60 p. 2).

234. If large funding increases were enacted, but then directed primarily to reducing class sizes and raising teacher salaries, an analysis of New York data reveals that math and ELA proficiency scores for elementary students would rise only slightly and scores for middle school students would increase by even less. (C.X. 60 p. 1; T. 4661-4662).

235. Further, analysis of New York-specific data reveals that 90% of the variation in ELA test scores and 80% of the variation in math scores occurs within school districts, as opposed to between school districts with different funding. (C.X. 60 pp. 1-2).

236. The verifiable fact that so much of the variation occurs within school districts as opposed to between them is clear evidence that individual school and student differences—not district inputs—are the primary reason school districts display differing levels of achievement test proficiency. (C.X. 60 p. 2).

237. New York has the highest average per pupil expenditures of any state in the nation. (C.X. 60 p. 6).

238. New York has the highest average teacher salaries for public elementary and secondary schools in the nation. (C.X. 60 pp. 5-6).

239. The statistical technique of longitudinal multiple regression is necessary when estimating the effects of school resources over time because it is well established that student outcomes are strongly influenced by student socioeconomic characteristics, and those factors must be taken into account to isolate the impact of increases in funding and other school resources. (C.X. 60 pp. 3, 9, 19).

240. Less than 20% of variations in elementary and middle school ELA and math scores occurs between districts, meaning that more than 80% of such differences occurs within districts. (C.X. 60 pp. 6-7; T. 4742-4743).

241. At least 80% of the variations in elementary and middle school ELA and math scores occurs within schools. (C.X. 60 p. 8; T. 4743).

242. While there is a statistically significant relationship between elementary math scores and class size, teacher salary, teacher turnover rate and per pupil expenditures for general education, as well as a statistically significant relationship between elementary ELA scores and teacher salary,

teacher turnover rate and per pupil expenditures for general education, the magnitude of the relationship between those inputs and student performance is incredibly small. (C.X. 60 pp. 10-11, 20; T. 4693).

243. Analysis of a sub-set of New York school districts consisting of school districts (including all of the plaintiff districts) that are in upstate New York, have enrollments between 1,000 and 5,000 students, and have average or high-needs-to-resource ratios, while adjusting for socioeconomic student characteristics, reveals that there is no visible relationship between class size and elementary test scores and between teacher salary and elementary test scores. (C.X. 60 pp. 11-14).

244. What drives differences in student outcomes is not class size, teacher salary, or per pupil expenditures. (C.X. 60 at pp. 12-14).

245. There is no statistically significant relationship between high school graduation and dropout rates and total or general education expenditures, teacher education, teacher experience, teacher certification, and class size. (C.X. 60 pp. 16, 28-29).

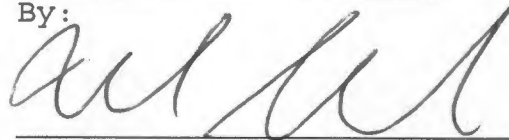
246. Regression analysis reveals that the only school input factor with a statistically significant positive relationship to high school outcomes is teacher turnover, but this relationship is very weak. (C.X. 60 pp. 16, 27).

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Yours, etc.,

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