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I. INTRODUCTION

A. Overview

1. The New York State Constitution requires that all students be provided with the opportunity for a sound, basic, education.

2. Students in the Maisto Districts,[1] including certain disadvantaged subgroups of students such as children living in poverty, racial minorities, children with disabilities, and students with limited English proficiency, are not receiving an opportunity for a sound basic education.

3. The input resources available to the Maisto District students are not adequate.

4. The Maisto District outputs as measured by test scores and graduation rates are not adequate.

5. The inadequate input resources in the Maisto Districts are a cause of the Maisto Districts' inadequate outputs, as measured by test scores and graduation rates. Increased funding and resources would improve the test scores and graduation rates in the Maisto Districts.

6. The State developed a funding system that was designed to provide New York State school districts with sufficient funds to provide their students with an adequate education.

7. The State provided the Maisto Districts with $1.1 billion less than was determined by the State to be necessary under the funding system and that shortfall caused the districts to significantly reduce essential inputs well below the level necessary to provide students with an opportunity for a sound basic education.

[1] The eight "Maisto Districts" are Jamestown City School District ("Jamestown"), Kingston City School District ("Kingston"), Newburgh Enlarged City School District ("Newburgh"), Niagara Falls City School District ("Niagara Falls"), Mount Vernon School District ("Mount Vernon"), Port Jervis City School District ("Port Jervis"), Poughkeepsie City School District ("Poughkeepsie"), and Utica City School District ("Utica").

B. State Resources for An Adequate Education

8. In 2007, and in response to the New York Court of Appeals' 2003 decision in *Campaign for Fiscal Equity v. State* ("CFE"), New York State enacted a funding system (the "2007 Foundation Aid Formula", as defined below in Section III), that met New York's constitutional requirement. The 2007 Foundation Aid Formula was designed to calculate the cost of providing the average student with an adequate education. (P.X. 107, p. 8, 52; see also Section III infra).

9. The 2007 Foundation Aid Formula, as enacted by the State, called for an increase of $5.5 billion in state school funding ("Foundation Aid," as defined below in Section III) to provide all New York State school districts with the basic per pupil cost of efficiently providing a sound basic education for their students. (C.X. 21, ¶¶ 5a, 9; see Section III infra). The Foundation Aid, as calculated under the 2007 Foundation Aid Formula, was designed to provide the districts with sufficient funding to meet their respective sound basic education spending target (the "SBE spending target", as defined below in Section III). (C.X. 21, ¶ 5).

10. The $5.5 billion of Foundation Aid was to be phased in over four years, with full funding to be allocated to the districts by the 2010-11 school year. (C.X. 21, ¶ 9; see Section III infra). After 2011, funding to all New York State schools was to continue to be provided to New York State districts as calculated under the Foundation Aid Formula.

11. In developing the 2007 Foundation Aid Formula, the State recognized that certain students, especially students living in poverty and/or students with limited English proficiency, require additional time and services to succeed academically. (C.X. 21, ¶ 5b; see Section III infra).

12. The 2007 Foundation Aid Formula was designed to account for the added costs associated with providing the necessary services for these students. (C.X. 21, ¶ 5b) (In calculating the SBE spending target for a district, the State considers: (i) the district's "pupil need index", which combines measures of student poverty, students with limited English proficiency, and district population scarcity; and (ii) a "regional cost index", which measures regional variations in purchasing power across the state, based on wages of non-school professionals).

13. Accordingly, the vast majority of the $5.5 billion increase in funding was intended to be distributed to high-needs districts, such as the Maisto Districts.[2] (P.X. 107, pp.1-2, 9; see Section III infra).

14. As detailed in Section III below, in 2009-10, the State froze the funding. (C.X. 21, ¶¶ 11-12; see Section III infra). In 2010-11, the State began cutting Foundation Aid. Id. The State further reduced school aid through the Gap Elimination Adjustment enacted in 2010-11. (C.X. 21, ¶ 12; see Section III infra).

15. As a result of the underfunding and cuts, and notwithstanding the restoration of some funding beginning in 2012-2013, by the 2014-2015 school year New York State school districts had received approximately $5.7 billion *less* than the amount intended (and required) under the 2007 Foundation Aid Formula. (C.X. 21, ¶ 19; see Section III infra).

16. The total shortfall in Foundation Aid funding for the Maisto Districts alone, as of 2014-15, *was over $1.1 billion* (P.X. 113-20).[3]

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[2] The Maisto Districts have high concentrations of high needs students, including students who are classified as economically disadvantaged, students who have limited English proficiency, and students with disabilities. (P. X. 1, 2, 3, 45, 50, 56, 74, 79; see Section II infra; Joint Findings of Fact, Appendix B).

[3] During trial, the State stipulated to the facts related to the enactment of the 2007 Foundation Aid Formula, the amount due to the districts under the 2007 Foundation Aid Formula, and the total shortfalls to the Maisto Districts as of 2014-2015. See Appendix A (P.X. 113-120). However, though the facts are undisputed, the State refused to consent to the inclusion in the "Joint Findings of Fact" of the facts contained herein related to funding.

C. Inputs

17. Because of a lack of sufficient funding, the Maisto Districts have cut necessary staff, programs, and services below the level required to provide all of their students with the opportunity for an adequate education. (See Section IV infra).

18. The Maisto Districts have had to cut necessary staff such as teachers, social workers, counselors, Academic Intervention Service Teachers, special education teachers, reading teachers, literacy and math coaches, English Language Learner instructors, administrative positions, and security personnel. (See Section IV infra; T. 1916, 1923 (noting Newburgh reduced its number of teachers by 209 between 2008-09 and 2012-13); T. 332-33 (noting Poughkeepsie reduced approximately 130 total staff from 2009-2014); T. 3735-37; C.X. 64, p. 21-22 (noting Jamestown reduced its staff by about 24% from the 2008-09 school year to the 2011-12 school year); T. 4602 (noting Port Jervis lost over ten percent of its staff in one year); T. 2337-38 (noting there are simply not enough teachers with the capacity to address the needs of the Mt. Vernon students); P.X. 44 (noting that over the five years from 2010-11 through 2014-15, Utica had to cut 364.6 positions); T. 1033 (noting Kingston has approximately 115 fewer full time staff than it did in 2012); P.X. 67; P.X. 68; Tr. at 1553-1554; Tr. at 1557-1560 (noting Niagara Falls has had to cut 207.5 employees from the general fund budget, which does not include the significant number of employees whose positions were cut from the grant budget).

19. The Maisto Districts have also cut numerous programs which are necessary for high needs and at-risk students, such as Academic Intervention Services, English language learner programs, extended learning programs, reading programs, community outreach. (See Section IV infra; C.X. 10, Report, p.14; Tr. 1150, 1065-66, 1079-81 (noting Kingston is unable to meet the needs of its neediest students because it is deficient in

numerous programs, including academic intervention services, Response to Intervention programs, programs for students with disabilities); T. 2072-74 (noting Newburgh does not have enough social workers, counselors, or academic intervention services teachers to provide adequate services for the needs of its student population); P.X. 68; Tr. at 1557-1560 (noting Niagara Falls has cut literacy and math coaches, Academic Intervention Support teachers in math and reading, parent advocates, parent support personnel, home school partners, discipline teachers, attendance monitors, truancy officers, and police officers from the grant budget); C.X. 6, Statement, p. 6; T. 693, 3726, T. 876-77 (noting Jamestown does not have adequate academic intervention services, services for English language learners, or early literacy intervention); T. 2256, 2260; C.X. 7, p. 11-12 (noting Mt. Vernon has had to cut their "specials," including: library, art, music, band, and orchestra and noting that reading teachers, and in particular AIS teachers, have been reduced to a minimal level, that is not adequate for the students' needs); T. 467 (noting Utica is not in compliance with the State's own regulations regarding academic intervention services); C.X. 12; T. 2838 (noting Port Jervis has insufficient academic intervention services, does not have the full continuum of services for students with disabilities, and lacks the qualified teachers and support staff to provide at-risk students with an expanded platform of services); T. 157, 386, 344-45, 347 (noting Poughkeepsie has been out of compliance with standards for students with disabilities for the past five years, out of compliance with respect to its special education program, and out of compliance with its academic intervention services).

20. Every fact and expert witness for the Plaintiffs testified to the negative effects of the resource cuts and agreed resources would improve the test scores and graduation rates in

their districts, particularly for the districts' high need students. For example, as succinctly stated by Deputy Superintendent for Newburgh Enlarged City School District Edward Forgit:"'[w]ith the number of high need students in our district, it is unfortunate that funding restrictions have led to the elimination of over 230 positions in a five-year period." (T. 1915-16; P.X. 85, p. 9; see Section IV infra).

21. The State's own experts and fact witnesses also conceded the negative effects of the resource cuts. For example, State expert Roger Gorham acknowledged that the staff cuts in the Poughkeepsie district have had an effect that no one would want and noted that if Poughkeepsie had more money, the district would be able to save programs from elimination and could have smaller class sizes. (T. 3580, 3607-08; see Section IV infra). State expert Roger Gorham further acknowledged that cuts to the teaching staff in Utica were dramatic and detrimental and that there was no educational reason for the cuts; the cuts were made solely for budget reasons. (Tr. 100, 487:1-4; see Section IV infra).

D. Outputs

22. The lack of adequate resources in the Maisto Districts has led to unacceptably low outputs. (See Section V infra).

23. The New York State Education Department ("NYSED") has stated that, if a district is providing the opportunity for a sound basic education, the vast preponderance of students should be scoring at a level 3 or higher on whatever test is being used for defining academic outcomes. (P. X. 112, p. 3; see Section V infra).

24. Districts in which on average less than 80 percent of the students tested score at levels 3 or 4 were identified as districts which may need to increase instructional expenditures in order to improve academic performance. (P.X. 112, p. 6; see Section V infra).

25. New York State's standard is that 80% of New York State students graduate within four years of commencing high school. The State has indicated that it deems a district with an 80% graduation rate to be providing its students with a sound basic education. The average graduation rate for New York State in 2014 was 76%. (See Section V infra).

26. Each of the Maisto Districts has a graduation rate below the State's standard of 80% and the New York State average of 76%. (Joint Findings of Fact, Appendix F; see also Section V infra).

27. Each of the Maisto Districts has test scores that fall far short of the State standards. (Joint Findings of Fact, Appendix H; see also Section V infra).

28. As acknowledged by State experts and employees, all of the Maisto Districts have inadequate outputs (see Section V infra).

29. State witness Ira Schwartz acknowledged that the outputs in all eight of the Maisto Districts are not adequate. (T. 4802; see Section V infra).

30. State expert Gregory Aidala agrees with Plaintiff expert Dr. Stephen Uebbing that too many Kingston students are not graduating and too many did poorly on state assessments. (T. 3501; T. 3503; see Section V infra).

31. State expert Roger Gorham acknowledged that Utica currently has unacceptable outputs. (T. 3622; see Section V infra).

32. State expert, Tomas Coseo, acknowledged that Niagara Falls's 60% graduation rate is not adequate. (T. 3863; see Section V infra). He further acknowledged "the outputs for a sound, basic education continue to be less than acceptable in Niagara Falls City School District." (T. 3861; see Section V infra).

33. The State expert Roger Gorham stated that a graduation rate of 57% in Poughkeepsie was not adequate, acknowledging that at least four out of every ten students in Poughkeepsie are not graduating. (T. 3569-71; see Section V infra). Gorham further noted that outputs in Poughkeepsie are unsatisfactory and acknowledged that Poughkeepsie does not have acceptable academic achievement. (T. 3567; 3574; see Section V infra).

34. State expert Jeffrey McLellan acknowledged that the tests scores for Port Jervis were "not acceptable," "disappointing" and need to improve. (T. 4580-82; see Section V infra).

35. State expert John McGuire stated that the graduation rates districtwide in Mt. Vernon are unacceptable and acknowledged that the level of school performance in Mt. Vernon is below the acceptable minimum for student performance. (T. 3752; T. 3799; see Section V infra).

36. State expert Gregory Scott Hunter acknowledged Jamestown is not achieving adequate outputs. (T. 3721; see Section V infra).

37. State expert, Gregory Aidala, acknowledged student outcomes in Newburgh were "poor" and "very weak" and that outputs across the board for the district are unacceptable (T. 3376, 3377, 3462; see Section V infra).

E. Causation

38. Inadequate levels of State funding is *a cause* of the Maisto District failures. This causal link is acknowledged by experts for the State.

39. Many of the State experts noted that the cuts in state funding negatively affected the Maisto districts and conceded that additional funding would improve student academic outcomes in the Maisto Districts.

40. State expert Gregory Scott Hunter noted that, had Jamestown received the $109 million in aid that it did not get, it probably could have done some very good things with the money that would have improved the student outputs if it were properly applied. (T. 3734; see Section III infra).

41. State expert Gregory Aidala acknowledged that Kingston would benefit if there were no GEA and there were full phase-in of Foundation Aid. (T. 3534-5; see Section III infra).

42. State expert John McGuire recognized that the $116.5 million Mt. Vernon did not receive in five-year funding is "a huge amount" and the district "would have benefited" if it had received that amount. (T. 3837; $116.5 million; see Section III infra).

43. State expert Thomas Coseo noted that the amounts of Foundation Aid Niagara Falls did not receive as promised under Foundation Aid "can make a significant difference." (T. 3902; $116.5 million; see Section III infra).

44. State expert Jeffrey McLellan stated acknowledged that, had Port Jervis had received the $67 million not received under Foundation Aid, it had the capability of generating better student outcomes in Port Jervis. (T. 4594; see Section III infra).

45. State expert Roger Gorham testified that the funding cuts had detrimental effects on Poughkeepsie, and that the Poughkeepsie school district would be better off if it received more money. (T. 3609-10; see Section III infra). Gorham testified that he would advocate for more resources in Poughkeepsie, and that more resources, if applied well, would help to generate better outcomes for students in Poughkeepsie. (T. 3598-3598; see Section III infra).

46. Gorham further acknowledged that the lack of resources is contributing to the unacceptable outputs in Utica, and that additional funds for Utica would help improve test scores and graduation rates. (T. 3623, 3654; see Section III infra).

47. State expert Eric Hanushek conceded that if the Maisto districts had additional funds and they spent those funds wisely, it would ultimately lead to improved performance. (T. 4358; see Section III infra).

48. The only State expert witness who testified that additional funds would not improve outputs was Dr. David Armor, and his conclusions are contrary to the facts and contrary to every other expert who testified.

II. OVERVIEW OF MAISTO DISTRICTS

A. General Demographic Make-Up of Maisto Districts

49. All eight of the Maisto Districts are high need and serve high concentrations of children from poverty backgrounds. (T. 4803).

50. The Maisto Districts are all characterized by high percentages of students who are classified as economically disadvantaged. (P. X. 1, 2, 3, 45, 50, 56, 74, 79). Economically disadvantaged students make up the majority of the students in each of the Maisto Districts. Each Maisto District has a higher percentage of economically disadvantaged students than the state average (P. X. 1, 2, 3, 7, 45, 50, 56, 74, 79):

District	Economically Disadvantaged Student % in 2013-2014
Jamestown	67%
Kingston	56%
Mt. Vernon	73%
Newburgh	71%

District	Economically Disadvantaged Student % in 2013-2014
Niagara Falls	69%
Port Jervis	62%
Poughkeepsie	86%
Utica	83%
State	54%*

*The State percentage is for the 2012-2013 school year.

51. Most of the districts have high percentages of students from racial minority groups (P. X. 1, 2, 3, 7, 45, 50, 56, 74, 79):

District	Black/African American Student % in 2013-14	Hispanic/Latino Student % in 2013-14	Asian Student % in 2013-14	White Student % in 2013-14
Jamestown	4%	19%	0%	67%
Kingston	16%	16%	2%	60%
Mt. Vernon	76%	17%	2%	5%
Newburgh	26%	46%	2%	23%
Niagara Falls	35%	5%	2%	48%
Port Jervis	9%	12%	1%	74%
Poughkeepsie	55%	30%	1%	10%
Utica	26%	18%	16%	37%
State	18%*	24%*	9%*	47%*

*The State percentages are for the 2012-2013 school year.

52. Some of the districts also have large percentages of students who have Limited English Proficiency[4] (P. X. 1, 2, 3, 7, 45, 50, 56, 74, 79):

District	Limited English Proficiency Student % in 2013-2014
Jamestown	5%
Kingston	3%
Mt. Vernon	8%
Newburgh	13%
Niagara Falls	1%
Port Jervis	1%
Poughkeepsie	10%
Utica	16%
State	8%*

*The State percentage is for the 2012-2013 school year.

53. Many of the districts also have large percentages of students who are classified as students with disabilities ("SWD") (P. X. 1, 2, 3, 7, 45, 50, 56, 74, 79):

District	SWD % in 2013-2014
Jamestown	12%
Kingston	22%
Mt. Vernon	19%
Newburgh	15%
Niagara Falls	16%
Port Jervis	17%

[4] The terms limited English proficiency, English as a Second Language ("ESL"), and English language learners ("ELL") are used interchangeably.

District	SWD % in 2013-2014
Poughkeepsie	16%
Utica	16%
State	15%*

*The State percentage is for the 2012-2013 school year.

B. Unique Needs of High Risk Student Populations

54. Children living in concentrated poverty are more likely to be exposed to violence, be a victim of violence and neglect, live with neighborhood disorganization, have a parent incarcerated or otherwise involved with the justice system, or have a parent with serious mental illness, addiction, or other health problems. (C.X. 24, p. 4).[5] They face an elevated risk of mental health, physical health, social, and behavioral problems that negatively affect their readiness to learn in school. (C.X. 24, p. 4; C.X. 8, Report, p. 5-6). Some of the challenges that must be addressed by schools and districts serving high poverty communities are food insecurity, anxiety, depression, adverse childhood experience (ACE), environmental violence, and post-traumatic stress disorder. (C.X. 24, p. 5).

55. Research establishes a clear link between poverty and poor performance in school. (C.X. 24, p. 7, 9; P.X. 107, p.16; C.X. 8, Report, p. 5). This effect is evident in the literature on poverty and in student achievement data. (C.X. 24, p. 19). Data showing the correlation between household economic status and academic achievement demonstrates that the

[5] Laurence T. Spring is the Superintendent of Schenectady City School District in New York State. He has been a superintendent in high need and impoverished communities in New York State for over eight years. He has also held positions as an assistant superintendent of instruction, special education director, high school principal, assistant principal, and social studies teacher. He possesses extensive academic and professional expertise and experience related to the education of students who live in poverty and attend high poverty schools and districts. (D.X. A1; C.X. 24, p. 5-6; T. 2404-07, 2432, 2476.) Mr. Spring's report prepared for this case, "Essential Programs and Services for At-Risk Students in New York's High Poverty Districts," describes the impact of poverty on academic achievement, (T. 2417), and the elements of the expanded platform of programs and services necessary for provide students living in poverty. (C.X. 24, p. 19; T. 2420-1, 2449.)

more intense the level of poverty, the lower a student's achievement level.(C.X. 24, p. 8; T. 2409-11; P.X. 107, p. 16).

56. If no changes are made to the education system, the relationship of poverty to school performance will continue to manifest. (T. 2498-9). If additional resources were allocated, student achievement would improve. (T. 2503 (discussing chart on C.X. 24, p. 8)).

57. Economically disadvantaged students have difficulty understanding how to interact within a larger educational community. (C.X. 7, p. 9).[6] The result is an increased need for school staff and services, all of which are vital to overcoming the academic difficulties posed by the students' socio-economic status. (C.X. 7, p. 9).

58. As acknowledged by State expert Eric Hanushek, poverty concentration has an important impact on achievement. (T. 4427). Children who experience family and community poverty are at risk of poor academic performance, academic failure, grade retention, school dropout, or failure to finish high school meeting basic graduation requirements. (C.X. 24, p. 5, 7-8).

59. Specific academic effects of poverty include reduced vocabulary, delayed reading skills, long-term limited reading ability, reduced academic ability, reduced IQ, suppressed SAT performance, reduced graduation rates, reduced college going rates, and high rates of discipline and suspension. (C.X. 24, p. 11-12).Children in poor families are also at

[6] Dr. Stephen Uebbing submitted expert reports on the Kingston, Newburgh, Port Jervis and Mount Vernon City School Districts. (C.X. 7-14). Dr. Uebbing is a Professor of Educational Leadership at the Warner School of Education at the University of Rochester. He is also the designated superintendent of the University's Educational Partnership Organization with the Rochester City School District's East High School. Dr. Uebbing has over thirty years of experience in education as a superintendent, a high school principal, and a teacher. Dr. Uebbing is a very well-respected expert in education in New York State. (T. 4823). The State has certified Dr. Uebbing to be an outside educational expert that districts may request to be members of school improvement teams called Integrated Intervention Teams ("IITs"). (T. 4822-23). He has served on a number of IITs. (T. 4823).

elevated risk of asthma, learning disabilities, poor health, and missing school. (C.X. 24, p. 12).

60. Poverty negatively affects vocabulary and speech development. (C.X. 15, p. 12).[7] Compared to their peers, impoverished children develop a significant language gap by the age of five. (C.X. 8, Report p. 7). In fact, "high income children hear approximately 30 million more words than their poverty stricken peers by age five." (C.X. 8, Report p. 7). As a result of this language gap many students come to kindergarten two to three years behind in developmental capacity. (T. 2342).

61. There are many intervening variables that explain the link between poverty and poor school performance. These include neighborhood disorder, environmental violence, poor nutrition, childhood neglect, higher rates of parental incarceration, lower incidence of adult diplomas, increased rates of mental illness, and higher mobility rates. Unemployment and underemployment in high-poverty neighborhoods decrease the well-being and executive functioning capacity of their citizens; as poverty persists across generations, the ability to take advantage of educational opportunities diminishes. (C.X. 24, p. 9). Lack of employment opportunities also contributes to neighborhood disorder; poor neighborhoods experience both minor crimes and an increased incidence of violence. (C.X. 24, p. 9). Children living in poverty are more likely to witness or be victims of violence, raising their risk of PTSD. (C.X. 24, p. 9-10).

62. Poverty reinforces cycles of mobility. (C.X. 24, p. 10). Rates of eviction and foreclosure are elevated in poor neighborhoods. (C.X. 24, p. 10; T. 2424). For an individual child, changing schools creates a delay in learning equal to approximately 3.5 months. (C.X.

[7] Dr. Bruce Fraser submitted expert reports on Niagara Falls. (C.X. 19-22). Dr. Fraser has years of experience in education in instructional and administrative roles, and has served as a superintendent in communities neighboring Niagara Falls Additionally, he recently served as the Executive Director of the New York State Rural Schools Association.

24, p. 10; T. 2448). Transience makes it even more difficult for students to overcome the educational challenges associated with poverty. (C.X. 15, p. 12).

63. Poverty contributes to mental illness, which in turn reinforces poverty. The negative characteristics of impoverished neighborhoods contribute to elevated rates of anxiety, Major Depressive Disorder, and Post Traumatic Stress Disorder. Such mental illnesses present difficulties in many areas of children's lives, including school. (C.X. 24, p. 10.)

64. Children who grow up in poverty have often fallen significantly behind their peers and grade-level standards by elementary or middle school. (C.X. 24, p. 4, 11.) Children with mental illnesses have difficulty focusing in class, engaging in long range planning, and other executive functioning skills. They often have low thresholds of frustration and will act out in the absence of pro-social coping mechanisms. (C.X. 24, p. 11.) They are often unprepared for high school, which can cause frustration and prompt them to fall further behind or drop out. (C.X. 24, p. 4.)

65. Students from high-poverty backgrounds can be successful in school. (T. 2497-98.) If schools are able to work appropriately with students, they can overcome the significant barriers to academic success that they face. (T. 2498; C.X. 2, Report, p. 2).

66. Students who are poor and live in concentrated poverty require an expanded platform of programs and services, in addition to the curriculum and instructional programs available to all students, in order to receive the opportunity for an adequate education. (C.X. 24, p. 2, 3; P.X. 107, p. 7).

67. The level and intensity of services provided to students living in poverty must be calibrated to their level of need. The level of need increases with the intensity of poverty, the length of time spent in poverty, and the frequency of household and community

poverty. (C.X. 24, p. 3-4, 5, 7). Measuring poverty only by frequency of poverty, usually measured for school districts by the rate at which students qualify for free or reduced price lunch, neglects to account for intensity of poverty and length of time spent in poverty. (T. 2451, 2477, 2480-81). The intensity of poverty that a student experiences makes a significant difference in the type and intensity of challenges the student faces. Students living in more intense poverty face "adverse childhood experiences," which cause intense stress and have a biological and cognitive impact, affecting skills such as executive functioning and language ability and leading to specific needs. (T. 2477-79; see also C.X. 24, p. 10).

68. To be effective, the expanded platform of programs and services required by students living in poverty must include both educational and educationally-related programs and services. (C.X. 24, p. 2; P.X. 107, p. 7). This means schools must address both the direct academic needs of poor students and the physical, social, and mental health needs that prevent them from taking advantage of the curriculum and instruction available to all students. (C.X. 24, p. 5).

69. Conditions of individual poverty are reinforced by the lack of resources and supportive services in a community. Therefore, schools must have the resources to provide an expanded platform of education and educationally-related services to address the disadvantages of at-risk students. (C.X. 24, p. 12). When schools are underfunded, they cannot provide the services required to meet the needs of an at-risk student population. (C.X. 24, p. 13).

70. Poverty is a major factor in low student performance, high dropout rates, and low graduation rates. (C.X. 24, p. 13). Although schools cannot fully alleviate the problems

associated with concentrated poverty, they must provide an expanded platform of services targeted to students' needs in order to give them the opportunity for an adequate education and improved academic outcomes. (C.X. 24, p. 13).

71. To serve students living in poverty, schools must have sufficient numbers of qualified personnel and sufficient resources to tailor the school environment to their needs. (C.X. 24, p. 14). Staff also needs time to develop creative solutions that can be applied broadly. (C.X. 24, p. 19).

72. Districts serving high-poverty populations require trained social workers to address the social, behavioral, and mental health needs of at-risk students. (C.X. 24, p. 14). The school should also have at least one professional tasked solely with coordinating services and treatment objectives between school and county service providers. (C.X. 24, p. 14). A sound recommendation from the National Association of Social Workers Standards for Social Work Services specifies a counselor to student ratio of 1:250 for general education students and 1:50 for students with more intense needs. (C.X. 24, p. 15; T. 2495). An appropriate ratio of social workers is necessary to provide students with the social and emotional stability that allows them to learn. (T. 2496). The proper social worker ratio for a specific school or district should be determined by assessing the percentage of students with intense needs. (T. 2450-51).

73. Social workers must be available to assist in mitigating negative effects of parental incarceration on students. (T. 2490-91). Otherwise, children are prone to self-medicate through violence or substance abuse. (T. 2491).

74. Children also need assistance understanding and coping with parents who have significant or persistent mental illness. (T. 2491-92). Treatment should be structured so

that parents are involved in therapy and such that parent and student treatment objectives are coordinated. (T. 2492).

75. Classroom teachers often need support to understand and address the behavior of at-risk students, necessitating behavioral specialists and psychologists at the school and district levels. (C.X. 24, p. 14-15).

76. In order to address the problems created by poverty, schools must address concerns both with individual students and their environments. (C.X. 24, p. 15; T. 2494-95).

77. For example, a student with PTSD requires an elevated level of services in an intensive therapeutic educational environment. This generally entails a reduced number of students in the classroom, a full or part-time social worker attached to the class, and family therapy sessions. (C.X. 24, p. 15; T. 2495).

78. School nurses play a critical role in identifying physical and mental health problems and providing health services. The recommended ratio when students have special health needs is 1:225 students or 1:125 if the health needs are more complex. (C.X. 24, p. 15; T. 2456-57).

79. Guidance counselors are required for older students, in order to provide services such as monitoring of progress for graduation, college visits, mentoring, and internships. (C.X. 24, p. 15). The intervention strategies that are most effective for older students are relationship-based. (C.X. 24, p. 15). Schools with older students must also have gang prevention programs and services. (C.X. 24, p. 15-16). The American School Counselor Association recommends a ratio of 1:250 for school counselors. (C.X. 24, p. 16).

80. Parent and community liaisons, or family engagement coordinators, are necessary to address the environment in which high-need students operate. These individuals assist

families in engaging with the school and advocating for their children, and can also help improve the neighborhood environment. (C.X. 24, p. 16). Programs that support parents are essential in helping students overcome the impacts of concentrated poverty. (C.X. 15, p.12-13).

81. Social workers, school nurses, guidance counselors, and parent liaisons must work together to coordinate services and interventions for students and families based on a holistic assessment of their needs. A comprehensive approach is necessary to ensure that teachers and principals do not have to spend instructional time dealing with students' health and behavioral issues. (C.X. 24, p. 16).A study on increasing school attendance cited in one of the reports by State expert Dr. Thomas Coseo recommends the same comprehensive network of supports for both students and families, requiring the involvement of many different types of school staff. (C.X. 51, p. 74 n.35).

82. Schools with high concentrations of at-risk students must also continually assess students' progress and provide academic supports to students at risk of academic failure. (C.X. 24, p. 16-17).

83. Specialized reading instruction is one of the most effective academic interventions for students who fall behind in reading and mathematics in the early grades. (C.X. 24, p. 17).In high poverty districts, it is essential that reading and math specialists and tutors work with the classroom teacher to identify children who are not performing on grade level and provide more intensive small group or one-on-one instructional interventions. (C.X. 24, p. 17). Early intervention and progress monitoring are key because younger students are most able to learn language acquisition skills and because early intervention minimizes the skills gap. (C.X. 24, p. 17). These methods are particularly important for

students living in intense poverty because they are more likely to have significantly impaired language acquisition skills, (C.X. 24, p. 17-18), which are negatively affected by adverse childhood experiences, (C.X. 24, p. 10).

84. Opportunities for extended learning time are necessary to help students living in concentrated poverty succeed in school. (C.X. 15, p. 12-13). "Extended learning time" is designed to improve and sustain academic progress by providing students with "more time on task" for students who are behind in certain subjects or not performing at grade level. (C.X. 24, p. 18). It includes extra academic instruction after the regular school day and during extended school year programs. (C.X. 24, p. 18). Students in high poverty communities are at significant risk of "summer learning loss" which contributes to falling behind academically. (C.X. 24, p. 18).Extended learning time is particularly effective for middle and high school students, in order to sustain progress toward graduation. (C.X. 24, p. 18).

85. Academic Intervention Services ("AIS") are a New York State-mandated program requiring that students receive specialized additional services in their areas of difficulty, especially as related to their performance on state assessment. (C.X. 24, p. 18). AIS requires high quality teachers because the students in AIS have not experienced success with initial instruction, meaning elevated experience and expertise are required to determine their specific challenges. (T. 2496-97).

86. Response to Intervention ("RtI") is a federally mandated program requiring schools to implement evidence-based interventions in increasing intensity prior to referring a student to special education. (C.X. 24, p. 18). Providing services of increasing intensity

requires decreasing student to staff ratios and proper implementation of evidence-based interventions requires additional training, support, and materials. (C.X. 24, p. 18-19).

87. High quality teaching is an important element of educating high-poverty students, and higher quality teachers are needed to educate these students than students who are not living in intense poverty. (T. 2427, 2485). These students are often harder to teach because they present more complex problems, and often have multiple learning issues; many students with such challenges may be present in the classroom. (T. 2485-86). This requires greater skill in diagnostic and prescriptive teaching. (T. 2486). In schools with a higher incidence of poverty, intense poverty, or where children live in poverty for long periods, these problems are more numerous or complex, requiring greater experience, training, and expertise, as well as more work, on the part of teachers. (T. 2486-87).

88. Research shows that overcoming the negative effects of concentrated poverty requires smaller class sizes that allow for more individualized instruction. (C.X. 15, p. 12-13). Smaller class sizes allow teachers to form high quality relationships with students, which are particularly important to children living in poverty who often suffer from mental illnesses such as major depressive disorder, anxiety, and PTSD. (T. 2487). Smaller class sizes give teachers a greater ability to engage in diagnostic and prescriptive teaching processes. (T. 2487-88). Smaller class size also reduces the level of activity in the classroom and allows students with mental illnesses such as PTSD, which is more common among children living in intense poverty, to experience a predictable and routine setting that allows them to feel safe, which is a precursor to treatment. (T. 2488).

89. Mr. Thomas Bongiovi, Superintendent of Port Jervis, spent ten years providing Regents exam review for students who were at risk of failing the tests. (T. 2154). Based on his

ten years of experience, he testified that one-on-one tutoring, and sometimes working in a small group, led the students to be successful. (T. 2154-55). Entire industries, such as Kaplan and Sylvan Learning Centers base their business on the idea that smaller sizes, one-on-one attention, will make students successful. (T. 2155). These businesses guarantee success and have survived for many years because it is a successful approach. (T. 2155).

90. Intense poverty means that students and their families are living well below the poverty line, often experience high mobility (discussed below), depend upon social services, and experience food insecurity (i.e., not knowing where one or more meals will come from or if the will receive sufficient caloric intake). (T. 2478). Intense poverty can have a biological and cognitive impact on development, which can impair students' ability to comprehend language or plan ahead. (T. 2479). High mobility students are those whose families do not have steady housing. (T. 2478-79). They often experience intense poverty, move repeatedly, stay in temporary housing, may be frequently evicted, and whose housing situation may require them to be separated from other family members. (T. 2478). Districts with high mobility students need a number of resources to address its effects on students. (T. 2484-85). Plaintiffs' expert Dr. Peggy Wozniak[8] testified students entering the classroom at different points in the year require additional instruction and one-on-one attention to assess the student's needs and catch them up with the curriculum. (T. 1488-89). Often students entering the classroom during the year are

[8] Dr. Peggy Wozniak submitted expert reports on the Jamestown, Poughkeepsie, and Utica school districts. (C.X. 1-6, 17). Dr. Wozniak has extensive experience in elementary and secondary education, gained from over forty years as a teacher and administrator. Among many other roles, she has served on the Advisory Board of the Governor's Children's Cabinet, as an Education Specialist for New York State Education Department, and on the faculty for the Transition to the Superintendency Program. She is currently an adjunct faculty member at the University of Nevada, Reno, teaching graduate level courses in the Department of Educational Leadership.

behind due to prolonged absence for school and will require additional resources. (T. 1488-89).

91. These additional resources for high mobility students include social workers to provide counseling and help students focus on school, family engagement specialists, literacy specialists, math specialists, and often an increased number of psychologists who can conduct psycho-educational testing to determine what is inhibiting the student's learning. (T. 2484). Given the sequential nature of reading instruction, literacy specialists are needed to identify holes in instruction experienced by students who have moved, which takes a high level of expertise. (T. 2485). In order to address the negative effects of mobility, schools must be able to respond quickly to minimize the learning disruption. (T. 2482). Schools must act as case managers to connect families to other agencies and act as a single point of access for services. (T. 2483). Schools must also frequently assess students to quickly identify and remediate instructional gaps. (T. 2483-84). School funding is also connected to mobility because of the stress that elevated property taxes place on low-income neighborhoods. (T. 2482).

92. Providing the expanded platform of programs and services necessary to give high-need students in high-poverty, small city school districts the opportunity for a sound basic education would require, in many instances, that high-poverty districts spend substantial funds and hire substantial additional staff. (T. 2421, 2459-60).

93. It is well known that "economically disadvantaged students are more expensive to educate than their 'school ready' peers from affluent suburbs." (C.X. 7, p. 8; see also C.X. 2, Report, p. 32). Research shows that educating students living in poverty entails increased costs. (P.X. 108, p. 4s). Districts serving concentrations of children from

poverty backgrounds have a greater need to fund programs that provide extra time and help to educate students, thus increasing educational costs. (D.X. X-1, p. 4).

94. State expert Eric Hanushek acknowledged it is useful to try to provide extra funds – extra counselors, extra reading specialists. (T. 4429). State expert Ira Schwartz noted that, generally speaking when students have particular needs like English language learners and students with disabilities, it is generally thought that resources would be helpful in meeting the needs of those students. (T. 4806). Resources include money. (T. 4807).

95. The resources enumerated above allow schools to develop systems for monitoring the academic, social, and health needs of students living in poverty and for assessing the efficacy of the school's interventions. (C.X. 24, p. 19).

96. An example of the type of resources necessary to improve achievement can be found at East High School in Rochester. (T. 2974-77). With the approval and support of the State (T. 2981), the University of Rochester is running this school, which is facing closure owing to ongoing low achievement. (T. 2973). For example, 78% of incoming 7th graders score at Level I in reading. (T. 2976). The additional resources involved in the school turnaround include: lengthening the school day by one and a half hours, adding 11.5 reading teachers, a high intensity 9th grade academy, seven additional social workers, one at each grade level, small daily advisory groups with a social worker, counselor and administrator, to work on issues kids face in their lives, a professor who will be getting sabbatical to oversee parent and community involvement, Dr. Uebbing's time as superintendent of the school, staff at the University of Rochester writing curriculum, a change in the transportation system and attendance officers. (T. 2974-77).

C. District Specific Demographics

1. *Jamestown*

97. Jamestown had the following student demographics for the 2010-2011 through 2013-2014 schools years (P. X. 3 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 1)):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Economically Disadvantaged	62%*	69%*	66%	67%
Students with Disabilities	12.6%	11.7%	12%	12%
Limited English Proficiency	4%	4%	4%	5%
White	70%	69%	68%	67%
Black/African-American	6%	5%	5%	4%
Hispanic/ Latino	15%	16%	18%	19%
Asian	1%	0%	0%	0%

*For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches.

98. Jamestown had 4911 students enrolled in kindergarten through twelfth grade in the 2014-2015 school year. (P.X. 3). Jamestown operates nine schools (five elementary schools, three middle schools, and Jamestown High School) for these students. (C.X. 6, Statement, p. 4).

99. The City of Jamestown's median household income and median and cost of living index are well below the national averages. (C.X. 6, Statement, p. 3). The City of Jamestown has high poverty, low per capita income, low property wealth, and high property tax

rates. (C.X. 6, Statement, p. 3). The unemployment rate is at 13.8% which is higher than the national unemployment average of 7.9% according to the 2010 US Census. (C.X. 6, Statement, p. 3).

100. New York State utilizes a measure of school district wealth called the Combined Wealth Ratio ("CWR") to compare the wealth of school districts. (C.X. 15, p. 5). This ratio equally weights a school districts' per pupil income and per pupil property value. (C.X. 15, p. 5). The districts wealth in each of these areas is compared to the state average for these measures resulting in an indexed local wealth measure where 1.000 represents the wealth of a school district with state average wealth. (C.X. 15, p. 5).

101. Jamestown's CWR is .255, which is in the bottom 1% in terms out of about 675 districts in New York. (T. 846). Jamestown's CWR for 2015-2016 aid is 0.283. (D.X. H-2). As compared with the State, Jamestown's CWR for 2015-2016 aid is the lowest decile. (D.X. H-2). In fact, Jamestown is the sixth poorest district in the State. (D.X. H-2).

102. Since at least 2005, the New York State Education Department has classified the Jamestown as a high needs district—the state's highest category for level of need. (T. 673-74).

103. Jamestown has a high level of transiency. (T. 675). Throughout Jamestown, between 15-20% of the students have been, at some point, educated in other schools. (T. 676). This presents a particular issue to Jamestown because it is unclear what education those students have received. (T. 676).

104. Jamestown is a high poverty district. For the 2012-13 school year, 57% of students were eligible for free lunch, with an additional 4% eligible for reduced-price lunch. (P.X. 21).

105. The percentage of Hispanic or Latino students in Jamestown has increased from 9% in the 2004-05 school year to 19% in 2013-2014. (C.X. 6, Statement, p. 3-4; P.X. 3). Many of these Hispanic and/or Latino students are English Language Learners (ELLs) (T. 675). Of these students, over 95% are from Puerto Rico. (T. 675).

106. The "Pupil Need Index" (PNI) is a state index which combines measures of student poverty, students with limited English proficiency, and district population scarcity. (C.X. 21, Report, p. 3). PNI is a part of the Foundation Aid Formula. (C.X. 21, Report, p. 4). The PNI for Jamestown for 2014-2015 is 1.711 and the PNI for 2013-2014 is 1.654. (C.X. 21, Report, p. 22).

2. *Kingston*

107. Kingston had the following student demographics for 2010-2011 through 2013-2014 schools years (P. X. 45 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 2)):

Student Group	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**
Economically Disadvantaged	42%*	46%*	50%	56%
Students with Disabilities	17%	17.6%	21%	22%
Limited English Proficiency	3%	3%	3%	3%
White	66%	65%	63%	60%
Black/African-American	18%	18%	17%	16%
Hispanic/ Latino	11%	12%	14%	16%
Asian	2%	2%	2%	2%

*For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches.

108. In the 2013-14 school year, there were 6,383 students enrolled in Kingston. (T. 1168; P.X. 11, p. 602).

109. Kingston High School is surrounded by desolation, crime, and prostitution. (T. 1026-27).

110. Economically disadvantaged students are concentrated in the City of Kingston. (T. 1075).

111. In 2012-13 48 percent of Kingston students were eligible for free or reduced price lunch. (T. 1111; P.X. 45). In 2014-15 there was an increase of about 3%, from 48% to 51%. (T. 1111).

112. There has been an increase in the number of students with disabilities in Kingston. (T. 1024-25).

113. Kingston's PNI for 2013-2014 is 1.442. (C.X. 21, Report, p. 22). The PNI for 2014-2015 is 1.457. (C.X. 21, Report, p. 22; D.X. M-2).

114. The CWR for Kingston for 2015-2016 aid is 0.842. (D.X. H-2).

3. *Mt. Vernon*

115. Mount Vernon had the following student demographics for 2010-2011 through 2013-2014 schools years (P. X. 79 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 5)):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Economically Disadvantaged	70%*	66%*	77%	73%
Students with Disabilities	16.3%	16.1%	20%	19%
Limited English Proficiency	9%	9%	9%	8%

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
White	7%	6%	5%	5%
Black/African-American	80%	77%	76%	76%
Hispanic/ Latino	12%	15%	17%	17%
Asian	1%	1%	1%	2%

***For the 2010-2011and 2011-2012 school years, the state did not report data for the "economically disadvantaged" demographic group. Instead, the percentage represents students enrolled in free and reduced priced lunches.

116. In the past two years over 8,000 students have been enrolled within the Mt. Vernon School District. (P.X.79).

117. The New York State Education Department has classified Mt. Vernon as a High Need/Resource Capacity Urban-Suburban School District ("HNR"). (C.X. 7, p. 5). Districts are designated as HNR if their need/resource index is greater than 70%. (C.X. 7, p. 5).

118. Mt. Vernon has a CWR of 0.731 for 2015-2016 aid. (D.X. H-2). For 2013-2014, Mt. Vernon had a CWR of .795. (C.X. 7, p. 15). For 2012-2013, Mt. Vernon had a CWR of .868. (C.X. 7, p. 15). Thus, not only is Mt. Vernon a "very low-wealth District," but the large downward shift "indicates that Mount Vernon is becoming less wealthy in comparison to the rest of the state." (C.X. 7, p. 15).

119. The PNI for Mt. Vernon in 2013-2014 is 1.629. (C.X. 21, Report, p. 22). The PNI in 2014-2015 is 1.613. (C.X. 21, Report, p. 22; D.X. M-2).

120. The effects of poverty on student preparedness and motivation are well documented. As former Assistant Superintendent for Business Tim Costello explained, "when their parents aren't sure how they're going to provide, how they're going to maintain the

home, whether they're going to lose their home and have to move someplace else, children feel anxiety." (T. 2245). Further, "there's less likely to be the kinds of reading material, there's less likely to be the ability to provide the support that a child might find in a more traditional home." (T. 2245).

121. Similarly, current Superintendent Kenneth Hamilton described the Mt. Vernon community as "unique in the sense that many of our children come to school lacking the prerequisites necessary to experience the level of success that will make them college bound or even employable upon graduation." (T. 2316). Homelessness of students is also a significant problem in Mt. Vernon. In the last year alone, over 500 students were considered homeless. (T. 2245). According to Hamilton, the parents are "disenfranchised, disengaged of our system's failure to provide adequate education for our students." (T. 2318).

122. There is also an increased security need in Mt. Vernon relative to the surrounding communities. (T. 2264). Due to the presence of gangs, drugs, and violence, Mt. Vernon requires a large security force, metal detectors, and full-body scans. (T. 2264 – 65).

123. Mt. Vernon is a predominantly African-American community and is characterized by a high-poverty population and economic need. (T. 2240). As a result of such high need within the district, over 70% of Mt. Vernon students are eligible for free and reduced lunch (FRL). (T. 2240; P.X. 79; C.X. 7, p. 4). This is notwithstanding the fact that "the percentage of students eligible for FRL is almost always underestimated as not all eligible students enroll." (C.X. 7, p. 4).

124. In addition, a significant component of Mt. Vernon's student population is from the Caribbean and Central America. (T. 2240). Many of these students possess little to no

English language skills and require English as a second language and other additional services. (T. 2240).

125. Although approximately twenty-four percent of Mt. Vernon's population identifies as Caucasian or white, a large percentage of the district's more affluent and white school children attend private schools outside of Mt. Vernon. (T. 2242). As a result, only 5% of Mt. Vernon's student population is classified as white – a marked contrast from the demographics of the city as a whole. (T. 2242).

126. As an additional difficulty, Mt. Vernon has a high percentage of students-with-disabilities. According to the 2013-14 Report Card published by the state, 19% of Mt. Vernon's student population was characterized as disabled. In some schools, that number is larger. Davis elementary has a students with disabilities population of 28%. (C.X. 7, p. 30). Students-with-disabilities constitute 21% of Graham elementary, which is situated in one of the neediest neighborhoods in the city. (C.X. 7, p. 29).

4. *Newburgh*

127. Newburgh had the following student demographics for the 2010-2011 through 2013-2014 schools years (P. X. 74 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 3)):

Student Group	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**
Economically Disadvantaged	65%*	66%*	71%	71%
Students with Disabilities	13.2%	12.8%	14%	15%
Limited English Proficiency	15%	14%	14%	13%
White	27%	26%	24%	23%

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Black/African-American	28%	27%	26%	26%
Hispanic/ Latino	42%	44%	45%	46%
Asian	2%	2%	2%	2%

*****For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches.

128. Enrollment in 2013-2014 for grades K-12 was 11,001 students. (P.X. 74.)

129. "As is often the case in American cities, Newburgh has experienced a high rate of crime, including violent crime. A September 2011 New York Magazine article labeled Newburgh as the 'Murder Capital of New York State' detailing large scale efforts led by the FBI to curb gang violence. According to the article, Newburgh had a higher rate of violent crime per capita than the South Bronx. (Keefe, 2011)" (C.X. 13, p. 5). The needs of urban districts such as Newburg are especially high due to the need for additional security in the school district. (T. 2670-75).

130. Newburgh serves a large percentage of economically disadvantaged children. (T. 2569, 2572). For instance, in 2012-2013 89% of students at Temple Hill School were economically disadvantaged. (T. 2083).

131. At the time of trial 54% of students at Fostertown school received free and reduced lunches, the lowest in the district at the elementary school level. (T. 2082).

132. "In Newburgh, there are 1502 English Language Learners including 799 students who receive English as a second language instruction." (C.X. 13, p. 8). Because of the high percentage of ELL students, Newburgh effectively a school district within the district with arond 1500 ELL students T. 2670-75).

133. Newburgh's percent of students with disabilities, currently 15 percent, is a growing population. (T. 1879-80). This represents 1,610 students with disabilities in 2013-14. (P.X. 74).

134. Newburgh's CWR for 2015-2016 is 0.526. (D.X. H-2). Newburgh is in the third lowest decile in the State. (D.X. H-2).

135. Newburgh's PNI in 2013-2014 is 1.653. (C.X. 21, Report, p.22). The PNI in 2014-2015 is 1.66 (C.X. 21, Report, p. 22; D.X. M-2).

5. ***Niagara Falls***

136. Niagara Falls had the following student demographics for the 2010-2011 through 2013-2014 schools years (P.X. 56 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 4)):

Student Group	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**
Economically Disadvantaged	65%*	74%*	69%	69%
Students with Disabilities	16.6%	15.5%	16%	16%
Limited English Proficiency	1%	1%	1%	1%
White	53%	52%	50%	48%
Black/African-American	35%	35%	35%	35%
Hispanic/ Latino	3%	4%	5%	5%
Asian	2%	2%	1%	2%

*For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches

137. Based on the 2013-2014 report card, there were 6,685 students enrolled in the Niagara Falls during the 2013-2014 academic year. (P.X. 56).

138. The State of New York classifies the Niagara Falls as a "high-need/resource capacity, school district." (C.X. 16, Statement, p. 5; see also T. 1565). This classification is based on a need/resource index over seventy percent. The need/resource index is a ratio of the estimated poverty percentage to the Combined Wealth Ratio. (C.X. 16, Statement, p. 5). The District also measures as a very low wealth school district. (C.X. 16, Statement, p. 5). Over the decade from 2000 to 2010, the wealth of the Niagara Falls City School District fell significantly: from a CWR of .514 to .358. This CWR, well below the state average, signifies that NFSD ranks within the lowest ten percent of school districts in the state in terms of the community's ability to support local education with locally generated revenues." (C.X. 16, Statement, p. 5-6).

139. Niagara Falls's CWR for 2015-2016 aid is 0.343. (D.X. H-2). It is in the lowest decile in the State. (D.X. H-2). Niagara Falls is the sixteenth poorest district in the State. (D.X. H-2).

140. The PNI in 2013-2014 is 1.685. (C.X. 21, Report, p. 22). The PNI in 2014-2015 is 1.691. (C.X. 21, Report, p. 22; D.X. M-2).

141. "[T]he Niagara Falls City School District faces the challenge of educating a diverse and economically deprived student population while being recognized by NY State as a community with very low local incomes and local property wealth." (C.X. 15, p. 37).

142. The rate of teen pregnancy in the City and County of Niagara is one of the highest rates in the State of New York. (T. 1672). Typically, between 50 and 75 students in the Niagara Falls High School are parents as teenagers. (T. 1672).

143. "Our students face challenges that many students of low income families face, they were living in many times single parent homes, and the students at the senior high then take on some of the responsibility of the adult. For instance, they're home often times putting the younger kids on the bus in the morning, they're home early to make sure there is somebody there when the kids come home, they have challenges revolving around drug and alcohol use in the family, it's a—it can be a chaotic experience for kids." (T. 1673). As a result of their complicated home lives, "their attendance is lower, their ability to focus on academics is then decreased because they're paying attention to some of those social/emotional needs of either themselves or for a younger sibling." (T. 1673).

144. As of October 5, 2015, the percentage of economically disadvantaged students had risen to about 75 percent. (T. 1525; C.X. 16, Statement, p. 4). In 2012, 72 percent of the students in the district were eligible for free or reduced lunch. (P.X. 56). By 2015, that percentage rose to 75 percent. (T. 1525-26).

145. Students come into the district with deficiencies in their ability to learn. (T. 1526-27). "The gap between their expected ability to learn and their actual performance is getting wider at an earlier age." (T. 1526-27). Various elementary schools in the district had the following numbers of students entering kindergarten in need of intervention services. (P.X. 66):

School	Number entering kindergarten in need of intervention services	Total number of students
Abate	40	75
Cataract	24	76
G.J. Mann	20	59
Hype Park	29	64
Kalfas	20	61
Maple Avenue	14	45
Niagara Street	45	104

School	Number entering kindergarten in need of intervention services	Total number of students
79th Street	25	81
District	217	565

146. In total, in the fall of 2014, 565 students entered kindergarten in the Niagara Falls City School District. (P.X. 66). However, only 420 of those students were enrolled in the District's Pre-K program. (T. 1556). The District considers Pre-K critical to student success. (T. 1556). Yet, about 145 students start school for the first time in kindergarten. (P.X. 66, T. 1556). And of those 565 students who entered kindergarten in 2014, 217 were in need of intervention services. (P.X. 66). "The widening 'readiness' gap between [Niagara Falls] incoming kindergarten students and national norms confirms the deteriorating economic and demographic make-up of the [Niagara Falls] presents additional challenges for the [Niagara Falls] to overcome each year." (C.X. 16, Report, p. 17).

6. *Port Jervis*

147. Port Jervis had the following student demographics for the 2010-2011 through 2013-2014 schools years (P. X. 50 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 6)):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Economically Disadvantaged	57%*	55%*	59%	62%
Students with Disabilities	13.6%	14.3%	17%	17%
Limited English Proficiency	1%	1%	1%	1%
White	85%	77%	75%	74%

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Black/African-American	10%	10%	9%	9%
Hispanic/ Latino	4%	10%	12%	12%
Asian	1%	1%	2%	1%

*For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunch.

148. In 2013-14 enrollment in Port Jervis was 2,769. (T. 2804).

149. "Port Jervis, although small in size, has many of the same attributes as New York's larger cities: high poverty, low per capita income, low property wealth and high property tax rates. These conditions are the result of decades of low property wealth and household income. PJ per capital income is $24,062, by far the lowest when compared with other school districts in the area. PJ also has the lowest level of adults with college degrees and the lowest home values in the County." (C.X. 12, Statement, p. 3).

150. Port Jervis is classified by the State as a high need resource capacity rural district. (T. 2801).

151. State Expert Jeffrey McLellan acknowledged that student demographics are different in Port Jervis than in surrounding school districts. (T. 4585). Port Jervis has a much larger number of economically disadvantaged students as opposed to other districts. (T. 4585). Port Jervis's economically disadvantaged students are not scoring as high, and "there's much more work to be done to increase student achievement levels at Port Jervis." (T. 4585).

152. One of the primary challenges facing Port Jervis is high poverty. (T. 2144). Demographically, Port Jervis suffers from "multi-generational poverty." (T. 2145).

153. "The 58.3% of PJSD students eligible for nutritional assistance through the FRL program breaks down as 49% eligible for free lunch and 9.3% eligible for reduced price lunch (as of March 2014). This means that almost half of PJSD students are from households at the lowest poverty level." (C.X. 11 ¶ 5). Port Jervis has substantially higher free and reduced lunch percentage as compared to comparison districts. (T. 2800-01).

154. Students live in overcrowded and unfurnished apartments and often lack basic needs like warm clothing. (T. 2144-45). It is "very difficult for any student to get any homework done in many of their homes." (T. 2145).

155. Linked to the problem of poverty in the district is the problem of widespread heroin abuse. (T. 2145-46).

156. "The average Combined Wealth Ratio throughout the state is 1.00. The Port Jervis City School District has a CWR of .499. This would suggest that Port Jervis is a very low-wealth District, especially compared to downstate districts in general and other districts in the comparison group specifically." (C.X. 12, Report, p. 16).

157. In 2013-2014, Port Jervis has a PNI of 1.491. (C.X. 21, Report, p. 22). This is an especially high index number considering that the district has very few students with Limited English Proficiency which is part of the PNI formula. (C.X. 12, Report, p.16). In 2014-2015, Port Jervis has a PNI of 1.494. (C.X. 21, Report, p. 22; D.X. M-2).

158. State Expert Jeffrey McClellan concedes that Port Jervis is a low wealth school district, that Port Jervis is in the next-to-bottom decile of school districts in the state in terms of wealth, and that Port Jervis has a low Combined Wealth Ratio. (T. 4566-67).

159. Port Jervis Superintendent Thomas Bongiovi testified that one of the primary challenges facing Port Jervis is an "extremely high drug rate" and a "very high special ed population." (T. 2144).

160. Children come from homes of parents who use and sell drugs, and many students have parents in prison or on parole because of drug-related offenses. (T. 2146).

161. State Expert Jeffrey McClellan acknowledge the percentage of students with disabilities has been increasing over time from 12.84% in 2009-10 to 17% in 2013-14. (T. 4568). This far exceeds the state recommended limit of 11%. (T. 2147).

162. "It is critical to realize that given the number of economically disadvantaged children in Port Jervis, class sizes and academic supports cannot be at the levels of other schools with much lower numbers of economically disadvantaged children. These restraints are caused by inadequate state funding and severely limit the district's ability to provide a sound basic education to all children." (C.X. 12, Report, p. 22).

7. *Poughkeepsie*

163. Poughkeepsie had the following student demographics for the 2010-2011 through 2013-2014 schools years (P. X. 1 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 7)):

Student Group	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**
Economically Disadvantaged	74%*	91%*	85%	86%
Students with Disabilities	16.9%	16%	15%	16%
Limited English Proficiency	11%	11%	10%	10%
White	14%	13%	12%	10%

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Black/African-American	59%	60%	56%	55%
Hispanic/ Latino	25%	26%	28%	30%
Asian	1%	1%	1%	1%

*For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches.

164. The 2013-2014 Report Card lists 4382 students in the Poughkeepsie City School District. (P.X. 1). Dr. Nicole Williams testified that enrollment in the current year (2014-2015) was up 124 students over the previous year (2013-2014). (T. 293).

165. At the time of trial, there were approximately 4700 students in the Poughkeepsie City School District. (T. 82, 89, 181, 294-95, 325).

166. The resident population of Poughkeepsie is equally financially distressed. (T. 276). Poughkeepsie is the highest poverty district in the Hudson Valley, and the current percentage of poverty in the district is near or above 88% to 90%. (T. 276, 324).

167. Dr. Nicole Williams, the superintendent of the Poughkeepsie City School District, stated that 4% of the student body is homeless. (T. 90). The school district supplements the high poverty demands of its students by providing a food backpacking program, a food pantry at the Middle School, and through offering breakfast in every elementary school in the district. (T. 91, 131).

168. Given the high-poverty background of the students, some students show up to school never having held a book. (T. 100). Others walk three miles to get to school. (T. 91-92).

8. *Utica*

169. Utica had the following student demographics for the 2010-2011 through 2013-2014 schools years (P.X. 2 (Stipulated in Joint Findings of Fact, Appendix B, ¶ 8)):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Economically Disadvantaged	76%*	80%*	81%	83%
Students with Disabilities	16.6%	16.3%	17%	16%
Limited English Proficiency	14%	15%	15%	16%
White	44%	41%	38%	37%
Black/African-American	27%	26%	25%	26%
Hispanic/ Latino	16%	17%	18%	18%
Asian	12%	13%	15%	16%

*****For the 2010-2011 school year, the state did not report data for the "economically disadvantaged" demographic group. Instead for 2010-2011, the percentage represents students enrolled in free and reduced priced lunches.

170. Utica's enrollment has grown over the past five years. (T. 492). As of January 22, 2015, the district had grown further to 10,179 students; the enrollment is projected to continue to increase in the future. (T. 492).

171. The City of Utica's median household income and median home value are well below state averages. (C.X. 40, p. 17).

172. Utica's PNI for 2013-2014 is 1.849 (C.X. 21, Report, p. 22). The PNI in 2014-2015 is 1.971 (C.X. 21, Report, p. 22; D.X. M-2).

173. Utica is the fifth poorest district out of about 674 statewide, based on its CWR of 0.266 for 2015-2016 aid. (D.X. H-2; T. 436). Approximately 85 % of Utica students are eligible for free and reduced lunch. (T. 436).

174. The individual poverty rate in Utica is double the national average. (P.X.4, Report, p. 1).

175. Utica has a pupil need index of 1.862, as calculated by the state, compared to the state average of 1.544. (D.X. M-2).

176. Utica had about 105 students that are homeless at the time of trial. (T. 440).

177. According to the State's expert, Dr. Gorham, Utica has a "diverse and high-need student population" and "serve[s] a higher proportion of at-risk populations." (C.X. 40, p. 25, 139)

178. Many students come from families with an incarcerated parent or member of the family. (T. 441) ("Many of the children that are residing in the district, within the confines of the district, have come up with a parent or a guardian who has followed an incarcerated member of the family."). As a result, those families are generally unable to provide a stable environment to support children and their schooling. (T. 441-42).

179. Many students come into kindergarten with a developmental age two-to-three years behind the other students and thus require immediate intervention and additional instructional resources to catch up with their peers. (T. 463-64).

180. "The City of Utica [the third largest] collection site for refugees in the northeast." (T. 432). The influx of refugees and immigrant students increases Utica's enrollment. T. 621-22). About 15 percent of the Utica student population is refugees, and the refugee students come from such places as Myanmar, Nepal, Somalia, Yemen, Iraq, Bosnia, and Russia. (T. 431-32). (C.X. 3, p. 1). Students in Utica speak about 42 languages in total.

(T. 438-39). As a result, Utica has a large percentage of students with limited English proficiency. (T. 431).

181. Refugee children in Utica come with virtually nothing: "[t]hey arrive in this country and they don't they have – they have virtually nothing but the clothes on their back." (T. 434). As Lori Eccleston, Director of Curriculum and Instruction, described, "many of the new children come in and have no education, no formal education, nor do their parents. Many of them were born in refugee camps. Many of them come and they're ill." (T. 432-33).

182. "The majority of the students served by the Utica District have increased need for resources and support due to their unique needs relative to their socio-economic status, limited English proficiency and/or disability." (P.X. 3, p. 3).

D. <u>District Budget Information</u>

1. *Jamestown*

183. For the past five years, Jamestown has had an average budget gap of $3 million a year. (T. 686). The gap represents the amount of money needed to maintain existing services, personnel and equipment. (T. 679)

184. In 2014-2015, Jamestown appropriated $3.5 million from the fund balance in order to close the budget gap. (T. 679). Jamestown only has $200,000 left in the fund balance now. (T. 679). In 2010-2011, the district spent at least $1 million to close the budget gap. (T. 680)

185. Spending the fund balance does not completely close the budget gap. (T. 686-87). The district also needs to cut costs, through personnel and other reductions. (T. 686-87).

186. A 1% tax levy increase would generate $140,000 in Jamestown, in comparison to Jamestown's $70 million budget. (T. 677). In order to close the budget gap each year, Jamestown would have to raise property taxes by 20%-30% a year. (T. 677).

187. Approximately 70% of the district's budget comes from state aid. (T. 678).

188. Jamestown has attempted in the past five years to raise taxes and the budget was voted down. (T. 677).

2. *Kingston*

189. In 2012-2013, Kingston had to close a $6.7 million budget gap (T. 1029). The gap was the result of inadequate revenue (T. 1028). It closed the gap by closing an elementary school, laying off approximately 25-30 people and making other cuts to programs. (T. 1030).

190. In 2013-2014, Kingston had to close an approximately $6 million budget gap. (T. 1029). The district closed the gap with a plan that included closing three more elementary schools, laying off 115 staff, including teachers, administrators, lunch workers, hall monitors and security guards, attrition, reconfiguring middle schools and other cuts. (T. 1030).

191. In 2014-2015, Kingston had to close an approximately $5 million budget gap. (T. 1029). It closed the gap by attrition and retirement incentives, finding efficiencies in administration, and creating community partnerships with BOCES and Ulster Community College. (Tr. 1033).

192. Kingston must maintain restricted and unrestricted reserves. (T. 1186-88). Restricted reserves provide coverage for potential liability such as from tax certiorari appeals. (T. 1187). Kingston has $10 million in exposure for tax certiorari. (T. 1187).If the district lost half of those appeals, it would be required to pay $5 million dollars. (T. 1187). If the

district does not keep money in reserves, it would have to either attempt to get taxpayers to vote for an increased budget the next year or cut $5 million from the next year's budget. (T. 1187). Thus keeping money in reserves is fiscally prudent. (T. 1187). Unrestricted reserves provide coverage for other unexpected costs. (T. 1187). For example, if a student with special needs transfers into the district midyear, which can cost the district $250,000. (T. 1187).

3. *Mount Vernon*

193. In 2008-2009, Mount Vernon's budget went into a deficit mode. (T. 2246). The expenditures exceeded the revenues. (T. 2246).

194. Every year is a challenge with the budget. (T. 2247). State aid has gone down since the recession and pressures on our budget include increased costs, tax certiorari, and snow removal. (T. 2247).

195. Owing to the pressures on the budget, Mount Vernon has had to cut services, use the fund balance, raise taxes and particularly focus on reducing staffing. (T. 2247-48).

196. In 2010-2011 and 2011-12, Mount Vernon raised property taxes 5%, in 2012-2013 there was a nominal reduction in property taxes, and in 2013-2014 and in 2014-20 15 there was a property tax increase of less than 1%. (T. 2254). At the same time, there was a significant reduction in services. (T. 2254).

197. During those years, the district also spent from the fund balance, which isn't a continuing source of revenue. (T. 2254).

198. During this same period the district's yearly budget gap ranged from $5 million to $15 million. (T. 2255). The gap results from not having enough revenue to cover expenditures (T. 2253-54).

199. An additional pressure to the district's budget is the mandated payments to a charter school. The payments made to the charter school are:

Fiscal Year	Charter School Payment
2009-10	$189,398
2010-11	$288,857
2011-12	$2,099,059
2012-13	$3,325,859
2013-14	$4,636,155

(P.X. 35)

4. *Newburgh*

200. In 2009-2010, Newburgh school district had a budget gap of $8,721,399. (T. 1886). In other words, if the district were to have rolled over, from the 2008-009 school year, the exact same level of staff, services and; programs, the district would have been short $8,721,399 to pay for that. (T. 1886; P.X. 83).

201. In 2010-2011, Newburgh school district had a budget gap of $6,138,442.00, again representing the amount needed to maintain the same level of staff, services and programs from the previous year (T. 1886; P.X. 83).

202. In 2011-2012, Newburgh school district had a budget gap of $ 17,798,463.00, again representing the amount needed to maintain the same level of staff, services and programs from the previous year (T. 1886; P.X. 83).

203. In 2012-2013, Newburgh school district had a budget gap of $ 12,323,850.00, again representing the amount needed to maintain the same level of staff, services and programs from the previous year (T. 1887; P.X. 83)

204. In 2013-2014, Newburgh school district had a budget gap of $ 5,336,371.00, again representing the amount needed to maintain the same level of staff, services and programs from the previous year (T. 1887; P.X. 83). As additional pressure on the budget, in 2013-2014, Newburgh was mandated to pay $733,734 to a charter school. (P.X. 34).

205. In 2014-2015, Newburgh school district had a budget gap of $ 6,547,100.00, again representing the amount needed to maintain the same level of staff, services and programs from the previous year (T. 1887; P.X. 83).

206. The total budget gaps for the period from 2009-2010 to 2014-2015 was $56,865,625. (T. 1887, P.X. 83).

207. In 2015-2016, the Newburgh district is projecting a $7 million budget gap. (T. 2073-74).

208. In order to close the budget gaps in each year, Newburgh school district made cuts each year to staff and services. (T. 1887).

209. The shortfall in state aid contributed to the budget gaps discussed over these schools years. (T. 1925)

210. In 2013-2014, the comptroller indicated that the Newburgh school district was in fiscal stress and the board of education decided to try to balance the school budget without using the fund balance. (T. 2058).

5. *Niagara Falls*

211. Niagara Falls's total budget for the 2014-2015 fiscal year is $126,636,144. (P.X.67; T. 1534). 21.2% of that budget comes from local property taxes. (P.X.67; T. 1533). 73.7% comes from state aid. (P.X.67; T. 1533). The District's budget history over the past five years is as follows (P.X.67):

Fiscal Year	Budget
2009-2010	$127,896,009
2010-2011	$126,033,417
2011-2012	$121,057,959
2012-2013	$122,438,834
2013-2014	$124,060,725
2014-2015	$126,636,144

212. In order to maintain the staffing and programs that the District had in 2009-2010 through to the next year, the District would have needed to increase its budget. (T. 1536). But, because for the past six years the budget has been consistently lower than it was in 2009, the District has had to both "turn to reductions in force," which means cutting personnel and programs, and use "what little reserves [it] had" to account for its decreased budget. (T. 1537). The amount of money the District has taken from its reserves and the number of full-time (FT) and part-time (PT) employees it has let go include (P.X.67; T. 1554):

Fiscal Year	Reserves Used	Reductions in Force
2009-2010	0	2 FT
2010-2011	0	11 FT/PT mix
2011-2012	$500,000	74 FT/PT mix

Fiscal Year	Reserves Used	Reductions in Force
2012-2013	$1,200,000	13FT/63PT
2013-2014	$2,300,000	3FT/12PT
2014-2015	$2,000,000	3.5FT/26PT

213. Additional staff positions were cut resulting from loss of grant funding. (T. 1557). The District has approximately $2.3 million remaining in its reserves at the time of trial. (T. 1537). That represents less than two percent of its current budget. (T. 1537-38).

214. At the beginning of each year, the District "rolls forward" the program from the previous year. (T. 1541). The District assumes it will employ the same teachers and staff members and require the same budget. (T. 1541). In other words, the District assumes it will maintain the program it had the year before. (T. 1542). When the District does not have enough available funding to cover the costs associated with maintaining the status quo, it creates a gap in the District's budget. (T. 1542). The District's project budget gaps for the past six years are as follows (P.X. 69-73; T. 1543-44):

Fiscal Year	Project Gap
2009-2010	$3,321,268
2010-2011	$3,000,000
2011-2012	$7,500,000
2012-2013	$4,279,000
2013-2014	$5,283,653
2014-2015	Between $5,331,912 and $6,797,066

215. In 2014, the Niagara Falls City School District received approximately $9 million in grants. (T. 1557). But just six years ago, the District received about $27 million. (T.

1558). In addition to receiving fewer grants, resources such as Title I and Title II-A which the District regularly receives have been reduced. (T. 1558). The state has eliminated other entitlement programs, such as Title II-D, Title IV and Title V completely. (T. 1558). The district applies for "every grant that is out there." (T. 1558). Total state aid to Niagara Falls, excluding building aid, is approximately $1.7 million lower in 2014-2015 than it was in 2008-2009. (C.X. 16, Report, p. 39, T. 1843)

216. About two years ago, Niagara Falls increased its property tax rate within the city by three percent. (T. 1534). That increase raised a total of $750,000. (T. 1534). The Niagara Falls City School District received $258,000 of that revenue. (T. 1534). That $258,000 represented about 0.002% of the District's budget at that time. (T. 1534). In order to close the district's budget gap for just 2011-12, $7.5 million, Niagara Falls would have to raise taxes by 30%. (T. 1835). And, because of New York State's tax cap, raising property taxes by more than 2% would require an override vote of at least 60% of the voters in the community. (T. 1835).

217. An additional pressure to the district's budget is the mandated payments to a charter school. The payments made to the charter school are:

Fiscal Year	Charter School Payment
2009-2010	$3,502,732
2010-2011	$3,832,269
2011-2012	$3,812,787
2012-2013	$3,926,581
2013-2014	$4,030,362

(P.X. 38)

218. Five years ago, in order to save money, the district had to close an elementary school and close another building and move the board of education into that closed elementary school, (T. 1580).

6. *Port Jervis*

219. "On the surface, it appears that Port Jervis spends more per pupil than some schools in the comparison group and more per pupil that NYS similar group districts. When poverty is factored in, however, Port Jervis spends less than all but one of the comparison districts. This is a district making an enormous local effort to serve a very challenging population." (C.X. 12, Report, p. 26).

220. "Based on Combined Wealth Ratio, Port Jervis has the least capacity to fund its educational program." (C.X. 12, Report, p. 25).

221. Port Jervis has virtually no tax base – "everything that happens in Port Jervis that requires additional expenditures with State aid cuts is coming out of a community with zero tax base." (T. 2834). "The relatively low economic wellbeing of the community is reflected in the list of largest taxpayers…Absent from the list of large taxpayers are retail establishments such as malls or even larger shopping centers. Instead, we find a Mobil home park, vacant land and the 9th and 10th ranked taxpayers, an apartment complex and a motel." (C.X. 12, Report, p. 7).

222. There is a "documented higher need in Port Jervis regarding issues that kids have to have attended to." (T. 2831). Instructional expenditures per pupil for Port Jervis are insufficient once taking into consideration "the specific needs that a high poverty low wealth district." (T. 2832). The situation requires an expansion of the platform of services that Port Jervis is not fully providing. (T. 2832).

223. The high cost of special education means that cost per pupil will be higher in Port Jervis. (T. 2228-29).

224. In the past year, after the budget has been passed, there have been approximately four instances where a student with an IEP will move into the district. (T. 2148).Providing services to those students can cost the district between $25,000- $75,000 extra per year. (T. 2148). In the past fifteen years, having students with disabilities move into the district after the budget has already been passed is a constant occurrence. (T. 2148). Legally, the district must comply with a student's IEP, regardless of cost. (T. 2148-49).

7. *Poughkeepsie*

225. Two thirds of Poughkeepsie's district budget comes from state funding. (T. 95, 321).

226. The freeze in foundation aid and Gap Elimination adjustment, beginning in 2009, had devastating effects on the school district. (T. 321-22).

227. The staff and programming cuts in the school district were the result of budget cuts caused by inadequate state aid. (T. 322).

228. Poughkeepsie has had to spend down its fund balance in the past five years because of inadequate revenue and a priority to maintain some of the program and staffing that is essential to the school district. (T. 335).

229. Poughkeepsie's fund balance is currently $800,000. (T. 335). It is less than 1%, as a result of having to spend it down for five years. (T. 95). The fund balance is low because of cuts from state aid. (T. 95). The state comptroller's office has made a designating the school district as fiscally stressed district because it spent down its fund balance. (T. 94). The comptroller's report gave a negative assessment about Poughkeepsie's fund balance; i.e. that it is too low, below 4%. (T. 336-67).

230. In part as a result of the low fund balance, the school district's credit rating has been downgraded and is rated low by Moody's. (T. 337).

231. The low credit rating makes it difficult for the school district to raise money through bonds. (T. 337-38). Poughkeepsie' tax base is low. A 1% property tax increase yields only approximately $250,000. (T. 341)

232. Grant writing is labor intensive, and Poughkeepsie has a small staff, but the district makes reasonable efforts to obtain grants. (T. 134-35). Grants are competitive, so there is no guarantee that the grant will be secured, and the grants often expire after a set period of time. (T. 135).

233. The state's expert agreed that Poughkeepsie didn't receive the funding it expected it would receive. (T. 3580).

234. Roger Gorham acknowledged that state aid decreased at a time when tax legislation made it more difficult to raise funds. He further agreed that the cuts occurred at the same time as increased mandated contributions to state retirement systems and healthcare plans. T. (3591-92).

8. *Utica*

235. Approximately 74%-75% of Utica's school district budget comes from state aid. (T. 443).

236. The district's budget needs to be balanced every year. (T. 449).

237. For the past five years, there has been a deficit; therefore the gap must be closed to balance the budget (T. 448-49; P.X. 44).

238. Since foundation aid stopped flowing in 2010-2011 and since the Gap Elimination Adjustment began, the district had budget deficits. (T. 453). In addition to the loss of state aid, federal aid was cut through sequestration, cuts were made to Title I and Title II (a) (class size reduction federal funding). (T. 454). Additionally, in 2013-14 the district

paid 1,979,975 in mandated payments to a new charter school. (P.X. 5). In 2014-2015, the district had a projected loss of $2.7 million dollars in mandated payments to a charter school. (C.X. 4, p. 33).

239. In 2010-2011, the district had to close a budget deficit of $2,306,245 (T. 455, P.X. 44). 18 staff positions were cut as a result. (P.X. 44).

240. In 2011-2012, the district had to close a budget deficit of $5,552,407 (T. 455, P.X. 44). 44.5 staff positions were cut as a result. (P.X. 44).

241. In 2012-2013, the district had to close a budget deficit of $6,778,499 (T. 455, P.X. 44). 148.6 staff positions were cut as a result. (P.X. 44).

242. In 2013-2014, the district had to close a budget deficit of $5,612,845 (T. 456, P.X. 44). 96 staff positions were cut as a result. (P.X. 44).

243. In 2014-2015, the district had to close a budget deficit of $5,227,170 (T. 455, P.X. 44). 57.5 staff positions were cut as a result. (P.X. 44).

244. The total amount of budget deficits that needed to be closed for that time period was $25,477,266. The total number of staff positions cut as a result was 364.6 (P.X. 44).

III. FUNDING OF MAISTO DISTRICTS

A. Development and Enactment of Foundation Aid Formula

245. In response to *CFE*, the New York State Education Department conducted a cost study and developed a state aid proposal. This proposal was eventually adopted by the Regents as the 2004-05 state aid proposal (the "2004-05 Regents State Aid Proposal"). (C.X. 25, ¶ 6). The Regents submitted this proposal to the panel of referees appointed by the Supreme Court in CFE to determine decision in the case. (T. 3026-3027).

246. In the 2004-05 Regents State Aid Proposal, the Regents put forth a foundation aid formula (the "Foundation Aid Formula") to calculate state aid to school districts for operating expenses. (P.X. 107, p. 1).

247. The Foundation Aid Formula, as proposed in the 2004-05 Regents State Aid Proposal, had four basic components:

i. **The Foundation Cost** is the cost of providing general education services in New York schools, measured by determining the instructional costs of districts that are performing well.

ii. **The Pupil Needs Index** recognizes the added costs of providing extra time and extra help for students to succeed in school. It is measured by the number of students eligible for free and reduced price lunch and students living in geographically sparse areas of the State.

iii. **The Regional Cost Index** is an adjustment that recognizes regional variations in purchasing power around the State. It is measured based on wages of non-school professionals in each region of the State.

iv. **The Expected Local Contribution** is an amount school districts are expected to spend as their fair share of the total cost of general education. It is measured by multiplying the district tax base by an expected tax rate adjusted by district income per child. The Expected Local Contribution is not a mandated tax rate, but a way of determining a local share in order to calculate State Aid. (P.X. Ex. 107, pp. 1-2).

248. The Foundation Aid Formula, as proposed by the Regents, calculated foundation aid in the following manner: District's State Aid = [Foundation Cost x Pupil Need Index x Regional Cost Index] - Expected Local Contribution. (P.X. 107, p. 1).

249. The Foundation Aid Formula was designed to calculate the cost of providing the average student with an education that meets the State's learning standards. (P.X. 107, p. 8). According to the 2004-05 Regents State Aid Proposal, the measure of an adequate education was "the unweighted average of 80 percent of its test takers scoring at Level 3 or above on seven examinations (Fourth Grade English Language Arts, Fourth Grade Mathematics, high school Mathematics A, Global History, U.S. History, English and Earth Science)" over three years. (P.X. 107, p. 52).

250. In calculating the foundation amount per pupil (i.e. the Foundation Cost), the 2004-05 Regents State Aid Proposal focused on the expenditures in "successful" school districts, i.e. districts providing the adequate education as described above. (P.X. 107, pp. 8, 47-52).

251. As part of this calculation, the 2004-05 Regents State Aid Proposal called for adding an "efficiency filter." (P.X. 107, p. 55).The efficiency filter ranked the "successful" school districts from high to low based upon need and cost-adjusted instructional expenditures per pupil. (P.X. 107, p. 55).The mean expenditure per pupil was calculated for the lower half of these districts, based on per-pupil expenditures. (P.X. 107, p. 55). Thus, the Foundation Cost was calculated by only including the average per-pupil expenditures of the lowest spending "successful" school districts; those the state considered "efficient" because they spent less than those "successful" districts in the upper half of spending. (P.X. 107, p. 55).

252. In the 2004-05 Regents State Aid Proposal, foundation aid, as calculated by the Foundation Aid Formula, would replace 29 different state aids and grants. (P.X. 107, pp. 10-11).

253. The 2004-05 Regents State Aid Proposal called for a $5.98 billion increase in state school aid for general instructional expenses, which would be funded by the new Foundation Aid Formula, to be phased in over seven years. (P.X. 107, p. 2).

254. The 2004-05 Regents State Aid Proposal noted that students attending schools that have a high percentage of student poverty and limited local resources have fewer resources. (P.X. 107, p. 6). The 2004-05 Regents State Aid Proposal further stated that these students "are more likely to need extra instructional time, tutoring, and assistance from social service agencies, yet are less likely to receive those services." (P.X. 107, p. 7).

255. The 2004-05 Regents State Aid Proposal called for high-needs school districts to receive over 80% of the overall increase in state school aid (P.X. 107, pp. 2, 5). The Regents noted the added costs associated with providing the extra time and help necessary for high-need students to succeed. (P.X. 107, p. 8). The Regents further recognized that districts with high concentrations of needy pupils must provide a broader array of additional services in order to enable their students to succeed. (P.X. 107, p. 9).

256. The 2004-05 Regents State Aid Proposal also contained a provision requiring schools that failed to make adequate yearly progress under the No Child Left Behind Law to develop a plan to show how the school is allocating resources to improve student achievement. (P.X. 107, p. 10).

257. In their memorandum of law to the referees in CFE, the Regents asserted that their 2004-05 State Aid Proposal satisfied the mandates of the Court of Appeals decision in that case. (C.X. 25, Exhibit A, Tab 3.)

258. In the 2004-05 Regents State Aid Proposal, the Regents maintained that their plan was designed to provide all students in New York with the opportunity for a sound basic education. (P.X. 107, pp. 8, 51-52).

259. The 2005-06 Regents State Aid Proposal was identical to the 2004-05 Regents State Aid Proposal, except it called for a $6.6 billion increase in foundation aid over five years. (P.X. 108, p. ii).The basic four components of the Foundation Aid Formula were maintained. (P.X. 108, p. 3). The measure of an adequate education in the 2005-06 Regents State Aid Proposal was the same as the previous year, as was the application of the efficiency filter.(P.X. 108, p. 21). The 2005-06 Regents State Aid Proposal, like the one the year before, directed 80% of the increase in foundation aid to high-need districts. (P.X. 108, p. 4). In their proposal, the Regents stated that they were responding to the call of the Panel of Referees in the CFE case to provide a statewide solution so that all children would be provided the opportunity for a sound basic Education. (P.X. 108, pp. i, 15)

260. The Regents State Aid Proposals for 2006-07 and 2007-08 carried forward the same Foundation Aid Formula components, with the same measure of an adequate education, the same application of the efficiency filter, and the same intent to drive over 80% of the increase to high-needs districts. (P.X. 109, pp. 1, 4, 5, 9-10; P.X. 110, pp. 1, 9, 14). As stated in a memo authorized by Commissioner Mills to the Regents' subcommittee on state aid and the full Board of Regents regarding the 2007-08 Regents State Aid Proposal,

"For the fourth year, the Board of Regents will carry forward a multi-year proposal to establish a foundation aid program that adjusts for differences in school district pupil needs and regional costs.Its goal is to close the achievement gap in a manner that is adequate, effective and efficient." (C.X. 25, Tab 2).

261. Shortly after Governor Spitzer's election in 2006, he convened a school finance working group. (T. 3073-74).This group collaborated with the State Department of Education, officials from the School Boards Association, superintendents, NYSUT and personnel in the legislature and other groups put together to work on a foundation aid formula. (T. 3074).

262. John Clarkson was a member of this working group, working for Governor Spitzer. (T. 3073-74).From 1980, after obtaining a Master's degree in public administration, through 2007, Mr. Clarkson worked for various New York state governmental and non-governmental agencies, including the State Division of the Budget, The New York State School Boards Association and the New York State Comptroller's office. (T. 3069-3072).In those positions, Mr. Clarkson worked on school finance issues. (T. 3069-3072). Beginning in 2005 Mr. Clarkson worked on a volunteer basis with Spitzer's policy group. (T. 3072). He provided the group with significant information on school aid, as he had background in the subject from his prior positions in state government. (T. 3072-73). He provided briefing materials and policy ideas, including the suggestion that a group be formed to study school finance and develop a school finance formula. (T. 3073). That group became the working group convened by Governor Spitzer to develop a school funding reform proposal. (T. 3073-74).

263. Frank Mauro participated in Governor Spitzer's working group, representing the Campaign for Fiscal Equity and another advocacy group, the Alliance for Quality Education. (C.X. 25, ¶ 12). Frank Mauro is an expert in the area of New York State school finance. (C.X. 25, ¶ ¶ 1-8). From November 1983 to January 1987, he was the Secretary (staff director) of the New York State Assembly Ways and Means Committee.(C.X. 25, ¶ 2).In that capacity, he was in charge of analyzing the Governor's annual budget proposals including his school aid proposals for the Assembly Majority. (C.X. 25, ¶ 2).During this time period, Mr. Mauro also oversaw the analysis of numerous school finance issues and was a lead negotiator for the Assembly on the state aid to education budget. (C.X. 25, ¶ 2). From February 1993 until December 2013, Mr. Mauro was the Executive Director of the Fiscal Policy Institute, a nonprofit research and education organization that studies matters related to state and local finances. (C.X. 25, ¶ 3). In the late 1990s, Mr. Mauro worked with colleagues at the Fiscal Policy Institute to develop a "foundation formula" school funding plan that could be used to implement the CFE's "Statewide Fair Funding Principles for a Sound Basic Education" in an economical, efficient and effective manner. (C.X. 25, ¶ 4).Following the Court of Appeals decision in CFE, Mr. Mauro assisted those hired by the Campaign for Fiscal Equity, the plaintiff in that case, to conduct a cost study and develop a funding formula proposal. (C.X. 25, ¶¶ 5-7). He also worked with Campaign for Fiscal Equity's Sound Basic Education Task Force to refine and finalize Campaign for Fiscal Equity's funding formula proposal. (C.X. 25, ¶ 7).

264. The working group based their work in large part on that done by the Regents in developing their Foundation Aid Formula, as featured in the Regents State Aid Proposals

from 2004-05 on. (T. 3075). The group used materials developed by the Regents, including their state aid proposals, the State Education Department's cost study, and the Regents memorandum of law submitted to the referees in CFE. (C.X. 25, ¶ 14). The working group met frequently during November and December 2006 to craft a funding formula proposal. (C.X. 25, ¶ 16).

265. The results of the working group's efforts became the legislative proposal for foundation aid that Governor Spitzer put forth in January 2007. (T. 3075).

266. Governor Spitzer's foundation aid proposal was designed to deliver the minimum amount of funding necessary to provide a sound basic education. (T. 3077). The formula was not designed to exceed the minimum necessary for a sound basic education. (T. 3096). The concern of the Spitzer administration at that time was that the State would not have enough money to fund the Foundation Aid Formula. There was never an excess of money available. (T. 3096).

267. Governor Spitzer's proposal, like the Regents State Aid Proposals, called for over 80% of the increase in state education aid (foundation aid) to go to high need districts. (T. 3082). Governor Spitzer's proposals contained the same four components as the Regents State Aid Proposals, as described in paragraph 3, above: a foundation amount, a pupil needs index, a regional cost index and an expected local contribution. (C.X. 25, ¶¶ 13,18-19; C.X. 25, Ex. B).

268. Governor Spitzer's proposal used the same "successful schools" metric for calculating the foundation aid amount, and the same "efficiency filter" used in the Regents proposals. (C.X. 21, ¶ 3-4; C.X. 25, p. 12; T. 3065, 3127).

269. Governor Spitzer's proposal called for a $4.8 billion dollar increase in what would be foundation aid, to be phased in over 4 years. (T. 3059).

270. In 2007, the legislature enacted the foundation aid formula (the "2007 Foundation Aid Formula"), and Governor Spitzer signed the law. The only significant difference between the enacted 2007 Foundation Aid Formula and Governor Spitzer's proposal was that the enacted legislation called for an increase of $5.5 billion, rather than $4.8 billion, in what would be foundation aid, also to be phased in over four years. (C.X. 25, ¶¶ 20-21; T. 3059-60). The $700 million additional dollars were to go to average and low-need districts. (T. 3060-61, 3094).

271. The enacted formula had the same basic components as the Regents State Aid proposals. (C.X. 21, Second Expert Report of Bruce Baker, ¶¶ 4-7). The enacted formula used the same efficiency filter as the Regents State Aid proposals, including the consideration of "successful" schools in the lower half of spending. (C.X. 21, ¶ 8.)

272. Like the Regents State Aid proposals' calculation of foundation amount or Foundation Cost, the enacted 2007 Foundation Aid Formula, calculates a "foundation amount" for all school districts that represents the basic per pupil cost of efficiently providing a sound basic education for all students, using the average spending of the lower-spending "successful" school districts. (C.X. 21, ¶ 5a). This amount is also called the "base." (C.X. 21, ¶ 5a).

273. The foundation amount represents the minimum spending necessary for providing a sound basic education, or the "SBE spending target." (C.X. 21, ¶ 5).

274. In calculating the SBE spending target for a district, the State considers two factors: 1) the district's "pupil need index" (PNI), which combines measures of student poverty,

students with limited English proficiency (LEP), and district population scarcity; and 2) a "regional cost index" (RCI), which measures regional variations in purchasing power across the state, based on wages of non-school professionals. (C.X. 21, ¶ 5b).

275. The State then multiplies the base (or foundation amount) times the pupil need index, the regional cost index and the district's "total aidable foundation pupil units" ("TAFPU") to arrive at the SBE spending target for that district, as follows: BASE X PNI X RCI X TAFPU.(C.X. 21, ¶ 5c).

276. After calculating the district's SBE spending target, the State determines the share of that target that will be supported by the State and the share that will be funded through local revenue raised by the district. (C.X. 21, ¶ 6). The State calculates its share of the district's SBE spending target by subtracting the expected local contribution from the spending target. This calculation yields the state share. (C.X. 21, ¶¶ 6-7).

B. 2007 Foundation Aid Formula and District Funding

277. When enacted in 2007, the 2007 Foundation Aid Formula required an increase of $5.5 billion in foundation aid ("Foundation Aid") statewide to support all districts' budgets at their respective SBE spending targets, as calculated under the 2007 Foundation Aid Formula. (C.X. 21, ¶ 9).

278. Under Chapter 57 of 2007, the enabling statute for the 2007 Foundation Aid Formula, the state foundation aid increase was to be phased in over four years, with full funding of the state aid component of district's SBE spending targets by the 2010-11 school year. (C.X. 21, p. ¶ 9).

279. In the first two years of Formula implementation, 2007-8 and 2008-09, the State provided the requisite installments of Foundation Aid totaling $2.3 billion statewide, meeting its

obligation for the state share of districts' SBE spending targets, under the 2007 Foundation Aid Formula. (C.X. 21, ¶10).

280. In 2009-10, the State froze Foundation Aid at the 2008-9 level, or at 37.5% of the amount required for full phase-in by 2010-11. (C.X. 21, ¶ 11).

281. Starting in 2010-11, the State began cutting Foundation Aid through a mechanism called the Gap Elimination Adjustment (GEA). Essentially, the GEA aimed to balance the state budget by recouping State aid from districts' budgets. (C.X. 21, ¶ 12).

282. In 2010-11, the GEA cut totaled $2.14 billion and in 2011-12, the GEA cut was $2.6 billion. In those years, some of the cuts were offset by federal stimulus money. (C.X. 21 ¶ 13).

283. In 2012-13, the GEA cut was $2.2 billion dollars. (C.X. 21, ¶ 13).

284. On average, GEA cuts fall more heavily on districts more dependent on state aid, or higher need districts. (C.X. 21, ¶ 13).

285. In addition, in 2011-12, the State imposed a Personal Income Growth Index Cap (PIGI) on State aid. The PIGI cap restricts the increase in State aid to the percentage commensurate with the state's Personal Income Growth Index, thus making it difficult if not entirely infeasible for the state to achieve its own adequate funding goals. (C.X. 21, ¶ 14).

286. In 2011-12, the State imposed a cap on local property tax revenue for districts' budgets. The cap restricts the ability of school districts from increasing the levy on property taxes by more than 2%. To override the 2% cap, school districts must obtain a supermajority, or 60% of qualified voters. Local property tax limits, in effect, prohibit many districts from making up for the aid the state has not provided. As such, districts are unable to

even achieve the level of spending the state has defined for them as sufficient to achieve desired outcomes. (C.X. 21, ¶ 15).

287. Because the highest spending districts in New York are also those with the highest property values, they exert the least tax effort. (D.X. X-1, 2014 State Aid to Schools – A primer, p.4). Communities that desire a high level of educational services, but do not have a large tax base, must bear a disproportionately heavy tax burden in order to provide those services. (D.X. X-1, p.4). In New York, the lowest wealth districts raise about one-tenth of the local revenue per pupil that the highest wealth districts do. (D.X. X-1, p. 19). The highest wealth districts tax themselves far less heavily to raise these much greater revenues. (D.X. X-1, p. 19).

288. In 2012-13, the State provided a $112 million increase in Foundation Aid, and restored $400 million of districts' GEA amount. (C.X. 21, ¶ 17).

289. In 2013-14, the State provided a $172 million increase in Foundation Aid, and restored $517 million of districts' GEA amount. (C.X. 21, ¶ 17).

290. Even with the increases in Foundation Aid in 2012-13 and 2013-14, actual Foundation Aid under the Formula was approximately $7 billion below the amount required to support districts' SBE spending targets statewide. (C.X. 21, ¶ 18; P.X. 130, p. 8).

291. In the 2014-15 school year, the State increased Foundation Aid by $250 million and restored the districts' GEA amounts by $602 million. (C.X. 21, ¶ 19).

292. Even with the increase for the 2014-15 school year and with the GEA restoration, the State's shortfall in Foundation Aid is $4.7 billion below what is required under the 2007 Foundation Aid Formula to support districts' SBE spending targets. The State also has yet to restore all of the 2007 Foundation Aid Formula funds recaptured through GEA,

and there remains $1 billion in GEA still owed to districts across the state. (C.X. 21, ¶ 19).

C. Maisto District State Aid Shortfalls

293. State Expert Roger Gorham noted that as local districts attempt to meet higher academic standards, they are required to do so with significantly fewer resources. (T. 3591). Not only has state aid to schools declined precipitously, the ability of local districts to make up the difference through increased local funding has been severely constrained by tax cap legislation. (T. 3591). All of this comes at a time when expenses such as mandated contributions to the state retirement systems and district contributions to healthcare plans have continued to increase. (T. 3591-92).

294. Moreover, the Foundation Aid calculated is never based on current data. The Foundation Aid as calculated under the 2007 Foundation Aid Formula was based on the spending of successful school districts to achieve 80% passage of seven examinations (Fourth Grade English Language Arts, Fourth Grade Mathematics, high school Mathematics A, Global History, U.S. History, English and Earth Science) in the three previous years (P.X. 110). Since then, every time the successful school analysis is updated, it relies on data that is over a year out of date. (T. 3321-22).

295. As standards increase, the cost of meeting those standards increase. (T. 3322).

296. In 2012-13, the outcome targets abruptly increased, with the advent of the new Common Core assessments. (T. 3322). Many of the schools previously achieving 60% proficiency in 2012 on the previous assessments achieved 20% proficiency on the 2013 assessments. (T. 3322).

297. An analysis has not yet been done on the actual costs of achieving proficiency on the new Common Core assessments. (T. 3323). However, increasing outcome targets will

increase the cost of meeting those outcome targets. (T. 3322). Increasing student need will also increase the cost of education. (T. 3322).

298. Based on the 2007 Foundation Aid Formula (and thus not accounting for the additional costs of the Common Core assessments), the total shortfall in Foundation Aid funding for the Maisto Districts alone, as of 2014-15, was *over $1.1 billion*. (P.X. 113-20).

299. All of the state's district experts acknowledged that the cuts in state funding negatively affected resources in the Maisto districts and that additional funding, which the state failed to provide, would improve student academic outcomes. (T. 3734, 3740 (Jamestown); T. 3528, 3530, 3534-3535 (Kingston); T. 3778:12-19, 3782:4-7, T. 3837 (Mt. Vernon); T. 3375, 3383, 3451, 3453-55, 3466:1-14 (Newburgh); T. 3896, 3928, 3936 (Niagara Falls); T. 4594:6-18, 4596-4597, 4602 (Port Jervis); T. 3597-3598, 3609-11 (Poughkeepsie); T. 3623, 3645, 3654 (Utica)). State expert Eric Hanushek conceded that if the Maisto districts had additional funds and they spent those funds wisely, it would ultimately lead to improved performance. (T. 4358).

1. *Jamestown*

2010-11

300. In 2010-11, Jamestown's gap in Foundation Aid totaled $16,285,588. (P.X. 113).

301. In 2010-11, Jamestown's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction) was $1,288,772. (P.X. 113).

2011-12

302. In 2011-12, Jamestown's gap in Foundation Aid totaled $20,219,946. (P.X. 113).

303. In 2011-12, Jamestown's net GEA reduction was $4,462,396. (P.X. 113).

2012-13

304. In 2012-13, Jamestown's gap in Foundation Aid totaled $19,446,040. (P.X. 113).

305. In 2012-13, Jamestown's net GEA reduction was $3,346,797. (P.X. 113).

2013-14

306. In 2013-14, Jamestown's gap in Foundation Aid totaled $21,565,724. (P.X. 113).

307. In 2013-14, Jamestown's net GEA reduction was $1,907,675. (P.X. 113).

308. Jamestown's 2013-14 state aid shortfall represents a 37% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

309. In 2014-15, Jamestown's gap in Foundation Aid totaled $20,296,979. (P.X. 113).

310. In 2014-15, Jamestown's net GEA reduction was $572,303. (P.X. 113).

311. Jamestown's 2014-15 state aid shortfall represents a 32% State Aid Gap for that year . (C.X. 21, ¶ 23).

Total Jamestown Shortfall

312. The total net GEA for Jamestown, from 2010-11 to 2014-15, was $11,577, 943. (P.X. 113). The Foundation Aid gap for that same time period is $97,814,277. (P.X. 113). Thus, the total shortfall in state aid for Jamestown from 2010-11 through 2014-15 was $109,392,220. (P.X. 113).

313. State expert, Gregory Scott Hunter, noted that had Jamestown received the $109 million in aid that it did not get, it probably could have done some very good things with the money that would have improved the student outputs if it were properly applied. (T. 3734).

314. Hunter further noted that, in the three years after the freezing of Foundation Aid, Jamestown lost 24.1% of its total professional staff. (T. 3737). He stated that the loss of that staff "very well could have contributed to a lack of ability to affect student improvement." (T. 3740).

2. *Kingston*

2010-11

315. In 2010-11, Kingston's gap in Foundation Aid totaled $10,577,592 . (P.X. 114).

316. In 2010-11, Kingston's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $2,511,133. (P.X. 114).

2011-12

317. In 2011-12, Kingston's gap in Foundation Aid totaled $13,440,982. (P.X. 114).

318. In 2011-12, Kingston's net GEA reduction was $8,808,663. (P.X. 114).

2012-13

319. In 2012-13, Kingston's gap in Foundation Aid totaled $10,399,536 . (P.X. 114).

320. In 2012-13, Kingston's net GEA reduction was $7,863,455. (P.X. 114).

2013-14

321. In 2013-14, Kingston's gap in Foundation Aid totaled $8,342,155 . (P.X. 114).

322. In 2013-14, Kingston's net GEA reduction was $5,951,222. (P.X. 114).

323. Kingston's 2013-14 state aid shortfall represents a 30% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

324. In 2014-15, Kingston's gap in Foundation Aid totaled $7,761,591. (P.X. 114).

325. In 2014-15, Kingston's net GEA reduction was $4,577,356. (P.X. 114).

326. Kingston's 2014-15 state aid shortfall represents a 25% State Aid Gap for that year. (C.X. 21, ¶23).

Total Kingston Shortfall

327. The total net GEA for Kingston, from 2010-11 to 2014-15, was $29,711,829. (P.X. 114). The Foundation Aid gap for that same time period is $50,521,856. (P.X. 114). Thus, the

total shortfall in state aid for Kingston from 2010-11 through 2014-15 was $80,233,685. (P.X. 114).

328. State expert Gregory Aidala noted that Kingston lost 11.5% of its staff in four years, and a decrease in state aid was a factor in that loss. (T. 3513). He acknowledged the district had to make net staff cuts in 2012-13, 2013-14, and 2014-15. (T. 3515-7). He further noted that teaching and learning in any school district is a function of the size of the professional and support staff as well as the allocation of resources. (T. 3519-20).Aidala stated that more money for extended learning time would have been a contributing factor toward improved outcomes in Kingston, and that limited additional funding for increased staffing would help Kingston. (T. 3528, 3530). Aidala also stated he would take into account wealth and poverty in giving out that money – which is what Foundation Aid does. (T. 3533-4).

329. Aidala further acknowledged that Kingston would benefit if there were no GEA and there were full phase-in of Foundation Aid. (T. 3534-5).

3. *Mount Vernon*

2010-11

330. In 2010-11, Mount Vernon's gap in Foundation Aid totaled -$636,100. (P.X. 115).

331. In 2010-11, Mount Vernon's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $3,674,775. (P.X. 115).

2011-12

332. In 2011-12, Mount Vernon's gap in Foundation Aid totaled $11,472,593. (P.X. 115).

333. In 2011-12, Mount Vernon's net GEA reduction was $13,196,859. (P.X. 115).

2012-13

334. In 2012-13, Mount Vernon's gap in Foundation Aid totaled $13,538,933. (P.X. 115).

335. In 2012-13, Mount Vernon's net GEA reduction was $11,956,764. (P.X. 115).

2013-14

336. In 2013-14, Mount Vernon's gap in Foundation Aid totaled $27,641,609. (P.X. 115).

337. In 2013-14, Mount Vernon's net GEA reduction was $10,243,952 (P.X. 115).

338. Mount Vernon's 2013-14 state aid shortfall represents a 42% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

339. In 2014-15, Mount Vernon's gap in Foundation Aid totaled $18,277,318. (P.X. 115).

340. In 2014-15, Mount Vernon's net GEA reduction was $7,195,465. (P.X. 115).

341. Mount Vernon's 2014-15 state aid shortfall represents a 30% State Aid Gap for that year. (C.X. 21 ¶ 23).

Total Mount Vernon Shortfall

342. The total net GEA for Mount Vernon, from 2010-11 to 2014-15, was $46,267,815. (P.X. 115). The Foundation Aid gap for that same time period is $70,294,353. (P.X. 115). Thus, the total shortfall in state aid for Mount Vernon from 2010-11 through 2014-15 was $116,562,168. (P.X. 115).

343. State expert John McGuire noted that "there are great things [Mt. Vernon] could do with whatever additional resources someone might give us." (T. 3759). He further recognized that district with greater need, like Mt. Vernon, should be given additional resources.(T. 3778).

344. McGuire recognized that the $116.5 million Mt. Vernon did not receive in five-year funding is "a huge amount" and the district "would have benefited" if it had received that amount. (T. 3837).

4. *Newburgh*

2010-11

345. In 2010-11, Newburgh's gap in Foundation Aid totaled $33,059,915. (P.X. 116, GEA Foundation Aid - Newburgh).

346. In 2010-11, Newburgh's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $4,038,700. (P.X. 116).

2011-12

347. In 2011-12, Newburgh's gap in Foundation Aid totaled $39,218,245. (P.X. 116).

348. In 2011-12, Newburgh's net GEA reduction was $14,052,668. (P.X. 116).

2012-13

349. In 2012-13, Newburgh's gap in Foundation Aid totaled $38,681,489. (P.X. 116).

350. In 2012-13, Newburgh's net GEA reduction was $11,789,185. (P.X. 116).

2013-14

351. In 2013-14, Newburgh's gap in Foundation Aid totaled $47,439,230. (P.X. 116).

352. In 2013-14, Newburgh's net GEA reduction was $8,920,768. (P.X. 116).

353. Newburgh's 2013-14 state aid shortfall represents a 40% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

354. In 2014-15, Newburgh's gap in Foundation Aid totaled $37,369,198. (P.X. 116).

355. In 2014-15, Newburgh's net GEA reduction was $4,337,448. (P.X. 116).

356. Newburgh's 2014-15 state aid shortfall represents a 30% State Aid Gap for that year. (C.X. 21, ¶ 23).

Total Newburgh Shortfall

357. The total net GEA for Newburgh, from 2010-11 to 2014-15, was $43,138,769. (P.X. 116). The Foundation Aid gap for that same time period is $195,768,077. (P.X. 116). Thus, the total shortfall in state aid for Newburgh from 2010-11 through 2014-15 was $238,906,846. (P.X. 116).

358. State Expert Gregory Aidala noted that the $239 million not provided under Foundation Aid would, more likely than not, increase the likelihood of Newburgh students improving their test scores and graduation rates. (T. 3375).

359. Aidala recognized stated properly utilized additional resources would improve student outcomes in Newburgh. (T. 3389).

360. Aidala further recognized that additional targeted resources would be beneficial in Newburgh. (T. 3392-93).He further recognized that additional funds would improve outputs in Newburgh and other districts. (T. 3383, 3399).

361. Aidala conceded that the reduction in state aid had an adverse impact on Newburgh with respect to staff cuts that needed to be made. (T. 3451). In three years, Newburgh had to cut one sixth of its staff, which were related to the reduction in state aid. (T. 3453-55). Aidala also recognized that substantial increases in funds and other resources can impact on student outcomes. (T. 3466:1-14).

5. *Niagara Falls*

2010-11

362. In 2010-11, Niagara Falls' gap in Foundation Aid totaled $17,963,626. (P.X. 117, GEA Foundation Aid – Niagara Falls).

363. In 2010-11, Niagara Falls' net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $2,395,015. (P.X. 117).

2011-12

364. In 2011-12, Niagara Falls' gap in Foundation Aid totaled $25,397,555. (P.X. 117).

365. In 2011-12, Niagara Falls' net GEA reduction was $8,137,599. (P.X. 117).

2012-13

366. In 2012-13, Niagara Falls' gap in Foundation Aid totaled $22,793,962. (P.X. 117).

367. In 2012-13, Niagara Falls' net GEA reduction was $6,103,200. (P.X. 117).

2013-14

368. In 2013-14, Niagara Falls' gap in Foundation Aid totaled $21,401,339. (P.X. 117).

369. In 2013-14, Niagara Falls' net GEA reduction was $3,478,824. (P.X. 117).

370. Niagara Falls' 2013-14 state aid shortfall represents a 27% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

371. In 2014-15, Niagara Falls' gap in Foundation Aid totaled $19,927,646. (P.X. 117).

372. In 2014-15, Niagara Falls' net GEA reduction was $1,378,088. (P.X. 117).

373. Niagara Falls' 2014-15 state aid shortfall represents a 23% State Aid Gap for that year. (C.X. 21, ¶ 23).

Total Niagara Falls Shortfall

374. The total net GEA for Niagara Falls, from 2010-11 to 2014-15, was $21,492,726. (P.X. 117). The Foundation Aid gap for that same time period is $107,484,128. (Plaintiffs' Exhibit 116). Thus, the total shortfall in state aid for Niagara Falls from 2010-11 through 2014-15 was $128,976,854. (P.X. 117).

375. State expert, Thomas Coseo, discussed the impact of such shortfalls on Niagara Falls and acknowledged that the higher the percentage of a school district's reliance on state aid,

the more dramatic the impact of state aid cuts, and Niagara Falls is a district with a high percentage of dependence on state aid. (T. 3896).

376. Coseo further acknowledged how New York State decreased its financial commitment to school districts over the period beginning in 2010-11. (T. 3896-97). The 2011-12 budget was the lowest level of state aid Coseo worked with in 30 years in education. (T. 3897).

377. Coseo recognized that the purpose of Foundation Aid was to drive more funds to the districts that needed it the most. (T. 3899). He further acknowledged that Niagara Falls is one of the districts most in need of state resources. (T. 3899).

378. According to State expert, Coseo, "[i]f the expenditures are made in the right ways, absolutely, that kind of money" – i.e., the amounts of Foundation Aid Niagara Falls did not receive – "can make a significant difference." (T. 3902).

379. If the state were to increase funding to Niagara Falls by $20.3 million per year, Coseo stated that it would certainly afford the district much more money to apply strategically to improve student outcomes. (T. 3928).

380. Coseo further stated that targeted, strategic placement of additional resources in well-developed reading programs at the elementary level absolutely would help students progress through the system better. (T. 3936).

6. *Port Jervis*

2010-11

381. In 2010-11, Port Jervis' gap in Foundation Aid totaled $9,646,449. (P.X. 118, GEA Foundation aid – Port Jervis).

382. In 2010-11, Port Jervis' net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $1,056,221. (P.X. 118).

2011-12

383. In 2011-12, Port Jervis' gap in Foundation Aid totaled $10,789,540. (P.X. 118).

384. In 2011-12, Port Jervis' net GEA reduction was $3,675,584 . (P.X. 118).

2012-13

385. In 2012-13, Port Jervis' gap in Foundation Aid totaled $10,859,282. (P.X. 118).

386. In 2012-13, Port Jervis' net GEA reduction was $2,869,207. (P.X. 118).

2013-14

387. In 2013-14, Port Jervis' gap in Foundation Aid totaled $13,407,888. (P.X. 118).

388. In 2013-14, Port Jervis' net GEA reduction was $2,175,209. (P.X. 118).

389. Port Jervis' 2013-14 state aid shortfall represents a 41% State Aid Gap for that year. (C.X. 21, p. 9, ¶ 23).

2014-15

390. In 2014-15, Port Jervis' gap in Foundation Aid totaled $12,248,965. (P.X. 118).

391. In 2014-15, Port Jervis' net GEA reduction was $652,563. (P.X. 118).

392. Port Jervis' 2014-15 state aid shortfall represents a 33% State Aid Gap for that year. (C.X. 21 ¶ 23).

Total Port Jervis Shortfall

393. The total net GEA for Port Jervis, from 2010-11 to 2014-15, was $10,428,784. (P.X. 118). The Foundation Aid gap for that same time period is $56,952,124. (P.X. 116). Thus, the total shortfall in state aid for Port Jervis from 2010-11 through 2014-15 was $67,380,908. (P.X. 118).

394. State expert Jeffrey McLellan acknowledged that Port Jervis is a low wealth school district with a low combined wealth ratio. (T. 4566-7). Port Jervis, continues facing difficult financial challenges. (T. 4588).

395. McLellan noted that about a thousand dollars less (or 5%) total per student is spent in Port Jervis than the state average. (T. 4590). If Port Jervis had received the $67 million not received under Foundation Aid and had used the money wisely, it had the capability of generating higher test scores and better graduation rates. (T. 4594).

396. McLellan also acknowledged that Port Jervis was using the resources it had efficiently and well. (T. 4596-7). However, Port Jervis lost over ten percent of its staff in one year. (T. 4602).

397. McLellan also acknowledged that additional funding could generate better student outcomes in Port Jervis. (T. 4594).

7. *Poughkeepsie*

2010-11

398. In 2010-11, Poughkeepsie's gap in Foundation Aid totaled $11,029,868. (P.X. 119).

399. In 2010-11, Poughkeepsie's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $1,541,218. (P.X. 119).

2011-12

400. In 2011-12, Poughkeepsie's gap in Foundation Aid totaled $13,636,093. (P.X. 119).

401. In 2011-12, Poughkeepsie's net GEA reduction was $5,249,553. (P.X. 119).

2012-13

402. In 2012-13, Poughkeepsie's gap in Foundation Aid totaled $12,948,595. (P.X. 119).

403. In 2012-13, Poughkeepsie's net GEA reduction was $4,167,123. (P.X. 119).

2013-14

404. In 2013-14, Poughkeepsie's gap in Foundation Aid totaled $16,741,096. (P.X. 119).

405. In 2013-14, Poughkeepsie's net GEA reduction was $2,754,851. (P.X. 119).

406. Poughkeepsie's 2013-14 state aid shortfall represents a 30% State Aid Gap for that year. (C.X. 21, ¶23).

2014-15

407. In 2014-15, Poughkeepsie's gap in Foundation Aid totaled $10,497,383. (P.X. 119).

408. In 2014-15, Poughkeepsie's net GEA reduction was $1,344,958. (P.X. 119).

409. Poughkeepsie's 2014-15 state aid shortfall represents a 20% State Aid Gap for that year. (C.X. 21, ¶ 23).

Total Poughkeepsie Shortfall

410. The total net GEA for Poughkeepsie, from 2010-11 to 2014-15, was $15,057,703. (P.X. 119). The Foundation Aid gap for that same time period is $64,853,035. (P.X. 116). Thus, the total shortfall in state aid for Poughkeepsie from 2010-11 through 2014-15 was $79,910,738. (P.X. 119).

411. State expert Roger Gorham testified that the GEA had detrimental effects on Poughkeepsie. (T. 3609). The Poughkeepsie school district would be better off if it received more money than it is receiving now. (T. 3610). More money can make a difference in teaching skills, and adequate funding is obviously part of the equation for bringing about change. (T. 3611).

412. Gorham noted that if Poughkeepsie had more money, it would be able to save programs and would be able to keep smaller class sizes. (T. 3608). He noted that Poughkeepsie significantly reduced the level of services and the number of employees due to budgetary constraints. (T. 3593).

413. Gorham acknowledge that more resources are certainly good if they're applied well, and he would advocate for more resources for Poughkeepsie. (T. 3597-8).If applied well, Gorham testified that more resources would help to generate better outcomes for students

in Poughkeepsie. (T. 3598). Gorham noted only a fool would suggest that additional resources aren't helpful and beneficial. (T. 3603).

8. *Utica*

2010-11

414. In 2010-11, Utica's gap in Foundation Aid totaled $45,320,220. (P.X. 120, GEA Foundation Aid - Utica).

415. In 2010-11, Utica's net reduction in state aid pursuant to the Gap Elimination Adjustment ("net GEA reduction") was $2,131,818. (P.X. 120).

2011-12

416. In 2011-12, Utica's gap in Foundation Aid totaled $52,325,429. (P.X. 120).

417. In 2011-12, Utica's net GEA reduction was $6,652,229. (P.X. 120).

2012-13

418. In 2012-13, Utica's gap in Foundation Aid totaled $58,257,136. (P.X. 120).

419. In 2012-13, Utica's net GEA reduction was $4,989,172. (P.X. 120).

2013-14

420. In 2013-14, Utica's gap in Foundation Aid totaled $61,754,248. (P.X. 120).

421. In 2013-14, Utica's net GEA reduction was $2,843,829. (P.X. 120).

422. Utica's 2013-14 state aid shortfall represents a 48% State Aid Gap for that year. (C.X. 21, ¶ 23).

2014-15

423. In 2014-15, Utica's gap in Foundation Aid totaled $55,084,031. (P.X. 120).

424. In 2014-15, Utica's net GEA reduction was $853,149. (P.X. 120).

425. Utica's 2014-15 state aid shortfall represents a 41% State Aid Gap for that year. (C.X. 21, ¶23).

Total Utica Shortfall

426. The total net GEA for Utica, from 2010-11 to 2014-15, was $17,470,197. (P.X. 120). The Foundation Aid gap for that same time period is $272,741,064. (P.X. 120). Thus, the total shortfall in state aid for Utica from 2010-11 through 2014-15 was $290,211,261. (P.X. 120).

427. State expert Roger Gorham acknowledged that the lack of resources is becoming an issue in Utica, which is contributing to the unacceptable outputs. (T. 3623). He noted that sometimes additional money is necessary to improve student performance. (T. 3645).

428. Gorham further acknowledged that any of the children in Utica can learn if they have the right environment. (T. 3654). If money is spent in the proper way, Gorham stated that additional funds with respect to Utica would help improve test scores and graduation rates. (T. 3654).

D. Maisto District Spending Shortfalls

429. The Sound Basic Education ("SBE") spending target for each district is the combination of state aid as determined by the 2007 Foundation Aid Formula and the local contribution: i.e. state share + local share. (C.X. 20, p. 10; C.X. 21, ¶ 6 and ¶ 25). The SBE spending target represents the minimum amount necessary to spend, as determined by the state, to provide an adequate education. (C.X. 21, ¶ 5). The spending gap for each district for a particular year is the difference between the SBE spending target for that year and the district's actual instructional expenditures for general education for that year. (C.X. 21, ¶ 25).

1. *Jamestown*

2010-11

430. Jamestown's SBE spending target for 2010-11 was $63,971,838. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $42,023,068. (P.X. 3, 2011-12 Fiscal Supplement). Thus, Jamestown's SBE spending gap for 2010-11 was $21,948,770, or 34% of its SBE spending target for that year.

431. Jamestown's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $17,574,360. (P.X. 113). Therefore, the state aid gap represents 42% of Jamestown's actual spending for 2010-11.

2011-12

432. Jamestown's SBE spending target for 2011-12 was $67, 639,825. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $43,957,840. (P.X. 3, 2012-13 Fiscal Supplement). Thus, Jamestown's SBE spending gap for 2010-11 was $23,681,985, or 35% of its SBE spending target for that year.

433. Jamestown's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $ 24,682,342. (P.X. 113). Therefore, the state aid gap represents 56% of Jamestown's actual spending for 2011-1.

2012-13

434. Jamestown's SBE spending target for 2012-13 was $66,779,947. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $42,044,950. (P.X. 3, 2013-14 Fiscal Supplement). Thus, Jamestown's SBE

spending gap for 2012-13 was $23, 734,997, or 37% of its SBE spending target for that year.

435. Jamestown's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $22,792,837. (P.X. 113). Therefore, the state aid gap represents 54% of Jamestown's actual spending for 2012-13.

2013-14

436. Jamestown's SBE spending target for 2013-14 was $66,870,453. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $44,098,764. (C.X. 21, p. 41, Table 3). Thus, Jamestown's SBE spending gap for 2013-14 was $22,771,689, or 34% of its SBE spending target for that year.

437. Jamestown's state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $23,473,399. (P.X. 113). Therefore, the state aid gap represents 53% of Jamestown's actual spending for 2013-14.

2. *Kingston*

2010-11

438. Kingston's SBE spending target for 2010-11 was $99,776,287. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $75,022,350. (P.X. 45, 2011-12Fiscal Supplement). Thus, Kingston's SBE spending gap for 2010-11 was $24,753,937, or 25% of its SBE spending target for that year.

439. Kingston's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $13,088,725. (P.X. 114). Therefore, the state aid gap represents 17% of Kingston's actual spending for 2010-11.

2011-12

440. Kingston's SBE spending target for 2011-12 was $105,001,390. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $82,532,725. (P.X. 45, 2012-13 Fiscal Supplement). Thus, Kingston's SBE spending gap for 2011-12 was $22,468,665, or 21% of its SBE spending target for that year.

441. Kingston's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $22,249,645. (P.X. 114). Therefore, the state aid gap represents 27% of Kingston's actual spending for 2011-12.

2012-13

442. Kingston's SBE spending target for 2012-13 was $103,690,906. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $79,637,775. (P.X. 45, 2013-14 Fiscal Supplement). Thus, Kingston's SBE spending gap for 2012-13 was $24,053,131, or 23% of its SBE spending target for that year.

443. Kingston's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $18,262,991. (P.X. 114). Therefore, the state aid gap represents 23% of Kingston's actual spending for 2012-13.

2013-14

444. Kingston's SBE spending target for 2013-14 was $100,509,276. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $79,919,335. (C.X. 21, p. 41, Table 3). Thus, Kingston's SBE spending gap for 2013-14 was $20,589,941, or 20% of its SBE spending target for that year.

445. Kingston's state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $14,293,377. (P.X. 114). Therefore, the state aid gap represents 18% of Kingston's actual spending for 2013-14.

3. *Mount Vernon*

2010-11

446. Mount Vernon's SBE spending target for 2010-11 was $137,365,472. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $99,586,646. (P.X. 79, 2011-12 Fiscal Supplement). Thus, Mount Vernon's SBE spending gap for 2010-11 was $37,778,826, or 28% of its SBE spending target for that year.

447. Mount Vernon's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $3,038,675. (P.X. 115). Therefore, the state aid gap represents 3% of Mount Vernon's actual spending for 2010-11.

2011-12

448. Mount Vernon's SBE spending target for 2011-12 was $147,982,225. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $104,920,833. (P.X. 79, 2012-13 Fiscal Supplement). Thus, Mount Vernon's SBE spending gap for 2011-12 was $43,061,392, or 29% of its SBE spending target for that year.

449. Mount Vernon's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $24,669,452. (P.X. 115). Therefore, the state aid gap represents 24% of Mount Vernon's actual spending for 2011-12.

2012-13

450. Mount Vernon's SBE spending target for 2012-13 was $151,238,735. (C.X. 21, p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $104,126,346. (P.X. 79, 2013-14 Fiscal Supplement). Thus, Mount Vernon's SBE spending gap for 2012-13 was $47,112,389, or 31% of its SBE spending target for that year.

451. Mount Vernon's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $25,495,697. (P.X. 115). Therefore, the state aid gap represents 24% of Mount Vernon's actual spending for 2012-13.

2013-14

452. Mount Vernon's SBE spending target for 2013-14 was $153,971,124. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $111,044,489. (C.X. 21. p. 41, Table 3). Thus, Mount Vernon's SBE spending gap for 2013-14 was $42,926,635, or 28% of its SBE spending target for that year.

453. Mount Vernon's state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $37,885,561. (P.X. 115). Therefore, the state aid gap represents 34% of Mount Vernon's actual spending for 2013-14.

4. *Newburgh*

2010-11

454. Newburgh's SBE spending target for 2010-11 was $182,184,270. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $146,605,737. (P.X. 74, 2011-12 Fiscal Supplement). Thus, Newburgh's SBE

spending gap for 2010-11 was $35,578,533, or 20% of its SBE spending target for that year.

455. Newburgh's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $37,098,615. (P.X. 116). Therefore, the state aid gap represents 25% of Newburgh's actual spending for 2010-11.

2011-12

456. Newburgh's SBE spending target for 2011-12 was $188,631,343. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $146,686, 922. (P.X. 74, Newburgh Report Cards, 2012-13 Fiscal Supplement). Thus, Newburgh's SBE spending gap for 2011-12 was $41, 944, 421, or 22% of its SBE spending target for that year.

457. Newburgh's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $53,270,913. (P.X. 116). Therefore, the state aid gap represents 36% of Newburgh's actual spending for 2011-12.

2012-13

458. Newburgh's SBE spending target for 2012-13 was $186,004,839. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $141,673,374. (P.X. 74, 2013-14 Fiscal Supplement). Thus, Newburgh's SBE spending gap for 2012-13 was $44,331,465, or 24% of its SBE spending target for that year.

459. Newburgh's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $50,470,674. (P.X. 116). Therefore, the state aid gap represents 36% of Newburgh's actual spending for 2012-13.

2013-14

460. Newburgh's SBE spending target for 2013-14 was $183,012,990. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $146,490,060. (C.X. 21, p. 41, Table 3). Thus, Newburgh's SBE spending gap for 2013-14 was $35,522,930, or 19% of its SBE spending target for that year.

461. Newburgh's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $56,359,998. (P.X. 116). Therefore, the state aid gap represents 38% of Newburgh's actual spending for 2013-14. .

5. *Niagara Falls*

2010-11

462. Niagara Falls' SBE spending target for 2010-11 was $97,454,443. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $72,055,901. (P.X. 56, 2011-12 Fiscal Supplement). Thus, Niagara Falls' SBE spending gap for 2010-11 was $25,398,542, or 26% of its SBE spending target for that year.

463. Niagara Falls' state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $20,358,641. (P.X. 117). Therefore, the state aid gap represents 28% of Niagara Falls' actual spending for 2010-11.

2011-12

464. Niagara Falls' SBE spending target for 2011-12 was $105,824,918. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $68,702,248. (P.X. 56, 2012-13 Fiscal Supplement). Thus, Niagara Falls' SBE spending gap for 2011-12 was $37,122,670, or 35% of its SBE spending target for that year.

465. Niagara Falls' state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $33,535,154. (P.X. 117). Therefore, the state aid gap represents 49% of Niagara Falls' actual spending for 2011-12.

2012-13

466. Niagara Falls' SBE spending target for 2012-13 was $102,932,036. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $67,450,753. (P.X. 56, 2013-14 Fiscal Supplement). Thus, Niagara Falls' SBE spending gap for 2012-13 was $35,481,283, or 34% of its SBE spending target for that year.

467. Niagara Falls' state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $28,897,162. (P.X. 117). Therefore, the state aid gap represents 43% of Niagara Falls' actual spending for 2012-13.

2013-14

468. Niagara Falls' SBE spending target for 2013-14 was $101,467,047. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $65,755,713. (C.X. 21. p. 41, Table 3). Thus, Niagara Falls' SBE spending gap for 2013-14 was $35,711,334, or 35% of its SBE spending target for that year.

469. Niagara Falls' state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $24,880,163. (P.X. 117). Therefore, the state aid gap represents 38% of Niagara Falls' actual spending for 2013-14.

6. *Port Jervis*

2010-11

470. Port Jervis' SBE spending target for 2010-11 was $42,893,023. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11

were $29,725,266. (P.X. 50, 2011-12 Fiscal Supplement). Thus, Port Jervis' SBE spending gap for 2010-11 was $13,167,757, or 31% of its SBE spending target for that year.

471. Port Jervis' state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $10,702,670. (P.X. 118). Therefore, the state aid gap represents 36% of Port Jervis' actual spending for 2010-11.

2011-12

472. Port Jervis' SBE spending target for 2011-12 was $46,989,853. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $31,792,634. (P.X. 50, 2012-13 Fiscal Supplement). Thus, Port Jervis' SBE spending gap for 2011-12 was $15,197,219, or 32% of its SBE spending target for that year.

473. Port Jervis' state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $14,465,124. (P.X. 118). Therefore, the state aid gap represents 45% of Port Jervis' actual spending for 2011-12.

2012-13

474. Port Jervis' SBE spending target for 2012-13 was $47,461,277. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $30,183,030. (P.X. 50, 2013-14 Fiscal Supplement). Thus, Port Jervis' SBE spending gap for 2012-13 was $17,278,247, or 36% of its SBE spending target for that year.

475. Port Jervis' state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $13,728,489. (P.X. 118). Therefore, the state aid gap represents 45% of Port Jervis' actual spending for 2012-13.

2013-14

476. Port Jervis' SBE spending target for 2013-14 was $47,711,902. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $29,864,944. (C.X. 21, p. 41, Table 3). Thus, Port Jervis' SBE spending gap for 2012-13 was $17,846,958, or 37% of its SBE spending target for that year.

477. Port Jervis' state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $15,583,097. (P.X. 118). Therefore, the state aid gap represents 52% of Port Jervis' actual spending for 2013-14. .

7. *Poughkeepsie*

2010-11

478. Poughkeepsie's SBE spending target for 2010-11 was $84,161,956. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $51,742,546. (P.X. 1, 2011-12 Fiscal Supplement). Thus, Poughkeepsie's SBE spending gap for 2010-11 was $32,419,410, or 39% of its SBE spending target for that year.

479. Poughkeepsie's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $12,571,086. (P.X. 119). Therefore, the state aid gap represents 24% of Poughkeepsie's actual spending for 2010-11.

2011-12

480. Poughkeepsie's SBE spending target for 2011-12 was $85,579,750. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $51,134,816. (P.X. 1, 2012-13 Fiscal Supplement). Thus, Poughkeepsie's SBE spending gap for 2011-12 was $34,444,934, or 40% of its SBE spending target for that year.

481. Poughkeepsie's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $18,885,646. (P.X. 119). Therefore, the state aid gap represents 37% of Poughkeepsie's actual spending for 2011-12.

2012-13

482. Poughkeepsie's SBE spending target for 2012-13 was $83,190,533. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $50,427,188. (P.X. 1, 2013-14 Fiscal Supplement). Thus, Poughkeepsie's SBE spending gap for 2012-13 was $32,763,345, or 39% of its SBE spending target for that year.

483. Poughkeepsie's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $17,115,718. (P.X. 119). Therefore, the state aid gap represents 34% of Poughkeepsie's actual spending for 2012-13.

2013-14

484. Poughkeepsie's SBE spending target for 2013-14 was $82,080,909. (C.X. 21 p. 41, Table 3).[9] Poughkeepsie's state aid gap for 2013-14 was $19,495,947. (P.X. 119). Therefore, the state aid gap represents 24% of Poughkeepsie's SBE spending target for 2013-14.

8. *Utica*

2010-11

485. Utica's SBE spending target for 2010-11 was $122,104,790. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2010-11 were $85,643,602. (P.X. 2, 2011-12 Fiscal Supplement). Thus, Utica's SBE spending gap for 2010-11 was $36,461,188, or 30% of its SBE spending target for that year.

[9] The district's actual total instructional expenditures for general education for 2013-14 were not available at the time of trial.

486. Utica's state aid gap for 2010-11 (net GEA reduction + foundation aid gap) was $47,452,038. (P.X. 120). Therefore, the state aid gap represents 55% of Utica's actual spending for 2010-11.

2011-12

487. Utica's SBE spending target for 2011-12 was $137,260,094. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2011-12 were $91,711,232. (P.X. 2, 2012-13 Fiscal Supplement). Thus, Utica's SBE spending gap for 2011-12 was $45,548,862, or 33% of its SBE spending target for that year.

488. Utica's state aid gap for 2011-12 (net GEA reduction + foundation aid gap) was $58,977,658. (P.X. 120). Therefore, the state aid gap represents 64% of Utica's actual spending for 2011-12.

2012-13

489. Utica's SBE spending target for 2012-13 was $143,850,907. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2012-13 were $80,956,900. (P.X. 2, 2013-14 Fiscal Supplement). Thus, Utica's SBE spending gap for 2012-13 was $62,894,007, or 44% of its SBE spending target for that year.

490. Utica's state aid gap for 2012-13 (net GEA reduction + foundation aid gap) was $63,246,308. (P.X. 120). Therefore, the state aid gap represents 78% of Utica's actual spending for 2012-13.

2013-14

491. Utica's SBE spending target for 2013-14 was $142,531,053. (C.X. 21 p. 41, Table 3). The district's actual total instructional expenditures for general education for 2013-14 were $88,508,990. (C.X. 21. p. 41, Table 3). Thus, Utica's SBE spending gap for 2013-14 was $54,022,063, or 38% of its SBE spending target for that year.

492. Utica's state aid gap for 2013-14 (net GEA reduction + foundation aid gap) was $64,598,077. (P.X. 120). Therefore, the state aid gap represents 73% of Utica's actual spending for 2013-14.

E. Federal Funds Allocated to Maisto Districts

493. Federal funds represent from approximately 2% to 9% of the Maisto districts' annual revenue. (T. 4842).

494. For the 2012-13 school year, federal funds represented the following percentages of the Maisto district revenue:

District	**Percent of Revenue from Federal Sources**
Jamestown	6.7%
Kingston	3.2%
Mount Vernon	3.3%
Newburgh	3.8%
Niagara Falls	5.7%
Port Jervis	2.4%
Poughkeepsie	8.4%
Utica	9.0%

(**P.X. 8, 2012-13 fiscal profile; D.X. H-2; T. 4282-84, 4839-42**).).

For the 2013-14 school year, federal funds represented the following percentages of the plaintiff districts' revenue:

District	**Percent of Revenue from Federal Sources**
Jamestown	6.7%
Kingston	2.9%

District	Percent of Revenue from Federal Sources
Mount Vernon	3.7%
Newburgh	3.7%
Niagara Falls	5%
Port Jervis	2.5%
Poughkeepsie	9.7%
Utica	8.2%

(P.X. 9).

495. Federal funds allocated to improve schools pursuant to the accountability status of the schools, including focus and priority designations, are subsumed within this 2%-9%. (T. 4840-42).

496. There is a requirement for all federal education aid except Race to the Top grants, that the funds received supplement, and cannot not supplant, aid received from other state and federal sources. (T. 4301-02).

497. Federal money is not intended to make up for the deficit in New York state aid; it is only for specifics purposes. (T. 4288).

IV. INPUTS

498. The State's failure to fund over $1 billion promised to the Maisto Districts under the Foundation Aid Formula caused the Maisto Districts to cut inputs significantly and well below the minimum required to provide students with an opportunity for a sound basic education.

A. Jamestown

499. Over the past five years, Jamestown has had a net reduction in the total number of staff. (T. 687 (estimating that Jamestown has eliminated approximately 80 positions over the past five years)). The State's expert, Gregory Hunter, testified that Jamestown reduced its staff by about 24% from the 2008-09 school year to the 2011-12 school year. (T. 3735-37; C.X. 64, p. 22). In 2008-09, Jamestown employed 821 professional staff members and in 2011-12, Jamestown employed 623 professional staff members. (T. 3735-36; C.X. 64, p. 22). 2008-09 was the last academic year before the State of New York froze Foundation Aid. (T. 3735-36).

500. Jamestown has also eliminated twenty to thirty teaching positions, including elementary teachers and English language arts, mathematics, and social studies teachers, as well as numerous professionals who provide additional support to students in the classroom, such as paraprofessionals and reading teachers. (T. 691-92).

501. Of the teachers in Jamestown, only 6% had a "master's degree plus 30 hours or doctorate" as of the 2012-13 school year. (P.X. 3). By contrast, 39% of public school teachers in the State of New York had such qualifications as of 2012-13. (P.X. 7).

502. Although approximately 70% of ninth graders entering high school read below grade level, there are no reading teachers assigned to Jamestown High School. (T. 695-96). The district does not have the resources to hire them. (T. 695). If JCSD had reading teachers at the high school level, enabling those students to receive additional targeted support to improve their reading skills, they would be able to strengthen their literacy, "which improves their ability to succeed in all academic subjects." (T. 697).

503. For budgetary reasons, Jamestown eliminated positions such as teachers on special assignment who worked as instructional coaches to improve the impact of other teachers in the classroom. (T. 687-88).

504. The district has also eliminated administrative positions such as an assistant superintendent for instruction and a director of staff and curriculum development. (T. 687-88). The Central Office Curriculum Department was downsized for fiscal reasons, with several administrative positions being combined and curriculum coordinators for other areas eliminated. (C.X. 6, Statement, p. 5). The high school, which should have an administrative staff of five, has an administrative staff of three. (T. 886). Having additional administrators would positively impact academic performance because administrators currently do not have enough time to observe teachers and help them improve instruction. (T. 886-87).

505. Jamestown's Director of Curriculum Instruction and Assessment, Jessie Joy, explained that the district's teachers need "job embedded professional development," consisting of "continued support, feedback, expertise from high-performing teachers, master teachers to be able to advise them and coach them on a regular basis" because "continued support and reinforcement from skilled educators is what it takes to improve professional performance." (T. 688-89). Research shows that this type of professional development conducted by instructional coaches "makes a difference in teacher performance." (T.689; 875-76). Many districts in the area employ these personnel, and Jamestown would still do so if not for their budgetary restraints. (T. 690).

506. Jamestown also eliminated several coordinator positions including curriculum coordinators, coordinator of health, physical education and family consumer services, coordinator of guidance, and coordinator of social studies. (T. 691).

507. Jamestown has eliminated two director positions: the director of information technology and computer services as well as the director of middle level education. (T. 691).

508. Rogers Elementary School, one of the elementary schools in Jamestown, was closed as a cost-cutting measure. (T. 927-28). "[W]hen a school closes it's a big deal. It's disruptive to not only the people who work in that school, it's disruptive to the families who have sent kids to that school. . . . It's very traumatic for the folks who live there." (T. 864).

509. Jamestown has problems with building safety. (T. 983 ("[B]ased on our safety audit, I cannot say that we have state of the art building safety based on the report we got from our safety consultant.")).

510. The district has had to eliminate several staff positions that focus on curriculum. (T. 687-88 (district eliminated assistant superintendent for instruction and a director of staff and curriculum development); see also C.X. 6, Statement, p. 5 ("The Central Office Curriculum Department has been significantly downsized due to fiscal constraints. The assistant superintendent for instruction and the directors for middle level education, and curriculum and assessment were reduced from 3 positions to 1 director position. Curriculum coordinators for other curricular areas were eliminated and staff were reassigned.")).

511. Jamestown has had to cut art and music due to lack of resources. (T. 692, 883). Restoring these programs would help raise student achievement. (T. 883-84 ("[W]hen

you have a successful art and music program in your school students perform better on writing tests and mathematics. . . . "[I]t would be my intention, if I had the resources, to restore [these classes] because I believe it would have a direct and positive impact on students being able to perform well . . .")).

512. Jamestown has a "significant number of students at-risk of academic failure due to family and community poverty, limited English proficiency, emotional or behavioral problems and other issues. These students require additional instructional time and other supports to improve their academic performance." (C.X. 6, Statement, p. 6). "Due to recent budget cuts, [Jamestown] lacks the qualified teachers and support staff to provide at-risk students with an expanded platform of services." (C.X. 6, Statement, p. 7).

513. Jamestown needs a larger number of support personnel to address the social and emotional needs of the students, including social workers. (T. 878). The Jamestown City School District currently does not employ any social workers. (T. 701, 722, 878). The students in JCSD have a "desperate need" for social workers because "their families are in crisis" and the schools do not have the resources to help them. (T. 701). The students in Jamestown "are raised in very high-stress households," often with "violence and drugs in the home, absent parents, teenagers taking care of younger siblings when the parents are not home, parents being arrested, and children being essentially abandoned." (T. 719). Social workers, unlike school counselors, are trained in family dynamics and family therapy. (T. 878). Social workers would be able to offer counseling and help families access other resources, such as mental health assistance. (T. 722). They would help improve academic performance by assisting students in coping with outside issues so that they could focus on school. (T. 880).

514. Psychologists are shared throughout the district, with some schools receiving less than .5 days of service per week, and this does not adequately meet the needs of the students. (C.X. 6, Statement, p. 5).

515. There is a "general lack of services" for ELL students and their families in Jamestown. (C.X. 6, Statement, p. 6). First, Jamestown is not in compliance with the state's mandated number of instructional minutes for ELLs with a certified ESL teacher. (T. 699-700). Second, the district is not able to instruct ELLs in small, focused groups according to their needs and proficiency levels. (T. 699). Jamestown simply does not have a sufficient number of teachers to both "meet the mandated number of instructional minutes and … group students according to their academic needs." (T. 699). There are nine ESL teachers in Jamestown, but it "needs three times that number to adequately provide service to ELL students." (C.X. 6, Statement, p. 7).

516. Due to budget cuts, there is no longer a guidance counselor assigned to work with ELL students and their families at the high school. (C.X. 6, Statement, p. 7). Further, "[t]here is not sufficient bilingual staff in the district to provide support and translation to students and families." (C.X. 6, Statement, p. 7).

517. Although 60% of Jamestown students are in need of academic intervention services ("AIS"), the district is unable to provide adequate AIS. (T. 693; see also T. 3726 (describing Jamestown's high need for Academic Intervention Services)). "Academic Intervention Services are provided to students who are not performing at grade level or adequately for their level of schooling, in particular area of . . . the academic curriculum . . . in order to bring those students back to a level of higher performance." (T. 3725-26). Jamestown is not in compliance with state regulations because it does not have sufficient

staff to provide the Academic Intervention Services ("AIS") required by the state. (T. 874; see also T. 693 ("[Jamestown has] not been able to add the staff members that [it] need[s] because adding has not been a consideration as [it has] been eliminating positions.")). Plaintiff's expert Peggy Wozniak noted that Jamestown's AIS class size is approximately 15 or more but should be no more than 10 students per class. (C.X. 6, Statement, p. 4; see also C.X. 6, Statement, p. 7 "(There is an urgent need for at least 10 additional teachers to provide appropriate and sufficient AIS and other non-academic support services for at-risk students.")). The district is unable to provide AIS in math at any grade level because it does not have any math intervention teachers, and is also unable to provide AIS in science and social studies. (T. 694, 697).

518. Jamestown does not have sufficient staff to provide the necessary remedial instruction in language and math to students enter the district's schools. (T. 717-18; see also T. 874 (Jamestown does not have "enough instructional staff to provide the interventions that students need")). As a result, the achievement gap is continuing or widening as the students get older. (T. 717-18; see also T. 903 (Superintendent Mains stated that he "will never be able to reach [his] goal without . . . substantial additional resources to provide the interventions" for economically disadvantaged students.")).

519. Superintendent Tim Mains identified the need for early literacy intervention. (T. 876-77; T. 695 (district is unable to prevent gaps in reading skills due to lack of early intervention); see also T. 870-71 (75% of children leaving first grade are not meeting benchmarks in oral reading fluency)). However, the district does not have the necessary funding. (T. 901-02 ("I can't provide targeted reading intervention without dollars to pay

the people to do the work, without dollars to train the people to do the work, without dollars to hire the supervisors to make sure the work is done and done correctly.")).

520. "The extended day program (AM and PM) was reduced several years ago and has now been eliminated due to budget" constraints. (C.X. 6, Statement, p. 6). Only about 10% of Jamestown students are able to participate in the afterschool program, which receives funding from foundations and charges families on a sliding scale. (T. 889-90). Jamestown is relying predominantly on outside agencies for the afterschool program because the district does not have the money to pay the district's teachers to provide those services. (T. 902). Students who participate in the after school program have better attendance, do better academically, and have fewer discipline problems than students with similar challenges who are not able to participate. (T. 890).

521. Summer school was eliminated at the elementary level. (C. X. 6, Statement, p. 6).

522. Jamestown does not have a credit recovery program, which would provide students an opportunity to make up for lost time and failed courses, and to recover the credits they need in order to graduate. (T. 3728, 3745).

523. Sometimes the students themselves are physically violent in the classroom. (T. 720). For this reason, teachers must know how to intervene and are put in the position of needing to be both a social worker and a teacher. (T. 720).

B. <u>Kingston</u>

524. To cut costs, in 2014-2015 the Kingston offered retirement incentive to teachers' union and teacher assistants union, to save cost. (T. 1033). The result was that Kingston lost about 10 to 15 teachers. (T. 1033, 1169-70, 1173). The district has also had to lay off staff members in recent years. (T. 1030-31). The district has approximately 115 fewer full time staff at the time of trial than it did in 2012. (T. 1033).

525. "Given the shortfall in school social workers, counselors and a very thin administrative structure overly stressed by new APPR regulations, Kingston cannot meet the requirements for sufficient family outreach and communication…." (C.X. 10, Report, p. 24).

526. Kingston has only one principal and one assistant principal at each middle school. (C.X. 10, Report, p. 2872-73; (C.X. 10, Statement, p. 8). They supervise a combined 2,000 students. (T. 2872-73; C.X. 10, Statement, p. 8). Yet, the Annual Professional Performance Review has increased the duties on the principals. (T. 2873). Dr.. Uebbing stated that each middle school needs an additional assistant principal because, due to APPR requirements, principals and assistant principals have less time for instructional leadership. (T. 2873-74).

527. Dr. Uebbing explained: "[f]ew want to consider the costs of additional school administrators, but Kingston clearly is too thin at the middle school level to provide the level of support necessary for a sound basic education for all students." (C.X. 10, Report, p. 29).

528. There is a "shortage of qualified school social workers in the district." (C.X. 10, Report, p. 24). "There are too few school social workers the secondary level. The National Association of School Social Workers has standards of 250:1, similar to school counselors. If the district were to meet these standards at the middle school high school level, they would need to add eleven (11) school social workers." (C.X. 10, Report, p. 29). One function of social workers is to strengthen the system of student-family supports. In Kingston, this would help reduce the high suspension rate. (C.X. 10, Report, p. 29). One function of social workers is to strengthen the system of student-

family supports. In Kingston, this would help reduce the high suspension rate. (C.X. 10, Report, p. 29).

529. "As part of the overall education plan to move the district forward dealing with the students that we have, one of our issues is right now some of our support positions, our guidance counselor positions. We have six guidance counselors at the middle school level to deal with 2,000 students, seven at the high school to deal with 2,000 students. We have no guidance offered at our elementary levels." (T. 1078). In order to improve results at the high school, guidance counselors are "doing the job of one and a half people." (T. 1078). In order to improve results at the high school, guidance counselors are "doing the job of one and a half people." (T. 1078). Kingston cannot hire more guidance counselors because it does not have enough resources. (T. 1079).

530. In January 2015, Kingston had ten kindergarten sections with 28 students, which is the contractual maximum, and another six kindergarten classes had 25 or 26 student. (T. 1046). "I think most people would say your kindergarten, first and second grade are the grades where you really want to have the lower number of students, 17, 18, 19 students." (T. 1046). Dr. Uebbing stated that Kingston's kindergarten students should be in classes of no more than 16 students. (C.X. 10, Report, p. 15).

531. Class sizes in common branch classes have increased due to school closures and lack of sufficient teachers. (T. 1046-47).

532. Dr. Uebbing stated that Kingston's kindergarten students should be in classes of no more than 16 students. (C.X. 10, Report, p. 15). "It is critical to realize that given the number of economically disadvantaged children in Kingston, class sizes and academic supports

cannot be at the levels of other schools with much lower numbers of economically disadvantaged children . . . ." (C.X. 10, Report, p. 24).

533. Plaintiffs' expert Dr. Stephen Uebbing testified that class sizes for special education are not appropriate: "The ICOG [Integrated co-teaching] classes they have are too large. And so I would like to know they also reduced the size of the ICOG classes. The number of integrated classes -- this is a good movement from they had 31 integrated classrooms and 18 integrated classrooms. That is the ICOG model. In addition, we reduced the number of our self-contained classes from 33to 28. That is the right direction. Still feels a little heavy, but I'm sure he will continue to look at every self-contained classroom and say how can we move the kids to an inclusion model. The ICOG model. You have a regular teacher and a special ed teacher in the same room. That is integrated. The students in there with disabilities. The key is not to let those classes get too big because if you think now they can be 30. Right? Then you have really defeated the purpose. You have to keep them in the low 20s, in my opinion and my experiences. So when I was there what they told me one of the problems is the ICOG classes were too large. So I do not have any knowledge if they have been able to reduce the size of those ICOG classes." (T. 2885-86).

534. In 2012 Kingston closed one school, and in 2013 Kingston closed three more schools. (T. 1031). Because of these four closures, at the time of trial Kingston elementary schools and middle schools operated at 95 percent capacity. (T. 1042). The State Education Department says 85 percent capacity is what schools should strive for, which leaves 15 percent capacity built in for flexibility. (T. 1043).

535. This flexibility is required because old schools like those in Kingston are not built for the "way we deliver education today. They weren't built for special education. They weren't built for reading instruction or pull out speech therapy or occupational therapy and physical therapy. They weren't built to have special rooms where you give test modifications for students with disabilities. So having those extra spaces within a building make a big difference." (T. 1043-44).

536. The 10 school buildings in Kingston range from 100 years old to about 50 years old. (T. 1044).

537. Carl Thurnau testified for the State in his capacity as Director of Facilities Planning for the State Education Department. (T. 4303). As basic requirements for an adequate educational facility, he confirmed that a facility should have sufficient, appropriate space for a student's educational needs. (T. 4341-42). Thurnau further noted that educational facilities should have accessible space for students with disabilities, and sufficiently private spaces for counseling. (T. 4342).

538. Thurnau confirmed that substandard and unsatisfactory building conditions can have an adverse impact on a student's educational needs. (T. 4342-43). Thurnau agrees that mold or poor air quality, chronic flooding or leaks, and poor ventilation and poor air quality could adversely impact a student's ability to learn. (T. 4342-43). The 2010 Building Condition Surveys are a comprehensive five-year survey to evaluate the structural integrity and condition of all major systems and components of an educational building as well as its athletic fields and playgrounds. (T. 4343).

539. The categories evaluated as part of the Building Condition Surveys are ones deemed by the State as important to the successful education of New York State students, or those

that are required for basic, adequate facilities. (T. 4346). The goal of the State Education Department is to have all categories rated as at least satisfactory. (T. 4346).

540. Thurnau confirmed that in the 2010 Building Condition Survey (the most recent available), the majority of the overall ratings for the buildings within the Maisto Districts received an overall rating of unsatisfactory, as identified by the Boards of Education. (T. 4347).[10]

541. Thurnau confirmed that thirteen out of seventeen student-occupied buildings in Kingston had an overall building rating of unsatisfactory. (T. 4444).

542. Twenty-five percent (25%) of classes in the middle schools lack Smart Boards and nearly seventy-five percent (75%) of classrooms in the elementary schools lack Smart Boards. (T. 1157).

543. Kingston is unable to meet the needs of its neediest students because it is deficient in providing programs such as AIS, RtI, and some programs for students with disabilities. (C.X. 10, Report, p. 13).

544. Recent budget cuts have negatively impacted Kingston's AIS program. Many staff positions were cut, and student group sizes increased. (C.X. 10, Report, p. 14). "KCSD needs to add substantial levels of Academic Intervention Services (AIS) for students at-risk of academic failure. AIS are required for all students who score at level 1 or 2, which is below the designated performance levels on elementary, intermediate, and commencement-level New York State assessments in English Language Arts, mathematics, social studies, and science; students who are at-risk of not meeting state standards as indicated through district adopted procedures; students in grades K-2 who

[10] Thurnau's testimony is summarized here. However, his testimony is noted in each district's Inputs section where recognized buildings had unsatisfactory ratings.

lack reading readiness; and Limited English Proficient (LEP)/English Language Learners (ELL) who do not achieve the annual performance standards." (C.X. 10, Statement, p. 9).

545. Kingston is unable to provide sufficient RtI services. (C.X. 10, Report, p. 13). RtI services help prevent students from unnecessarily being classified for special education. (T. 1150. ("Students are identified as possibly being in need of special education services. They are recommended to our school team and then our RTI team to look at what interventions need to be put into place prior to them being recommended to special education and then we implement those interventions and we monitor those interventions and we see if they're working for students.")).

546. Kingston does not have the resources to implement a district-wide reading recovery program, which would consist of short periods of intensive reading instruction with a low student-to-teacher ratio. These programs help students who cannot read well to read on grade level. In turn, being able to read addresses many other challenges to educational success. (T. 1065-66).

547. Kingston had to cut its program designed to help the students with mental health issues. (T. 1080 ("We had a primary mental health care project, which was a districtwide program, with primary mental health care workers in each of our elementary schools which was part of our cuts over the last three years." We don't have the capacity right now to do it. . . . [O]ur students don't have health insurance, don't have access to mental health professionals. Our students' parents may not have the capacity to know how to find that help so much of that falls on the school district and that's where the city school

districts have to deal with that. So to have that program in our schools is a huge assistance to our students and their families.")).

548. There is also a need in Kingston to increase capacity of the credit recovery program.(T. 1081). The credit recovery program was created by the school district. It is designed to help students recover the classes that they are missing.(T. 1055). Expansion of the program would have a significant impact on graduation rates. (T. 1081) ("[W]hen we see the increase in our graduation rates over the last few years, I would say if I can pick one thing that did it, it would be the credit recovery program. Are we able to reach all the students who need it through that credit recovery program? No. . . . If we had the capacity to address all of those students, that would go a long way to pushing the graduation rate even further.")).

549. Kingston has also cut its program for family outreach for ELL students.(T. 1079 ("One of the programs that was cut over the last three years was our family outreach workers for our ESL students. We had one in every building and now we just have two total in the district.")). The family outreach workers provided "a really important link between the parents and the school district and communicating to the parents about what the requirements are, communicating to the parents about how their student is doing in class, communicating with what is ESL and what is this program and why is my student being pulled out for this or that. . . If we could go back to having our ESL family workers districtwide I think that goes a long away to helping us communicate with the families, getting their support, and the family is big part of improving the academic performance." (T. 1079). Cutting family outreach workers affects ELL student performance. (T. 1080).

550. Kingston does not have the resource to appropriately implement integrated co-teaching, which is an inclusion model that integrates students with disabilities in a regular education classroom setting.Class sizes in Kingston are too large for this model. (T. 2885-86; C.X. 10, Report, p. 28). The district is not able to implement the inclusion model in the manner prescribed by research, and has to substitute teaching assistants for teachers. Implementing this program correctly would help address low academic achievement and graduation rates of students with disabilities and African American students who are disproportionately classified as special education students. (T. 1025, 1064).

551. Kingston needs more staff for its kindergarten program, elementary, AIS, students with disabilities, wrap around universal pre-kindergarten, other support staff and Professional Development. (C.X. 10, Report, p. 25). Kingston lacks the capacity to provide sufficient professional development. It cannot "provide the level of professional development necessary to fully implement RtI, the common core state standards or any of the reform initiatives that are part of the Regents Reform Agenda with the level of fidelity necessary to be successful." (C.X. 10, Report, p. 29).

552. Kingston is unable to provide pre-k to all students. (T. 1062-63). The preschool program is deficient because it "only serves a small portion of all four year olds, is only half day and has no wrap around component." (C.X. 10, Report, p. 27). Many students in the district come to school with learning deficiencies, which are not learning disabilities but can lead to students being placed in special education if not caught early. "[Universal pre-k] would be a huge place to start to fill those deficiencies." (T. 1061-62). Pre-k is also crucial in preparing children for kindergarten. "We're really looking for the standard

student in New York State to be able to read in kindergarten. So we need to have that extra time, we need that extra year, we need that wrap-around time after school, we need that summer program for those students to get them ready to give them that kick start and all your research shows birth to four is where you really make an impression on students as far as learning is concerned." (T. 1062-63).

553. Kingston also lacks funding for a preschool wrap around program, which is a program before or after school. (T. 1061-63). "Full day, wrap around programs for children ages 3 and 4 with an emphasis on language acquisition 35 would be a positive step towards leveling the playing field for children in poverty. Yet the district has a minimal program, largely community based and without transportation." (C.X. 10, Report, p. 14).

554. Kingston High School is surrounded by desolation, crime, and prostitution. (T. 1026-27). As a result, "Kingston spends approximately $1,000,000 per year on school security, mostly for 17 personnel costs . . . . This is money that could have provided ten or so additional teachers. In comparison, some suburban and rural districts have no full time security personnel." (C.X. 10, Report, p. 3).

555. "My first year, half a year, the 2012 school year, end of 2011-12, we closed one elementary school and we laid off about 25, 30 people. We made some other cuts to programs. Again, we continued to try to make our cuts through attrition, make cuts that are away from students, which is our goal, to make cuts as far away from students as possible. Deferred maintenance is always something we lean on when we need to, all school districts do when money gets tight. The following year we felt we had to do something drastic to not go over the fiscal cliff and maintain some level of fiscal stability. The board asked me to put together a plan to create fiscal stability. I came back with a

plan to close three more elementary schools and layoff about a hundred fifteen full-time equivalents across the board -- teachers, administrators, lunch workers, hall monitors, security people-- and the board approved that plan and in September of 2013 we closed three more elementary schools as well as reconfigured our middle schools grades from being a six, seven, eight building to being a five, six, seven, eight building and our elementary schools went from ten elementary schools – eleven if you count the school we closed the year before, so we went from eleven to seven elementary schools of K through four." (T. 1030).

C. <u>Mt. Vernon</u>

556. Mount Vernon has cut the number of reading teachers.(T. 2260).

557. Mt. Vernon has also reduced its nursing staff from full time to part time. (T. 2258). The nurses are also split between two sites, raising the anxiety of parents and students. (T. 2258). In fact, parents have raised specific concerns over incidents of asthma, the need for drugs, and treatment of diabetes in schools where there are not full-time nurses present. (T. 2258-59).

558. Many of Mt. Vernon's elementary schools do not have vice-principals. (T. 2343). As a result, the principals mostly deal with behavioral problems and thus are not given the opportunity to get in the classrooms and monitor instruction. (T. 2343). This prevents principals from monitoring of instructional practices and implementing methods developed through sound educational research. (T. 2343).

559. Mt. Vernon's central office also has a shortage of staff, which needs to see an increase. Tr. 2343:7-24 – 2344:1-4. There is only one content specialist for mathematics and one for language arts, and their responsibilities covers pre-K through grade 12 for the district

resulting in a "tremendous" workload for the content specialist and limited monitoring of instructional practices.(T. 2343-44).

560. Students with disabilities have particularly been impacted by budget cuts in the district. Statewide, over 57% of students with disabilities are placed in regular classroom settings for at least 80% of the time, while 11.7% of students are placed in regular classroom settings 40-70% of the time. (C.X. 7, p. 13).However, in Mt. Vernon – where the students with disabilities classification rate is over 30% higher than the state average – only 45.8% of students are placed in regular classroom settings at least 80% of the time, and 25.5% are placed in regular classroom settings 40-70% of the time. (C.X. 7, p. 13). The result is that students are too often placed outside of their regular classrooms because there are simply not sufficient in-class supports to make inclusion successful (C.X. 7, p. 13). Mt. Vernon's inability to invest in in-class supports also results in students with special needs often being placed out of district, which is costlier in the long run than if Mt. Vernon would invest more now. (C.X. 7, p. 13).

561. Class sizes in Mt. Vernon have also increased due to the lack of teachers. (T. 2257). Kindergarten classes are as large as 27, with an expectation that they will rise to 30. (C.X. 7, p. 22, 29). Since the school budget cuts went into effect, class sizes for middle and high school entry-level courses increased from 25 to approximately 30. (T. 2257). Research suggests that entry-level high school courses be capped at 20. (C.X. 7, p. 32). Further, the current class sizes and teaching loads are contributing to Mt. Vernon's poor test scores. (C.X. 7, p. 33).

562. The class sizes in Mt. Vernon are significantly larger compared to other districts. (T. 2262). Given that Mt. Vernon's students' needs are larger due to their economic

disadvantage, "just to be the same as even the other[s] isn't going to be good enough for what our students need." (T. 2262). Plaintiffs' expert Dr. Uebbing stated that "given the number of economically disadvantaged children in Mount Vernon, class sizes and academic supports cannot be at the levels of other schools with much lower numbers of economically disadvantaged children." (C.X. 7, p. 22).

563. Despite extraordinary needs in Mt. Vernon, average class sizes are comparable or higher that state averages:

Average Class Size 2013-2014 Mt. Vernon vs. State Average (P.X. 12):

Class Category	**Mt. Vernon**	**State Average**	**State Average Less N.Y.C.**
Pre-K	18.8	18.9	17.7
Kindergarten	18.6	21.6	20.0
Grade 1	18.5	23.0	20.6
Grade 2	19.4	22.7	21.1
Grade 3	20.5	22.9	21.4
Grade 4	18.6	23.0	21.9
Grade 5	18.1	23.3	22.3
Grade 6	18.4	23.1	22.8
English 7	26.2	23.1	21.6
English 9	23.2	23.0	21.5
English 11	20.3	23.1	21.6
Math 7	26.8	23.1	21.5
Living Environment/ Biology-Reg	24.2	23.3	21.6

Class Category	Mt. Vernon	State Average	State Average Less N.Y.C.
Physical Setting/ Chemistry – Re	27.3	23.6	21.6
Physical Setting/Physics – Regen	28.0	22.5	19.9
Grade 7: US & NY History	26.1	23.5	22.1
Global History & Geo 9	27.0	24.1	22.3
Global History & Geo 10	27.1	22.8	21.8
US History & Government	28.7	23.4	22.1

564. It is well documented that class sizes are a significant element determining student outcomes at an elementary level. (C.X. 7, p. 32). The American Institute for Research and Management (AIRA)'s professional judgment panel recommends class sizes of fifteen or less students for high-poverty districts. (C.X. 7, p. 32). Based on those numbers, Mt. Vernon would have to substantially increase the size of its faculty by adding 105 K-6 sections to meet the standards of the Institute for Research and Management. (C.X. 7, p. 32).

565. Additionally, middle school classrooms are generally crowded. (T. 2262).

566. The facilities and equipment in Mr. Vernon are generally in poor condition. (T. 2263). The buildings in Mt. Vernon were deemed unsatisfactory according to the New York State 2010 building condition survey. (T. 2267). Many of the buildings have serious problems relating to basic necessities, such as heating, roofing, and plumbing. (T.

2345).As a result, funds must often go towards upgrading the facilities before new technologies can even be implemented, let alone maintained. (T. 2264). Worse yet, Mt. Vernon schools simply do not have "the resources . . . [or] capacity to make sure that teachers are being exposed to high-level pedagogy that's supported by educational research." (T. 2344-45; T. 2268). Nowhere is that more clear than in special education, where smaller classrooms with special accommodations are necessary. (T. 2268). In the words of Dr. Hamilton, such intolerable and grossly inadequate conditions "sends a message to kids that we don't value you, [that] there's no value in education, and that there is not a lot of promise in your future in terms of the buildings that we expect our children to be educated in." (T. 2345).

567. As a small city school district, Mt. Vernon faces several limitations on their ability to finance capital expenses. (C.X. 7, p. 3). In 1999 Mt. Vernon commissioned a review in order to take advantage of a one-time ten percent additional state aid for renovations. (T. 2269). The review identified over $245 million in renovations, but the district was only able to borrow $100 million for the needed renovations due to borrowing limitations on small city school districts. (T. 2269); C.X. 7, p. 3). Out of that $100 million, a good portion was "diverted to accessibility for handicapped, code issues that the district was not complying with rather than for some of the renovations the district had needed." (T. 2269). Thus, not only does Mt. Vernon have a higher need for capital expenditures, but they cannot obtain the financing to make the necessary renovations due to their geographical disadvantage. (C.X. 7, p. 3).

568. Graham Elementary in Mt. Vernon is almost 120 years old, and the most recent addition was the new wing built in 1921. (T. 2267). The building has inadequate ventilation

resulting in problematic air quality. (C.X. 7, p. 10). The classrooms are old and "appear grimy." (T. 2267). Tim Costello described the way a student walks in the building: "You go down into what would be a moat, it's a level below street level, and you come in through the door and it's all kinds of steam pipes and water pipes over your head and the ceiling is very constricted. And then you go up a very narrow-turning stairway before you come to the main floor… It's not a great way for a child to enter into their school day." (T. 2267). Plaintiffs' expert Dr. Uebbing explained that "the overriding question one asks when visiting Graham is why this building is still used as a school? Most districts would have closed it long ago." (C.X. 7, p. 10).

569. As Uebbing stated: "if Graham was disturbing, Davis Middle School was more so." (C.X. 7, p. 10). Davis Elementary is over 70 years old and has a variety of issues regarding air quality and building integrity. (T. 2268). The gym floor is deteriorated and warped in several spots, exposing nails. (C.X. 7, p. 10). The roof leaks on a regular basis. (C.X. 7, p. 10). Oversized mercury vapor lights in the gym recently fell from the rafters and could have injured students and staff members. (C.X. 7, p. 10). Moreover, the classroom sizes at Graham and Davis are too large to facilitate special education. (T. 2268) ("[W]hen you provide special education, you need to provide that in smaller classroom spaces and designed around it."). Because of the age and condition of the buildings at Graham and Davis, there is little access to technology for students and little opportunity to implement modern pedagogy techniques. (T. 2268). In short, the facilities "need substantial modernization" to meet the needs of Mt. Vernon's schoolchildren. (T. 2268).

570. Mt. Vernon High School, "once the pride of the community" is in abysmal shape. (C.X. 7, p. 10). Constructed in 1963, Mt. Vernon High is "considered a relatively new building in Mt. Vernon." (T. 2286). Fencing and paving need to be repaired or replaced. (C.X. 7, p. 10). The windows do not fit correctly leaving gaps for the cold winter air to seep in. (C.X. 7, p. 10). A number of classroom spaces have been "condemned" due to a recent flood. (C.X. 7, p. 11). In 2010, one of the auditorium walls unexpectedly collapsed crashing through the roof of adjoining classrooms. (C.X. 7, p. 11). The sudden collapse of the wall also impacted the students' athletic pursuits, damaging a corridor that was routinely used by the track team. (T. 2268-69).

571. Mt. Vernon's former Assistant Superintendent for Business testified that Mt. Vernon's facilities do not always comply with federal ADA requirements. (T. 2269). "The elevators we have difficulty on occasion with their maintenance and the reliability. That's what makes buildings available to students on all levels." (T. 2269-70).

572. There are additional costs that go into updating these facilities. (T. 2270). The buildings were not built relative to the current student demographic, "special education being the most notable. The technology has changed." (T. 2270). The buildings were construed with asbestos, which is now a "danger to our health and welfare." (T. 2270). Thus, "if you renovate an older building, you very often have to have an additional expense to remediate the asbestos that was there." (T. 2270). In fact, the buildings are so ill-equipped to handle modern educational instruction and in such poor physical condition that, in some cases, it would be cheaper to simply tear the buildings down and start over than renovate the existing ones. (T. 2270).

573. Additionally, many athletic facilities are either missing or in disrepair. (T. 2272). Mt. Vernon cannot afford to update athletic facilities for the high school, which are not up to date, nor could they allocate money from state aid as the money they received was too little. (T. 2271 ("[S]tate aid is for the construction of instructional space, grounds and athletic space is incident to that instructional space. It's not aided directly.")).

574. Mt. Vernon was able to build a new field for its high school, but "didn't have enough money to put power to the score board or to the lights. There were no bleachers that were present there." (T. 2272). The field needed to be shared by boys' soccer, girls' soccer, varsity football and junior varsity football. (T. 2272). Not only does that create scheduling problems, but it makes the field wear out faster. (T. 2272). The tennis courts have not been repaved as Mt. Vernon has "never had the funds for it." T. 2272). The unpaved tennis courts and the single field are shared between all three high schools. (T. 2272). The two middle schools have fields, but they are "completely worn out or nonexistent." (T. 2272). And, of the three high schools, only Mt. Vernon High has any athletic facilities at all. (T. 2270).

575. Carl Thurnau confirmed that, in Mount Vernon, sixteen out of sixteen student-occupied buildings assessed had an overall building rating of unsatisfactory. (T. 4347-48).

576. For Nellie A. Thornton High School, the 2010 Building Condition Surveys identified and Thurnau confirmed: water damage on the interior walls of the school, exposed live wires, plumbing in such poor condition that lab fixtures have been disconnected, no ventilation in the auditorium, active leaks in classrooms, and a rating of "poor" for overall ventilation and air quality. (T. 4448-49).

577. For Mount Vernon High School, the 2010 Building Condition Surveys identified and Thurnau confirmed there is an active leak in the band room, a large hole in the ceiling, and an active leak in the library. (T. 4449). The ceilings are also generally noted to be beyond their useful life. (T. 4449). There are also active leaks throughout the building. (T. 4449-50). The building is also given an overall rating of poor for general appearance and a rating of poor for cleanliness. (T. 4450).

578. At Hamilton Elementary School, the 2010 Building Condition Surveys identified and Thurnau confirmed there are active leaks in the classrooms, and the building is given a rating of poor for humidity and moisture control as well as a rating of poor for ventilation and indoor air quality. (T. 4451).

579. At Graham Elementary School, the playgrounds and athletic fields are rated unsatisfactory. (T. 4451).

580. At A.B. Davis Middle School, the athletic fields are rated unsatisfactory. (T. 4451-52).

581. The classrooms in Mt. Vernon have instructional equipment and computers that are outdated by ten years, which cannot support modern software. (T. 2264; C.X. 7, p. 11). In fact, the present technology cannot be used to do the assessments required by the state. (T. 2264). And although Mt. Vernon does receive a technology grant through state aid, Mt. Vernon does not have the resources to spend anything over what they receive. (T. 2264). As Dr. Hamilton explained, "just having the hardware in and of itself is only part of the picture. The other part of the picture is training teachers on how to use that. We don't have the resources to do that." (T. 2344).

582. The workload of the academic supervisors is too large to properly develop the required curriculums. (T. 2343-44). Currently, just one supervisor is responsible for language arts

from pre-K through grade 12. (T. 2344). Another supervisor is responsible for math supervision from Pre-K through grade 12. (T. 2344). As a result, neither is able to supervise the teachers responsible for implementing the curriculums and improving the proficiency ratings. (T. 2344).

583. Mt. Vernon cannot properly teach to the Common Core curriculum as the "children lack access to technology in many instances. Our teachers don't have the professional development that they need in order to be successful in implementing technology." (T. 2344).

584. Mt. Vernon has had to cut their "specials," including: library, art, music, band, and orchestra. (T. 2256; C.X. 7, p. 11). In addition to the impact of these cuts on the students, teachers are no longer able to use these periods to properly prepare for instruction, which is an element required by the labor contract. (T. 2256). The result is that most elementary schools cannot offer a full range of the specials would expect at an elementary school. (T. 2256). Specifically, the schools would have to choose between offering "library or art or music." (T. 2256). Mt. Vernon has also cut a large number of extracurricular activities, such as various sports, band, activities, and clubs, which is unusual in the region. (T. 2256, 2259). For example, there is no band or orchestra at the high school level; the swimming team has been eliminated; there is no school play at a secondary level, etc. (T. 2256, 2259).

585. Reading teachers, and in particular AIS teachers, have been reduced to a minimal level, that is not adequate for the students' needs. (T. 2260; C.X. 7, p 12). There are simply not "enough teachers with the capacity to address the needs of [the] students" in Mt. Vernon. (T. 2260, C.X. 7, p. 12).

586. It is generally recommended that reading specialists should be limited to caseloads of 30 to effectively provide the necessary services for economically disadvantaged children. (C.X. 7, p. 32). But in Mt. Vernon, reading specialists have workloads nearing 300 students per specialist, or a ratio of 300:1. (T. 2337). Davis elementary has as many as 600 students who require the services of the only two reading teachers in the building. (C.X. 7, p. 30). This is despite the fact that 94% of students are failing. (T. 2337). 1600 students who need additional AIS support do not receive support from a certified reading teacher. (C.X. 7, p. 33).

587. Mt. Vernon struggles to address the needs of AIS students or even meet federal requirements. (T. 2261). There are not enough teachers to provide the required intervention services for the students who are failing. (T. 2337-38). The lack of reading and math specialists also affects the teachers who could be using them for professional development. (T. 2344).

588. There are not adequate resources to meet students' needs for speech therapy. (T. 2261). There is only one speech therapist available to Davis students, even though it is well-accepted that interventions from a speech therapist can increase proficiency in ELA. (C.X. 7, p. 30).

589. Mt. Vernon also cannot offer other academic opportunities that neighboring districts can due to lack of teachers and professional staff. (T. 2338). For example, students are not exposed to foreign language until seventh grade, while similar courses are offered in neighboring districts as early as the second grade. (T. 2338). In fact, many students do not receive any foreign language instruction at Mt. Vernon, as the limited amount of teachers cannot accommodate all the interested students. (C.X. 7, p. 13).

590. Statewide, schools are able to place 57.8% of students-with-disabilities in regular classroom settings for least 80% of the time, an essential part of achieving high quality results. (C.X. 7, p. 13). Mt. Vernon, on the other hand, is only able to place 45.8% of their students-with-disabilities in regular classroom settings for 80% of the time. (C.X. 7, p. 13).

591. Non-special education students do not have access to psychologists outside of the most extraordinary circumstances. (T. 2266; C.X. 7, p. 23). Meeting the requirements of the IEPs of students with disabilities takes up all the time of the psychologist and social worker. (Tr. 2266). The National Association of School Social Workers suggests a student/social worker ratio of 1:50 when dealing with students with intensive needs. (C.X. 7, p. 34-35). In the most normal circumstances, a ratio of 1:250 is suggested. (C.X. 7, p. 34). Mt. Vernon has a ratio of 1:470, despite being classified as high-poverty. (C.X. 7, p. 35).Indeed, if the district were to meet the recommended staffing levels of the National Association of School Social Workers, it would have to increase the total number of social workers by nearly 1000%. (C.X. 7, p. 23). Research indicates that the presence of social workers can help reduce chronic attendance problems in a district. (C.X. 7, p. 35). That is especially important where, as here, Mt. Vernon High School has an attendance rate of just 76.85% and a mere 61.53%. (C.X. 7, p. 35).

592. Referring to the large population of homeless students, the superintendent testified "it's actually kind of preposterous to think that children who come to school lacking food and clothing and shelter…come ready to learn. Having social workers and psychologists on staff to help address those kinds of needs" is imperative to ensuring "students come to school ready to learn." (T. 2340).

593. Mount Vernon has many students who arrive in kindergarten not ready and a five-year-old may have the developmental capacity of a two-year-old. (T. 2342). Homes in Mount Vernon are less likely to have reading material. (T. 2245) Having psychologists available "provides parents and kids and teachers with the kinds of skills they need in order to just get ready to learn." (T. 2341).

594. Many children in Mount Vernon feel the anxiety of their parents, about things like housing instability. (T. 2245). Many parents of students grew up in poverty in Mount Vernon themselves and lack connections social service agencies (T. 2241). There are many children born prematurely and children who suffer the psychological and sociological factors associated with poverty that impede education (T. 2336). Without social workers and psychologists to attend to the needs of children and their families, Mt. Vernon cannot attend to the academic needs of these children. (T. 2341-42).

595. Without social workers and psychologists, Mt. Vernon cannot attend to the academic needs to the large distribution of premature, impoverished children. (T. 2341-42).

596. Many of the schools do not have guidance counselors for children with social, emotional, and mental issues. (T. 2321). Not one of the eleven elementary schools in Mt. Vernon has a school counselor, even though experts agree that every elementary school should have at least one. (C.X. 7, p. 34-35). The secondary schools that have guidance counselors have a ratio of 1:300. (C.X. 7, p. 35). Even average-need districts are suggested to have a ratio of 1:230 to deal with students' needs. (C.X. 7, p. 35). And as previously noted, Mt. Vernon is not an average-need district and therefore needs an even lower ratio to adequately help students with more intensive needs. (T. 2262; C.X. 7, p. 34).

597. Only 63% of students receive a structured pre-K program. (C.X. 7, p. 22). Yet, "early interventions are the best way to begin to ameliorate the effects of poverty on school performance." (C.X. 7, p. 22). Mt. Vernon can now only afford to offer a "half-day" of pre-k, which is just three hours of instruction a day. (T. 2262-63). Pre-k, however, is crucial to the success of students because it allows for earlier intervention in the lives of young students in need. (T. 2263).

D. Newburgh

598. The Deputy Superintendent for Newburgh Edward Forgit stated that "[w]ith the number of high need students in our district, it is unfortunate that funding restrictions have led to the elimination of over 230 positions in a five-year period." (T. 1915-16; P.X. 85, p. 8).

599. In order to meet the needs of its students, Newburgh district needs 38 additional social workers; 21 elementary school counselors; 72 pre-K teachers and teacher's assistants; 56 elementary school teachers and aids; 24 middle school teachers; two middle school administrators; 44 high school teachers; 36 reading teachers in K through five, and 16 in the middle school and the high school; an additional 12 administrators with clerical support; 15 teacher leaders; two professional development specialists and 12 faculty and support staff for a credit recovery program. (T. 2564-65, 2568-59; C.X. 14, Report, p. 30-34).

600. Newburgh reduced its number of teachers by 109 between 2008-09 and 2012-13. (T. 1916). Deputy Superintendent Forgit stated that "the reduction in the number of teachers has had a negative impact on the performance of our students at the elementary and middle level, specifically." (T. 1923). The reduction in teachers was even greater by 2013-14, although the community was experiencing increasing need. (T. 2688).

601. Newburgh has been forced to reduce the number of elementary teachers due to budget cuts. This has increased class size and negatively impacted teachers' knowledge of the curriculum they teach because they have been shuffled to different grades. (T. 1894, 1926).

602. The district had to eliminate all first grade teaching assistants for budget reasons. Teaching assistants "support the teacher in delivering instruction" and work with groups of students under the teacher's supervision. They support the needs of high-need students by providing a smaller ratio of instructional support within the classroom. (T. 1913).

603. Newburgh needs additional administrators. (T. 2622-23, 2627-29; C.X. 14, Statement, p. 9; see also T. 4829-31 (district noted that tasks assigned to administrators exceeded their capacity)). Dr. Uebbing stated that in order to adequately serve all Newburgh students, the district needs not only the appropriate number of faculty, but also the appropriate number of supervisors. (C.X. 14, Report, p. 33). For example, Dr. Uebbing stated that middle school principals in Newburgh noted a need for at least 16 core content area teachers and two administrators to assist students with behavioral difficulties, and he agreed. (C.X. 14, Statement, p. 9; T. 2567).

604. Newburgh does not have enough social workers to meet the needs of students, and it does not have enough funding to hire more. (T. 2072, 2074, 2134-35, 2610; C.X. 14, Statement, p. 8; T. 1903-04 (district has had to reduce social worker staff over the last five years, with negative effects); see also T. 1946 (reduction in social workers has reduced the supports required for students in high-poverty schools). Newburgh has just six social workers for 13 schools. (T. 1903, 2108-09, 2134). The total population for these six social workers is 11,000. (T. 1903, 2135). Newburgh has a significant shortage

of counselors, with no counselors at the elementary level. Counselors work with students in the school building, mostly on academic issues. (T. 2617). Dr. Uebbing recommends that all elementary students have a full time counselor and that secondary students have counselors at a 1:180 ratio, which is essential for schools serving high numbers of economically disadvantaged students. (C.X. 14, Report, p. 32; T. 2615-16).

605. There are not enough academic intervention teachers to support the district and specifically the 80% of students that are preforming below proficient. (T. 2073).

606. The Newburgh school district has a 7 million dollar budget gap for the coming school year. (T. 2073-74). The 7 million dollar budget gap for 2015-16 will force the District to make additional cuts to certain programs and staff. (T. 2074). This includes social workers and bilingual/special education teachers. Dr. Padilla noted that 24% of Newburgh's ELL population also has a learning disability and given the lack of funding, the District is unable to provide them with both special education and language services. As a result, the district is unable to be compliant with state regulations and he predicted that the District will remain non-compliant next year due to budget cuts. (T. 2075).

607. Newburgh does not have the funds to hire sufficient ESL/bilingual teachers who also have special education certification. These teachers are needed to provide services to ELL students with disabilities, who require both types of services. (T. 1906).

608. The district has reduced two nurses and has reduced health aides in the nurse's office. (T. 1938).

609. Professional development for Newburgh teachers has been negatively affected by budget issues, with significant impacts in the district. (T. 1933-34). Deputy Superintendent Forgit explained that the Newburgh Teacher Center, which offered an opportunity for

teachers to share effective practices, "has taken a real hit." (T. 1934 ("It used to be very powerful because it was teachers working with teachers to share their craft.")). Dr. Uebbing noted the pervasive concern among administrators that the district lacks the capacity to provide sufficient professional development to successfully implement RtI, common core state standards, and other initiatives. (C.X. 14, Report, p. 33). Dr. Uebbing stated that two professional development specialists should be added in the district. (C.X. 14, Report, p. 33).

610. Classes should be around 18-20 children per class in kindergarten through second grade. (T. 1926, 2079). However, class sizes in Newburgh for these grades often far exceed these numbers. (T. 2676-77; C.X. 14, Report, p. 18; T. 2077-80 (noting there where about 27-28 students in at least one Kindergarten class in Gardnertown); see also T. 1975 (noting that kindergarten classes had as many as 26 students)). This is well above the 20 student size noted by the Court of Appeals and especially large for districts with high numbers of students with disabilities and children from economically disadvantaged families like Newburgh.

611. In 2014-2015 the common branch total (grades 1-6) was 22.6; sixth grade classes were the highest with an average of 26 for the district. Class Size Report Card. Dr. Uebbing recommended "an aggressive attempt to lower class size." (C.X. 14, Statement, p. 8).

612. Dr. Uebbing noted that social studies classes at Newburgh Free Academy average 27 students, and that these high class sizes can lead to dropout. (C.X. 14, Report, p. 31).

613. The loss of 140 teachers in 5 years (more than 14 percent) has increased class sizes and lowers student achievement, and has resulted in less attention to the students in most need of academic support. (T. 2690).

614. Teachers find it extremely difficult to teach with the large class sizes typical in Newburgh. (T. 2078). Yet, Newburgh does not have the resources to reduce class sizes, which are not educationally appropriate. (T. 2079).

615. Many of the school buildings in Newburgh are not ADA compliant. (C.X. 14, Statement, pp. 6-7.) For example, South Middle School is not handicapped accessible; students using wheelchairs must enter through the side door and go to the second floor to use the screening device, but there are no bathrooms on the second floor that are handicapped accessible. (T. 2592-93; see also T. 2954 (New Windsor School is not handicapped accessible)).

616. Many Newburgh school buildings require window repairs and have inoperable temperature controls. (C.X. 14, Statement, pp. 6-7).

617. The New Windsor School has serious facilities issues including ADA compliance, lack of an elevator for wheelchair accessibility to some classrooms and workspaces, electrical capacity issues that limit technology, and reliance on a fire escape for evacuation. (C.X. 14, Statement, p. 7); T. 2593.

618. The age of Newburgh facilities, an average of 68.5 years, makes them prone to problems. (C.X. 14, Statement, p. 7).

619. Newburgh had to close the West Street School because the district did not have the funds to operate it. (T. 1895).

620. In Newburgh, many of the classrooms or schools lack access or have only very limited access to computers, Smartboards or internet access. (T. 2080, 2107-08).Superintendent Padilla estimated that fewer than ten percent of high school classrooms in Newburgh

have Smartboards. (T. 2107-08). Only 4 percent of the building physically is able to get internet access (wireless and bandwidth). (T. 2080).

621. Moreover, the district lacks the infrastructure to improve technology. (T. 2080 ("[T]he most concerning [issue] regarding the technology – and this is pretty much the case for the entire district -- is we don't -- the infrastructure isn't in place. And so one concern, given where the state is going with students being soon to take online testing, I'm afraid this is going to put Newburgh behind even more because our students are not readily accessing technology either, because we don't have the equipment, but of far more concern is we don't have the bandwidth or the access in the buildings. Case in point, our high school has four percent access.")).

622. The district has had to greatly reduce its central support system to the schools; reorganization and reduction of administrative positions has included significant reduction in staff who oversee curriculum. (T. 1940 ("So we at one time had content area directors who really focused on and knew the depth of their content from K through 12. So we had a K-12 English Language Arts director that could really focus on understanding what the articulated curriculum should be for K-12, understanding the differences between the grade levels. We had that same type of structure or opportunity for math, for science, and for -- we had English, math, science and social studies. We had four core directors that could do that. We are now down to one director of elementary education, a supervisor at secondary STEM, and a supervisor of secondary humanities, with an assistant superintendent.")). These reductions have negatively impacted support for teachers. (T. 1940 ("So the intensity of support that we can provide to principals, assistant principals, and classroom teachers through a system of support at central office

has gone through so many iterations and been weakened such that it had a negative impact on the support for those classroom teachers.")).

623. Foreign language course offerings in the high school have been reduced to two languages due to budget cuts. (T. 1926-27).

624. All of the business courses in the high school have been eliminated. Deputy Superintendent Forgit explained that these courses prepared students for "secondary education and the business field" and their elimination means "lack of choice, [and] lack of better preparedness for post-secondary education." (T. 1927).

625. Lack of sufficient social workers has many negative effects on the district. Newburgh is not able to provide sufficient family outreach and communication, because of the shortage of social workers. (C.X. 14, Statement, p. 8; T. 2610). Because the number of social workers is so low, they cannot effectively engage with students. (T. 1903. ("When you have a high school that has over 3,000 students, spread over two campuses, and there's one social worker assigned to both of those campuses, it makes it very difficult for that one individual to connect, engage, and develop that positive relationship with that student who is already beginning to disengage.")). Social workers have the ability to counsel in the school as well as leaving the school to go into family homes; this is particularly important in a district such as Newburgh with large numbers of ELL students. (T. 2617). Social workers and guidance counselors are particularly important in a high-violence community like Newburgh, where they provide social/emotional support and help students transition into the classroom after witnessing violence. (T. 2072) ("[W]e just don't have the social workers and the guidance counselors to be able to provide the social/emotional learning and support our students with being able to make

the transition into the classroom given what they might have seen on the way to school or the constant violence there that they experience day in and day out."); see also Schwartz (T. 4830 (district noted that related service providers could not meet the social/emotional needs of students)). Social workers also help students graduate from high school by providing counseling and guidance, facilitating families' connections with the school, and coordinating teams to discuss barriers to student success. (T. 1904).

626. "[D]espite the fact that there is a very high percentage of ELL, and many poor families, there are no parent liaisons within the district." (C.X. 14, Report, p. 25).

627. Newburgh cannot afford enough academic intervention teachers to address the 83 percent of students with deficiencies on state ELA and math exams. (T. 2072-73; T. 1896, 1900-01 (district does not have sufficient resources to serve needs of students who do not score proficient on ELA and math exams); T. 2056 (Title I does not provide sufficient funding for adequate AIS); see also C.X. 14, Statement, p. 11 (AIS has been negatively affected by budget cuts and there is a "general shortage of qualified AIS providers in the district")). 80% of Newburgh students performed below proficiency district wide during the 2013-14 school year on the ELA assessment exams and the Newburg Superintendent attributed this to the District's dearth of academic intervention teachers. (T. 2071-74); see also C.X. 14, Statement, p. 10-11 ("[I]t is imperative that Newburgh improve Academic Intervention Services. It is not realistic to expect the core instructional program to provide the remediation necessary to overcome the effects of poverty on young children.")). Dr. Padilla believes that academic intervention teachers would be able to substantially raise students' test scores by providing additional help afterschool and/or on weekends. However, the District has a 7 million dollar budget gap for the 2015-16 school

year and without additional funding there are no funds to increase the number of academic intervention teachers. (T. 2071-74).

628. At the elementary level, students scoring at level 1 or 2 are not getting assistance from an AIS teacher. (T. 1931). Newburgh also does not have the funds to provide sufficient math AIS teachers at the middle school level. (T. 1901-03 ("That's where [the district is] truly deficient.")). AIS teachers have particularly large caseloads at the secondary level, with 125-150 students each. This means that rather than work with students each day, they see students once or twice in a six day cycle. (T. 1931). Newburgh has very few certified reading teachers, who are critical to remediation in ELA and math. (T. 1896 ("[T]he student population is presented with barriers that are preventing them from being successful in the areas of English Language Arts and math, and those barriers require a reading certified teacher to support interventions through Academic Intervention Services."); see also T. 1930 (Newburgh has only 1-1.5 reading teachers for each elementary building, which is inadequate to serve the student population)). Newburgh students requiring AIS services are "predominantly" in need of intensive reading instruction. (T. 1899). Reading teachers are an important element of math remediation, in addition to ELA remediation. (T. 1901 ("The content of math is something that we really need to work very closely with. You can also correlate some of the issues that the students have in math to reading. So there's academic vocabulary that plays into that as well. So I think it's a combined issue with math.")). Dr. Uebbing stated that a high need district such as Newburgh should have one reading specialist for every four sections of elementary students, meaning 36 additional specialists for grades K-5, and given the very low ELA scores, there should be one reading specialist per 300 secondary students,

equaling 16 additional reading specialists for the middle and high schools. (C.X. 14, Statement, p. 9). In addition to the lack of "human resources" to assist struggling students, the district does not have the funds to pay for diagnostic instruments such as computer software to evaluate students' academic abilities. (T. 1900. ("There are software programs that a teacher could embed in their classroom in order to support a particular student to learn to read. However, we don't . . . have the funding right now to purchase the level of software and technology that would be required for us to implement those programs. So I don't want to make it sound like we're saying that a reading teacher will fix this problem. It's a variety of different things."))

629. Students with disabilities have been negatively impacted by budget cuts. (C.X. 14, Statement, p. 12; see also T. 2057 (IDEA doesn't provide sufficient funding to meet the needs outlined in the Individualized Education Programs of students with disabilities)). Service options for these students are limited, and they are too often placed in more restrictive environments because lack of in-class supports precludes inclusion in the regular classroom. (C.X. 14, Statement, p. 12.)

630. There are insufficient pre-special education supports, including severe limitations on RtI services, which provides supports in the regular education setting. The result is that more children are classified as students with disabilities. (C.X. 14, Statement, p. 12).

631. "In Newburgh, there are 1502 English Language Learners including 799 students who receive English as a second language instruction." (C.X. 14, Statement, p. 12). Because of the high percentage of ELL students, Newburgh effectively a school district within the district with over 1500 ELL students, who are more expensive to educate because of services you must offer by law. (T. 2670-75). Budget cuts have forced the district to

eliminate teaching assistants and aids who would provide support to English language learner students reentering the general education classroom after receiving English as a Second Language instruction. Additionally, although the goal is to gradually move students in bilingual education programs into all-English classes, the required in-class supports are unavailable. (C.X. 14, Statement, p. 12-13).

632. There is a growing population of students in Newburgh who are both ELL and identified as students with disabilities, and currently 24 percent of ELLs also have a learning disability. (T. 2075). Yet, Newburgh lacks the funding to provide the appropriate and federally mandated programing for these students, and as a result is currently out of compliance. (T. 1905, 2075). The Deputy Superintendent testified that Newburgh's experience is that ELL students with disabilities do better if they have bilingual educational support. (T. 1906).

633. Dr. Padilla identified a number of areas for improvement, including the need for extended learning time, reduced classroom size in kindergarten and first grade, and bilingual/special education teachers. (T. 2075).

634. There are not enough pre-K spots to serve all students in the district, due to funding shortfalls. Deputy Superintendent Forgit estimated that there are approximately 200 students who do not receive pre-K and noted that the lack of pre-K means it is possible these students are not fully prepared for kindergarten. (T. 2015).

635. Newburgh used to offer an early literacy program, first for grades K-2 and then K-4, but had to discontinue the program due to lack of funds. The program was effective, and the district is observing negative effects of its elimination on third and fourth grade student performance on assessments. (T. 1909). Newburgh students require extended learning

time in order to receive the support they need to catch up and make progress academically. (T. at 2076 ("[G]iven where the majority of our students are at, and how much . . . intense support they require, I just don't see how we can do that in a regular school day . . . ."); C.X. 14, Statement, p. 10 (Newburgh has a significant number of students at risk of academic failure, who require "additional instructional time and other supports to improve their academic performance")). The district has reduced extended learning time programs at the middle school level. It eliminated its after school tutorial program for middle schoolers, which supported students in ELA and math by supplementing the instruction provided during the day. (T. 1910). The district also used to provide opportunities for sixth, seventh, and eighth grade students to make up units during the summer so they would be better prepared to transition to high school. The program is now limited to eighth grade, and only those students at risk of being retained in middle school. This has led to an increase in students "aging out" of middle school and is negatively affecting their performance. (T. 1912). Forgit explained that extended learning time would allow the district to build a more solid foundation for economically disadvantaged students at the middle school level that would facilitate engagement with secondary level learning. (T. 1946).

636. The district has had to reduce its staff of paraprofessional aides. For example, it eliminated attendance aides. (T. 1918).

637. The district no longer has an alternative education program, due to budget cuts. (T. 1927-28). The program "supported high school students who had disconnected and disengaged." The district is "no longer able to provide [that] non-traditional environment for students who are not successful in a traditional educational environment." (T. 1928).

Dr. Uebbing stated that "Newburgh has an immediate need to implement a robust system of credit recovery for its underperforming secondary students along with non-traditional opportunities for students who have children of their own, need to work and other exceptional cases." (C.X. 14, Statement, p. 12). This program would require approximately 12 faculty and support faculty, one clerical support staff, and a portion of an administrator. (C.X. 14, Statement, p. 12).

638. The district does not have the resources it needs to close gaps in graduation rate between African-American and Hispanic/Latino students, and white students. (T. 1948). Deputy Superintendent Forgit explained that the district needs culturally relevant materials, such as Spanish language texts, that are aligned to the curriculum, and that these resources go beyond those needed for economically disadvantaged students. (T. 1947-48 ("I believe that . . . there are more factors that have to be looked at in order to make the determination. Those factors could be do we have the right materials, resources and supplies that are culturally relevant to support those students? Do we have enough resources that are in Spanish and English to support students that are in the monolingual core courses? So if they're taking seventh grade social studies or seventh grade English, do they also have access to a Spanish text in order to be able to access that learning? So it's more broad than just the lack of the social/emotional needs. It's also do we have the cultural materials and resources, and the alignment of the curriculum to those.")).

639. The district had to eliminate its violence prevention coordinator due to budget cuts. Deputy Superintendent Forgit explained that "[t]he violence prevention coordinator ran the alternative to suspension program. It began . . . in the middle of the day, and it ran into six o'clock at night, and it allowed these students to come to the high school for their

education, they engaged in a dialogue with this particular individual, to talk about things in life that are really causing frustrations on their part, and then they began their academics for the . . . remainder of the day." (T. 1928). The alternative to suspension program allowed students to receive more services during suspension to prevent them from falling behind. (T. 1937 ("[S]tudents would get more than two hours of instruction a day, and they would get their core. We would be able to provide them with lunch, get them the physical education program, get them all the education they could possibly need so they don't fall behind.")). The elimination of the coordinator and this program has led to an increase in out-of-school suspensions in the high school. (T. 1929).

640. The district had to eliminate its "safe room" program at the elementary level. This program prevented students who were removed from the classroom from losing instructional time and falling behind. (T. 1937-38 ("We currently have a safe program or safe programs in our middle schools and in our high school. It's when a teacher removes a student from their particular classroom, they go to a particular classroom where a teacher is housed in that room to continue with instruction to help the students along so that they don't fall behind in the instructions based on removal from the classroom. We had to eliminate the safe rooms at the elementary level. So . . . in our K-5 buildings, we no longer have a safe room. If a student becomes disruptive and is not allowing the teacher to really provide the instruction that's required in that classroom for the other students, and that student is removed by that particular teacher, they basically go down to the main office where they sit and wait for the next opportunity to reengage with the class. So that lack of instruction -- of an instructional person has a negative impact on those particular students who are losing that instruction time.")).

641. Plaintiffs expert Dr. Uebbing found that Newburgh has the highest level of need. (T. 2672). He further recognized that budget cuts over the past five years have had a devastating impact on students in the district. (T. 2668).

E. Niagara Falls

642. Over the past six years, Niagara Falls has had to cut 207.5 employees from the general fund budget, which does not include the significant number of employees whose positions were cut from the grant budget. (P.X. 67; P.X. 68; T. 1553-54, 1557-60). In addition to cutting fifteen (15) teachers, sixteen (16) teaching assistants, seven (7) senior school monitors, and three (3) pupil services assistants from the general fund budget, Niagara Falls has cut literacy and math coaches, Academic Intervention Support teachers in math and reading, parent advocates, parent support personnel, home school partners, discipline teachers, attendance monitors, truancy officers, and police officers from the grant budget. (P.X. 68; T. 1557-60). Despite the district-wide philosophy that every member of staff contributes to the academic achievement of students, the district was forced to make these cuts in order to try to close its budget gap. (T. 1544, 1554).

643. For financial reasons, Niagara Falls has had to severely reduce the number of people in its central office. (T. 1716-17).

644. Niagara Falls previously had department chairs in every subject. (T. 1722). Now, Niagara Falls is only able to have department chairs in science, social studies, English, math, special education and for guidance counselors. (T. 1722). The District cut the other department chairs as a cost-saving mechanism. (T. 1722).

645. The district cut 7 senior school monitors from the 2011-12 school year to present. (P.X. 68). Senior school monitors ensured that students got on and off the bus safely, supervised the lunch room, made phone calls home when students were late or absent,

and helped provide children with clothing when not fully clothed. (T. 1555). The monitors would also do outreach to pre-k parents to encourage enrollment in pre-k. (T. 1557).

646. The district cut 3 pupil services assistants since the 2011-12 school year. (P.X. 68). The district no longer has parent advocates. (T. 1580). Previously Niagara Falls had one school liaison in every elementary school in the District. (T. 1579-80). Currently, Niagara Falls does not have any school liaisons because their positions were cut for budgetary reasons. (T. 1579). Pupil services assistants, home school liaisons and parent advocates, who provided outreach to parents, by phone and in person, would help ensure children attended school and could encourage pre-k attendance. (T. 1557-80).

647. The district has reduced attendance officers from 3 to 1. Attendance officers go to homes to help ensure attendance (T. 1578). There is now one attendance officer for approximately 7,000 students. (T. 1710-11). Niagara Falls currently has an absentee rate of approximately ten to twelve percent (10%-12%). (T. 1577). Niagara Falls has more students in poverty than the other 10 districts in Niagara Country with seventy-five percent (75%) of students classified as economically disadvantaged students who qualify for free or reduced lunch. (T. 1560-61).

648. Niagara Falls has a twenty percent higher level of students in poverty than the next closet district in the county. (T. 1561). Even though students in poverty have a far greater need for smaller class sizes, Niagara Falls has had a significantly higher student-to-teacher ratio than the ten other districts in the county. (P.X. 11; T. 1561). During the 2013-14 school year, in Niagara Falls there were 15.7 students per teacher. (P.X. 11; T. 1560). In Niagara County, by contrast, there were 13.6 students per teacher. (P.X. 11; T. 1560).

The student-to-teacher ratio has increased—not decreased—over the last nine years in Niagara Falls even though student needs have become greater over the same period. During the 2006-07 school year, there were 14.7 students per teacher, as opposed to 15.7 students per teacher in 2013-14. (P.X. 11; T. 1562-63). In 2013-14, Niagara Falls had 12.2 total professional staff members per student, up from a ratio of 11.4 professional staff members per student in 2009-10. Niagara County, by contrast, had a ratio of 11.3 total professional staff members to one student in 2013-14. (P.X. 11; T. 1561-62, 1657-58).

649. At Harry Abate Elementary School in Niagara Falls, for example, there are about 25 students per kindergarten classroom. (T. 1531). Of those 25 students, 14 are considered to require the highest level of need or slightly below the highest level of need. (T. 1529-31). Currently, the only resource to assist the single teacher handling twenty-five (25) students per class "who have a lot of other needs" is a retired teacher comes into the building "twice a week for about 40 minutes total" and works with students categorized as the highest level of need "in groups of five," but this method is "absolutely not" sufficient to meet the needs of these students. (T. 1531).

650. State expert, Thomas Coseo, acknowledged Niagara Falls is the highest need district in Niagara County and that classroom teachers are the most important ingredient in education. (T. 3909-10). To get Niagara Falls' teacher-student ratio in line with the region, he noted it would have to hire 110 more teachers. (T. 3910). He further noted that small class sizes are critically important for primary grades, and they are more important for high need than low need districts. (T. 3919).

651. The district provides 410-420 children with pre-k. (T. 1556). However 555 students are in kindergarten. Thus, over 130 children are not being served by the district pre-k program. (T. 1556). Senior school monitors and pupil services assistants who used to be employed by the district were responsible for reaching out to parents to ensure that their children were attending school. (T. 1555, 1557). Staffing cuts that eliminated these positions have contributed to the district's inability to reach this sizeable cohort of children who are eligible for, but not receiving, pre-k education. (T. 1524-25; 1556-57). If students were to receive pre-k, they would do better academically later on. (T. 1556). As of October 2012, 16% of students in the Niagara Falls City School District were classified as students with disabilities. (P.X. 56; T. 1524). That number increased to over 17% by the 2014-2015 school year. (T. 1524.) The increase in the number of students with disabilities is directly attributable to the fact that students are entering Kindergarten with less preparation, resulting in greater deficiencies in their ability to learn. The achievement gap between their expected ability to learn and their actual performance is getting wider at an earlier age. (T. 1526-27).

652. At the elementary school level, in fall 2014, 217 out of 565 students entering kindergarten, or 38.4%, were in need of intervention services. (P.X. 66). Of these 217, 103 were determined, using the New York State Department of Education's Response to Intervention model, to be "tier 3," i.e. most in need of pull-out extra academic help (one step removed from being placed in a special education program); and 114 were determined to be "tier 2," still in need of pull-out extra academic help at least three times per week according to the Response to Intervention mandate, but not as severe as tier 3. (P.X. 66; T. 1529-30, 1571-72). At every grade level throughout elementary school,

there are roughly the same percentages of tier 2 and tier 3 students as seen at the kindergarten level. (T. 1571). The necessary academic intervention services ("AIS") for students identified by the RTI model are lacking in Niagara Falls. (T. 1574-75).

653. In a typical kindergarten class of 25 students, for example, 14 students would be either tier 3 or tier 2. ((T. 1531). The only academic intervention the district can afford, using its Title I grant money, is bringing in a retired teacher twice a week for the tier 3 children. (T. 1571). This teacher spends approximately 20 minutes each session, thus 40 minutes a week, with approximately 5 tier 3 children at a time, 36 weeks per year. (T. 1532, 1571). This intervention is inadequate. The tier 2 students receive no academic intervention, although they need it, according to the State Department of Education's designation of tier 2. (T. 1532). The lack of sufficient academic intervention for tier 3 children, and any intervention for tier 2 children, also makes it difficult, in a class of 25, for a teacher to differentiate instruction effectively. (T. 1532). The lack of sufficient services for tier 3 children, and any services for tier 2 children, exists not only in kindergarten, but is replicated in every grade throughout elementary school. (T. 1571). The low high school graduation rates in Niagara Falls, which have further declined in recent years, are a direct result of the lack of adequate supports at the elementary level; students with disabilities in their elementary years who do not receive proper, state-mandated interventions will continue to fall farther and farther behind as they progress through their educational career. (T. 1548).

654. The district used to have two ELA AIS teachers and two math AIS teachers in each middle (prep) school, covering grades 7 and 8. (T. 1570). This enabled teachers to identify the students most in need, to take them out of their home and career, family

consumer science classes and technology classes and put them in an academic intervention support classes, where they would get additional help in reading and math. (T. 1571). Now, the district can only afford one ELA AIS teacher who works in both middle schools. (T. 1620). The district was forced to cut math AIS in the middle (prep) schools entirely. (T. 1570-71). No AIS support is provided in the Social Studies and Science curriculum areas for students at either the elementary or prep schools. (C.X. 21, Statement, p. 14).

655. At the high school level, Niagara Falls is only able to offer AIS to ninth grade students. Those students only receive the services for forty-seven minutes, every other day. (T. 1681). The high school used to have a double math period, 90 minutes every day, for 9th graders in Integrated Algebra, which is not only critical because it is a Regents' exam that students must pass, but also because it is a gatekeeper course to upper level math in high school. The program was cut in 2008-09 for financial reasons. (T. 1683-84, 1686). The services provided to ninth grade students are inadequate, as evidenced by the fact that their passing rates on the two exams that most ninth grade students take (Integrated Algebra and the Living Environment) are lower than the state average. (T. 1681). The older high school students still need AIS, but Niagara Falls does not have the resources to provide those students any services. (T. 1682). Due to staffing curtailments at Niagara Falls High School, there are no AIS supports for grades 10-12 students in ELA or Math, or in areas where a student has failed a required Regent's exam. (C.X. 16, Statement, p. 11). In previous years, the school was able to provide some tutoring in social studies and math, in January and June, two weeks before the state exams in those subjects. The

school was able to provide this tutoring only when there was money left in the principal's budget to do so. (T. 1682).

656. Within the past five years, Niagara Falls has had to terminate its remediation programs such as before school, after school, and summer programs. (T. 1568-70, 1684). These programs provided remedial, enrichment, nutritional, and recreational opportunities for all students. (C.X. 16, Statement, p. 11). These programs are vital for all students, but especially for children coming into kindergarten identified as learning deficient), as 217 out of 565 students entering kindergarten in Fall 2014 were. (T. 1568-69; P.X. 66). These programs offer extended learning time that students need when they enter school with such a large achievement gap. (T. 1569-70). In addition to the extra academic support these programs provided, they were also a way to keep an extra set of eyes on children beyond the 9:00am-3:00pm school day, and a way to ensure they did not get disenfranchised from school. (T. 1570). However, since Niagara Falls lacks funds from its general budget and no longer receives robust grant money, it simply does not have the financial resources to be able to host these programs for those students. (T. 1569-70). There is a direct correlation between the loss of the extended time and declining student performance. (T. 1570).

657. The district has some summer programs for children but not at the same level as before the cuts due to resource curtailment. (T. 1631-33; C.X. 16, Statement, p. 11).

658. Niagara Falls was also forced to discontinue its summer bridge programs, which identified at-risk students in 8th grade and helped them transition to high school by providing pre-teaching (which has been proven more effective than remediation) and skill development. (T. 1684-86). It also enabled these students to develop relationships with

high school staff, which eased the transition from a 500-student middle school to the 2,000 student high school. (T. 1685). The program, which was effective in helping focus students on learning, was cut in 2011-12 for financial reasons. (C.X. 16, Statement, p. 11; T. 1686).

659. Because Niagara Falls has cut many of the programs providing AIS students in need, "a classroom teacher can have students who are reading and operating at one, two, three, sometimes five levels below standard, but also that teacher has students who are operating above standard[,] and students all in between." (T. 1686-87). As a result, "the ability for that teacher to differentiate instruction becomes very difficult as there are so many different target groups[;] that often times what happens is that there are groups that don't get the differentiation they need." (T. 1686-87). Therefore, not only are the students who require AIS receiving inadequate intervention services, but the academic needs of students who do not require AIS also are not being met due to the lack of AIS. (T. 1687).

660. Research shows that placing students with disabilities in a regular class setting with two teachers (a content specialist and a Special Education specialist) helps students with disabilities to achieve more academic success. (T. 1584-85, 1689-90). However, Niagara Falls is not able to provide those students with the two teachers necessary for the program; implementing such a program would require more Special Education teachers. (T. 1584-85, 1691-92). Instead, Niagara Falls places one teacher in each classroom with between twenty and thirty students. (T. 1585, 1689). The result of the district's inability to provide more effective academic programs to students with disabilities is that students

with disabilities have greater difficulty meeting academic challenges and are less likely to graduate. (T. 1692).

661. Niagara Falls has approximately ninety students who are ELL. (T. 1585). For those ninety students, there are three ELL teachers and one ELL associate. (T. 1585). Effectively, there is one ELL teacher for approximately thirty ELL students. (T. 1586). Previously, Niagara Falls had four ELL teachers, but for budgetary reasons, it was forced to terminate one of those positions. (T. 1586). Two of the ELL teachers work with the 60 ELL students in elementary school and one ELL teacher is assigned to the other 30 students who are split between the middle (prep) schools and the high school. (T. 1585). There is one period per day when high school ELL students meet with the ELL teacher. This is not adequate to overcome the language barriers they face. (T. 1692-93). A sizeable number of ELL students are also identified as being in need of Individualized Education Programs ("IEPs"). These students' needs are difficult for the district to meet given the tight ELL staff schedules. (C.X. 16, Statement, p. 12). Only 3% of ELL students scored "proficient" (a score of 3 or higher) on the New York State Department of Education's standardized English Language Arts test in 2014. (P.X. 56; T. 1553).

662. Niagara Falls High School has eight guidance counselors for approximately 2,000 high need students. A ninth counselor is designated for running a new community grant, meaning she is responsible for coordinating with outside agencies and reporting to the principal and deputy superintendent. (T. 1751, C.X. 16, Statement, p. 11). These counselors have demanding positions. (T. 1699). They serve as conduits of information between parents, teachers, and students. (T. 1699). They offer guidance in course selection. (T. 1699). They also provide college counseling to juniors and seniors at the

high school level, many of whom are the first generation in their families to attend college. (T. 1699-70). The parents of these students do not have the experience or capacity to guide their children through the college application process, which increases the workload of the guidance counselors in the district. (T. 1699, 1700). Even though they are not supposed to act as therapeutic counselors, with no social workers at the Niagara Falls High School and only 1.5 psychologists, whose workloads are consumed by Committee on Special ("CSE") meetings, the guidance counselors must assume duties that would ordinarily be assumed by social workers and psychologists. (T. 1698; C.X. 16, Statement ¶ 38). The American School Counselor Association recommends a ratio of 250 students per counselor. (T. 1658: 12-18; C.X. 16, Statement, pp. 11-12). In the district, the ratio of students to guidance counselors is 278.7 to 1. (T. 1658). "The intense needs of the students served in the [Niagara Falls City School District] should result in a smaller student to counselor ratio." C.X. 16, Statement, pp. 11-12; T. 1658-59). It takes extended time for guidance counselors to meet the needs of students living in poverty. (T. 1704-05). For example, just to help one student living in poverty to apply for financial aid can take fifteen to sixteen hours. (T. 1704-05).

663. Children in Niagara Falls deal with chaos in their personal lives, including hunger, inadequate clothing, alcohol and drug use in their family and violence. (T. 1673, 1576-77). School is often the only time some children eat, and where they can obtain adequate clothing. (T. 1576-77). Many children are raised in single parent homes. (T. 1673). Older children are often responsible for feeding and preparing younger siblings for school, as well as getting them to school. (T. 1694). These factors interfere with a student's ability to arrive at school on time, stay at school the entire day and focus on

academics while at school. (T. 1576, 1673, 1694). Many of the students require therapeutic intervention to overcome social/emotional issues and to be able to concentrate on their studies. (T. 1693-94). In Niagara Falls, which had a 17% suspension rate at the high school in 2014, students require strategies to handle problems before they escalate into suspensions. (T. 1695-96).

664. Previously Niagara Falls received an elementary school counseling grant that allowed it to hire three social workers. (T. 1584). Once that grant ended, after three years, Niagara Falls had to lay those social workers off. (T. 1584). Currently, Niagara Falls does not have any social workers in the district at any level. (T. 1584, 1697). Social workers could work with students facing social and emotional challenges in a one-on-one setting. They could also work with students in small groups and assist the families of at-risk students to connect them with outside agencies. (T. 1693-94). These measures would help at-risk students to overcome social and emotional barriers to learning so that academics could become a priority. (T. 1693-94). In addition, social workers can have a positive effect on attendance rates. (T. 1694). Niagara Falls has an absentee rate of approximately ten to twelve percent (10%-12%). (T. 1577). Social workers can reach out to families to make sure that children are attending school. (T. 1694-95). They could also improve attendance by connecting families with child care and other services that would enable older siblings to get to school without having to take care of their younger siblings. (T. 1694-95). Social workers could improve the suspension rate, which was seventeen percent in the Niagara Falls High School in 2014, by equipping children with problem-solving skills and anger management tools that would help to defuse situations before they escalate. (T. 1695-96). Social workers could also reduce the dropout rate, which

was twenty-two percent in Niagara Falls in 2014, by intervening with students who are falling behind academically early in their educational careers, before they get so far behind that they feel their only recourse is to drop out of school. (T. 1696-97; *see also*ˆ, T. 1674; 1676; P.X. 56).

665. The district also has a need for behaviorists, who are trained to deal with students' management and anger issues. (T. 1697).

666. According to the state's expert, Dr. Thomas Coseo, "Improving student attendance, reducing tardiness, and correcting the root causes for the high suspension rates would improve 'outputs.'" (C.X. 49, p. 9). According to the state's expert, Dr. Thomas Coseo, "Improving student attendance, reducing tardiness, and correcting the root causes for the high suspension rates would improve 'outputs.'" (C.X. 49, p. 9). A report cited by Dr. Coseo in his addendum recommends a continuum of supports in order to improve attendance, a continuum of supports. (C.X. 51, p. 74, FN 35). Principally, Niagara Falls needs more professional staff, such as social workers, psychologists, behaviorists, and more teachers to bring the student-to-teacher ratio down. (T. 1728).

667. The district used to have three attendance officers, home liaisons, and parent advocates. Seven (7) senior school monitors and three (3) pupil services assistants have been cut since the 2011-12 school year. (P.X. 68). All of these employees used to call and visit homes to ensure that children attended school. (T. 1557-60, 1578-79). There is now only one attendance officer in the entire district of 7,000 students. (T. 1710). Parent advocates and home liaisons have been entirely eliminated, further reducing the district's ability to ensure on-time arrival in school and attendance in general. (T. 1559, 1578, 1579-80).

668. The district's psychologists do not have the time for therapeutic intervention or counseling of students. (T. 1698, 1577). Neither teachers, nor guidance counselors, nor any other staff members are trained to conduct therapeutic intervention. (T. 1698-99). Thus, no one in the district can conduct therapeutic intervention or counseling for students. Moreover, there is no one to identify students who have social, academic or emotional problems that affect their studies, but who are not asking for help. (T. 1705-06). A large percentage of these students drop out. (T. 1698-99, 1705-06).

669. The district received a grant for three years to do limited mental health counseling in the high school, but will not serve all of the students who need intervention nor the range of intervention needed, nor does it provide a long-term solution. (T. 1706-07).

670. The district has been cited by the New York State Department of Education for disproportionality; i.e. suspending a disproportionate number of minority students with disabilities in comparison to the State average. (T. 1572). After three years of citations, for one year, the district had funding from the state to obtain support of the New York University Center for Disproportionality. (T. 1572-73). The district improved, and then the state removed the funding. Once the district lost the funding, the district was once again cited for disproportionality. It has been cited for the past two years. (T. 1573). There is a correlation between the number of suspensions and the high, steadily increasing dropout rate in the district because students who are not in school fall farther behind academically. (T. 1574, 1676-77).

671. There is a shortage of nurses. There are two nurses for 2,000 students at Niagara Falls High School, which is a ratio of one nurse to 1,000 students. (T. 1709).

672. There are 50-75 pregnant or parenting teens in the school district and one of the highest rates in the State of New York. (T. 1672). While Niagara Falls High School previously had a program for teen parents and pregnant teens (Center for Young Parents), the District was forced to cut that program in 2012 for lack of funding. (T. 1711). That program provided teen parents and pregnant teens with access to a counselor who helped the young parents arrange child care, transportation, and health care. (T. 1712). The dedicated counselor for pregnant and parenting teens connected young parents with agencies, provided parenting classes, ensured nutrition, health care and child care for the babies and transportation for the parents (T. 1712). Not only did this counselor help the young parents reduce those barriers so the parents could still come to school, but the counselor also helped reduce barriers once the young parents got to school. (T. 1712). The counselor would help the young parents find tutors if necessary and keep them motivated. (T. 1712). This counselor was effective in keeping pregnant and parenting teens from dropping out of school. (T. 1712).

673. Owing to the lack of department chairs, social workers, parent advocates, home-school liaisons, school monitors, attendance officers, security personnel, and other support staff, the principals' roles have expanded to address the student and school needs previously handled by these staff members. (T. 1701). In the elementary and middle schools, principals must spend an hour in the mornings addressing the social needs of children, before doing their work. (T. 1576-77). Their time to focus on academics and to be instructional leaders is limited by these other duties. (T. 1576-77). In the high school, the principal must interrupt his work every 47 minutes to monitor hallways since, as the school does not have a sufficient number of security officers due to budgetary

restrictions. (T. 1715, 1726). The high school principal also creates the master schedule, he is the liaison for the math department, he oversees the maintenance staff, he works with students and parents, and he oversees the athletic director. (T. 1724-25). He works 60-65 hour weeks, is at school at 6:00 a.m. and comes in on weekends (T. 1725). Owing to the other duties he must assume as a result of the shortage in staff in other areas, he still does not have time to visit classrooms and conduct follow-ups, beyond those required for teacher evaluations. (T. 1725). He does not have the time to adequately develop the relationships with his staff required for him to be an effective educational leader. (T. 1724-25).

674. Owing to the shortage of support staff such as social workers, teachers spend time looking for food, clothing or other supplies for students. (T. 1701). Teachers will meet with students before school, during lunch and during their prep periods to either help students academically or socially. (T. 1701). Thus, teachers have less time for their own preparation for classes. (Tr. 1700-01, 1575-77). "The role that the teacher plays has become greater and greater in doing everything for every kid." (T. 1575). As the "supports beyond the classroom teacher continue to be cut and whittled away," the teachers in Niagara Falls are less able to focus their attention on academics. (T. 1575). Rather the teachers become solely responsible for providing social and emotional support to the students. (T. 1575).

675. As a result of reductions to the number of people in its central office, the District is less able to implement professional development programs. (T. 1716-17). The district is able to conduct some professional development on the common core. (T. 1717-18). New York State mandates the common core standards but does not provide funding for

professional development to familiarize teachers with them. (T. 1718). Common Core professional development was 98% of the professional development in the high school in the 2014-15 school year. (T. 1717-18). The school does not have resources to conduct professional development on the latest brain research and its application to education, on differentiation in education, on de-escalation of situations, and on management skills. (T. 1717-19). The district needs, but does not have, resources from its general budget or adequate time to train teachers on dealing with students with disabilities, and dealing with students in poverty, which has become critical since the demographics of the district have changed over the years. (T. 1586-87).

676. There are inadequate security officers to cover the entire high school between periods when students pass through the halls. (Tr. 1716). The security officers that the school has are untrained members of the community. The reduction in security officers, from fifteen (15) to seven (7), with only five (5) on duty during the day. (T. 1715). The other two must cover evenings and weekends. (T. 1715). This reduction has diminished the district's ability to defuse situations that occur in the community and are brought into school. These security personnel used to provide this function on a wider basis when there were more of them. (T. 1715-16). Security in an inner city school is critical because if there is not a safe learning environment, learning does not take place. (T. 1713-16). The way the high school is configured, 5 security officers cannot cover the entire building in between periods, so administrators must do this job. (T. 1716).

677. Senior school monitors used to ensure that children got on and off the bus safely and used to supervise the lunch room, but those positions were cut for budgetary reasons. (T. 1555). Seven school monitors have been cut since the 2011-2012 school year. (P.X. 68).

678. Teachers in the high school can only purchase textbooks that stay in the classroom. (T. 1720). They cannot purchase enough for students to take home; therefore they cannot assign homework from the textbooks. (T. 1719-20). The high school library has inadequate books, which impacts the school's ability to enable students to become independent readers; something it must do to implement the common core standards. (T. 1719). Many students are behind in reading skills and come from literacy-poor backgrounds where they do not have access to books at home. (T. 1719). Therefore, if they cannot find the books that they need in the library, they will not have any access to them at all. (T. 1719).

F. Port Jervis

679. Port Jervis has a pupil need index of higher than 1.482. (T. 2831). This is higher than all other peer districts except for Pine Bush. (T. 2831). There is a "documented higher need in Port Jervis regarding issues that kids have to have attended to." (T. 2831). Therefore, instructional expenditures per pupil for Port Jervis School District ("PJSD") are insufficient once taking into consider "the specific needs that a high poverty low wealth district" has. The situation requires an expansion of the platform of services that Port Jervis is not fully providing. (T. 2832).

680. Only 34 students in Port Jervis attend pre-kindergarten ("pre-K"). (T. 2153). The district does not have the resources to provide pre-K. (T. 2153). Project Discovery," a Pre-K program only contains 36 slots, which means only a low percentage of eligible students can participate. (T. 2185).

681. The percent of the student population with disabilities has increased from 12.8% in 2009-10 to 17% in 2013-14. (P.X. 50, Fiscal Supplement 2009-10, Report card 2013-14).

682. Because of the large percentage of special education students, smaller class size is needed. A class of 20 can have "16 students who are special ed, that's a special ed class, that's not a regular ed class, and that might only have one teacher. It might not be an inclusion class. That's one teacher teaching a class made up mostly of special education students." (T. 2154).

683. Port Jervis does not have the full continuum of services for students with disabilities. For example, they do not offer a Multi-Intervention Program for Students with Autism Spectrum Disorder.(C.X. 12, Statement, p. 10).

684. RtI which is required by SED regulations, includes a full continuum of intervention services in order to be effective. Port Jervis does not have a full range of interventions for its students. The result it not enough options to keep a student from entering special education." (C.X. 12, Statement, p. 10).

685. Special education students would benefit from more Academic Intervention Services ("AIS") in math and ELA. (T. 4626).

686. Students in Port Jervis need extra academic assistance and for one-on-one attention in a smaller class setting can help them be successful. (T. 2154-55). If students in Port Jervis received more specialized attention, the 94% of 8th graders who are failing in math would improve their scores. (T. 2155). The same would be true in ELA. (T. 2155). Smaller class sizes at the elementary school level are especially important for economically disadvantaged students. (C.X. 12, Report, p. 27).

687. Port Jervis needs reading teachers. The ELA scores at the elementary level are atrocious. (T. 2158). Two to four reading teacher per grade at the elementary school level would

raise test scores. (T. 2158). A focus on literacy in small class sizes at the elementary school level is necessary to move children to proficiency. (T. 2838).

688. The district needs to reduce the size of AIS groups (C.X. 12, Report, p. 14). At the ASK elementary school, AIS classes are performed on stairwell landings (T. 4624).

689. At all levels, from grade three to eight, there is a need to provide Academic Intervention services for students who are not succeeding. (T. 2153).

690. "There is an urgent need in Port Jervis to add substantial levels of Academic Intervention Services for students at risk of academic failure. These services are required by SED regulations and could include smaller class sizes, additional time before and after school, small group or individual interventions or other specialized instructional approaches. Port Jervis is currently not staffed to provide AIS at the level necessary to meet student need and boost performance of students at-risk of academic failure." (C.X.12,Statement, p. 9).

691. Specifically, there is a need for improved academic intervention services for middle school students. (T. 2838). However, state budget cuts have instead resulted in sharp reductions to AIS. (C.X. 12, Report, p. 13).

692. State expert, Jeffrey McLellan, agreed that Port Jervis would benefit from additional AIS funding. (T. 4625).

693. There are limited resources to provide for training opportunities for the teachers. (T. 2161). If Port Jervis had the resources, it could pull teachers out for a half a day or day of training, and send more teachers to conferences. (T. 2160).

694. Port Jervis City School District ("Port Jervis") lacks the qualified teachers and support staff to provide at-risk students with an expanded platform of services, including: extra-

periods or time during the regular school day, with in-class staff to work with students in small groups or one-on-one; before- and after-school academic instruction; and summer school." (C.X. 12, Statement, p. 9).

695. From 2010-11 to 2014-15, Port Jervis had cuts to teaching staff. (T. 4600-01).

696. State expert Jeffrey McLellan recognized that Port Jervis lost over ten percent of its staff in one year. (T. 4602).

697. Several years ago Port Jervis was forced to cut significant amount of extracurricular activities due to lack of funding. (T. 2218).

698. Because of the high poverty in Port Jervis, children bring outside issues with them to school, and also arrive at school in Kindergarten unprepared, such as in language acquisition. (T. 2832). Accordingly, the district needs to provide an expanded platform of services. (T. 2832). Port Jervis lacks wrap-around services, including after-school programs, child care, someone who could link parents with outside agencies that could provide them services, and parental training to help parents support their children in their education (T. 2835-36).

699. As Plaintiffs expert Dr. Stephen Uebbing observed: "[i]n my interactions with Port Jervis school and district leaders, one of the most consistent concerns was for a shortage of qualified school social workers in the district. Given the shortfall in school social workers, counselors and a very thin administrative structure overly stressed by new APPR regulations, Port Jervis cannot meet the requirements for sufficient family outreach and communication (C.X. 12, Report, p. 22).

700. "PJSD does not have programs specifically oriented to supporting students who are at risk of dropping out of school." (C.X. 12, Statement, p. 10).

701. "PJSD has only four social workers to serve the entire district, a level clearly insufficient to provide supports for students with health, emotional, behavioral and other problems that impact student academic performance and result in absenteeism and reduced instructional time in class…The National Association of School Social Workers recommends a ratio of one school social worker for every 250 pupils in an average need districts. The existing ratio in PJSD, a high need district, is approximately 1:700, far in excess of the levels needed to properly serve PJSD's sizeable at-risk student population." (C.X. 12, Statement, p. 8).

702. There is only one social worker at each building, meaning that there are only four social workers in total in the district. This is insufficient to meet the needs of the district. (T. 2155.) Students with IEPs have mandated counseling anywhere from once a week to three times a week. (T. 2156). This takes up most of the time of our school psychologists and social workers. (T. 2156). There is no additional time to help others. (T. 2156). Other students in the district have psychological and social needs as well. Many of Port Jervis' students lack the basic needs of life, like food and clothing. (T. 2155). There are students who come to school not having slept in a bed the night before. (T. 2156). There are students who have one or two of their parents in prison. (T. 21556). Many other students are being raised by grandparents. (T. 2156). Port Jervis has students that, if they aren't fed at school, they don't have a meal at home. (T. 2156). Students are burdened with so many other things that for them schooling is at the bottom of their list. They just can't get to it. (T. 2157). There is no budget for more social workers. (T. 2157).

703. Guidance counselors focus much of their time on mental health counseling, limiting their ability to provide academic counseling. (T. 2158). Port Jervis needs crisis counselors

because students have to deal with so much baggage. (T. 2158). PJSD needs additional counselors to work with students to improve its graduation rate. (C.X. 12, Statement, p. 10).

704. "The Port Jervis Middle School, unlike most middle schools, is in a building that only has space for the seventh and eighth grades. This limitation means there is a constant churn of students through the school for just two grades, making it difficult to create the stability needed to address the needs of students during this critical point in a child's educational and developmental experience." (C.X. 12, Statement, p. 5). The Port Jervis Middle School was built in 1922. (T. 2161).

705. At Port Jervis Middle School "there is no space for assemblies, school performances, school-wide meetings and other essential activities necessary to foster a strong school-wide environment." (C.X. 12, Statement, p. 6).

706. At Port Jervis Middle School "[t]here are no appropriate rooms for guidance counselors. Guidance counselors are consigned to makeshift closet size offices in the balcony space of the former auditorium, where there are no windows and no privacy." (C.X. 12, Statement, p. 6).

707. The cafeteria is on the third floor of the middle school, in contravention of current standards regarding accessibility and safety (T. 2162-63).

708. "The gym [at Port Jervis Middle School] is undersized, and has no space for spectators, poor acoustics, and an uneven and unsafe floor. The gym is inappropriately located in an academic wing. Noise from the gym transmits to first floor classrooms." (C.X. 12, Statement, p. 6).

709. The library at Port Jervis Middle School "is undersized, uninviting, poorly equipped, and lacking in the books, media and technology necessary to support current academic programs. The space is grossly inadequate as the library/media hub for the school's academic program." (C.X. 12, Statement, p. 6).

710. Science "classrooms [at Port Jervis Middle School] lack adequate space for preparation, experiments and storage, encroaching on the space available for student instruction." (C.X. 12, Statement, p. 6).

711. At Port Jervis Middle School the floors are "not level throughout the building, creating a physically challenging and unwelcoming environment for students and faculty, especially students with physical disabilities." (C.X. 12, Statement, p. 7). There is a continuous crack running along the third floor of the middle school building. (T. 2162; P.X. 92). Because of shifting, the floors in the middle school are cracking and replacing the tiles on the floor is only a stop-gap measure because they will crack again because of the shifting. (T. 2163). Asbestos levels prevent significant building improvements in the Middle School. (T. 2164).

712. The middle school is not adequate for continued long term use without major renovations or replacement. (T. 2819).

713. At the ASK elementary school, AIS classes are performed on stairwell landings (T. 4624).

714. The security in the middle school is inadequate as there are no cameras, and no other security measures to stop intruders from entering. Only one person is stationed at a single security checkpoint." (C.X. 12, Statement, p. 7).

G. Poughkeepsie

715. Poughkeepsie has reduced approximately 130 total staff over the past five years (2009-2014). This figure includes administrators, teachers, support staff, security personnel, and monitors. Budgetary cuts were the sole reason for the layoffs. (T. 332-33). The State expert for Poughkeepsie acknowledged that budgetary constraints have led to a significant reduction in the level of services and number of employees in Poughkeepsie. (T. 3593). Dr. Wozniak states that 115 staff positions were cut in the three years prior to her report. (C.X. 2, Report, p. 31).

716. Over 100 teachers have been cut in the past five years in the district. (T. 95-96). From 2008-2009 through 2012-2013, nearly 50 teaching positions were cut from the district. (P.X. 1). Teachers were cut in Poughkeepsie due to inadequate funding and the gap elimination adjustment funding cuts. (T. 106).

717. The State expert for Poughkeepsie admits that Poughkeepsie has lost 11% of its teachers from the years 2008-2008 to 2011-2012. The state's expert also agreed that the staff cuts in the district have had an effect that no one would want. (T. 3580). The state expert also testified that the ratio of students to teachers in Poughkeepsie increased after the budget cuts. In other words, one teacher was responsible for teaching an increasing number of students. The state expert admitted that the cuts occurred at a time when the needs of the Poughkeepsie student body were increasing. (T. 3587-88).

718. There are not enough teaching assistants as a result of budget cuts. (T. 33839).

719. Each guidance counselor is responsible for 300-325 students. This high ratio is caused by a shortage of funds. (T. 148).

720. Poughkeepsie used to employ district advocates who would serve as community liaisons for the parents in the district. However, "those services are no longer utilized at a time

when we need to engage our parents even more," due to lack of funding for the position. (T. 333-35).

721. There are only five social workers to serve 4700 students in the district. (T. 385). There is one full time social worker at the high school and one at the middle school. The other three rotate throughout the district. (T. 347-48). The high ratio of students to social workers causes student needs to go unmet, and there are occasions when a social worker is not available at a particular school because his or her schedule calls for them to be at another building. (T. 348; 386-87). Dr. Wozniak recommends adding an additional social worker to work full time at the high school. (C.X. 2, Report, p. 20).

722. The student-to-counselor ratio is approximately 1:300-350. A single counselor is responsible for over 300 students at each grade level in the middle school and high school. (T. 352). Lack of funds is the primary reason for the high student-to-counselor ratio. (T. 353).

723. There is also a need for dedicated Spanish-speaking counselors for the district Spanish speaking population. (T. 1334). Currently, the district relies on translators, which can complicate the counseling process when sensitive issues are being discussed with students and families. (T. 1334).

724. A 2008 review by the State indicated that Poughkeepsie required additional dually certified special education teachers, English as a Second Language teachers, English language arts coaches, and additional support staff. (C.X. 2, Report, p. 18).

725. A state review conducted of the High School in 2011 indicated that school-wide behavior issues and school improvement initiatives have prevented administrators from conducting the appropriate number of in-classroom observations. (C.X. 2, Report, p. 18).

726. A state review conducted of the Middle School in 2012 stated that teachers and school leaders needed increased support and training with regard to the Common Core Learning Standards. (C.X. 2, Report, p. 21).

727. There is not enough staff to offer Math Academic Intervention Services to all students who qualify for it at the Middle School. (C.X. 2, Report, p. 22).

728. Peggy Wozniak recommended that two full time literacy and math coaches be added to improve basic skills at the George Clinton Elementary School. (C.X. 2, Report, p. 24).

729. Dr. Wozniak stated that there was not enough adequate staff to meet the needs of English Language Learners at the Early Learning Center. (C.X. 2, Report, p .25).

730. For Poughkeepsie class sizes for the common branch category (i.e., self-contained classes in Grades 1-6; Grade 8 English, Math, Science, and Social Studies; Grade 10 English, Math, Science, and Social Studies) grew from an average of 20 students in 2006-2007 to the current high of 25 students in 2012-2013. (P.X. 1).

731. Because of cuts to staff, third and fourth grade class sizes in the district now exceed the contractual limits the district has in place with its teachers and there are now 30 or 31 students in numerous elementary classes. (T. 148, 281).

732. Despite having a much more needs-intensive student population, Poughkeepsie has the same teacher-to-pupil ratio as other wealthier districts in Dutchess County. (T. 278).

733. High class sizes impede a teacher's ability to provide the kind of individual support that students, particularly high-needs students, require. (T. 150, 285-86). Cuts of over one hundred teachers in recent years have had an impact on class size, the quality of instruction, and the ability to offer academic intervention services and other services to high need students. (T. 150-51). Further, students who in fact receive the individualized

attention and additional resources that small class sizes provide, demonstrate success in this environment. (T. 1463-64).

734. State expert Roger Gorham noted that Poughkeepsie has experienced financial difficulties as have virtually all districts as a result of the Gap Elimination Adjustment and Poughkeepsie needed to make staffing cuts. (T. 3579). From 2007-08 to 2011-12, he acknowledged that Poughkeepsie lost 11% of its teachers. (T. 3580).

735. Gorham acknowledged that staff cuts districts have had to make in recent years have had an effect no one would want. T. 3580. "[D]o [the cuts] hurt? Certainly they do. No question about it." (T. 3580).

736. Gorham noted that there are inherent benefits to smaller class sizes. (T. 3584). Poughkeepsie lost staff as a result of budget cuts. (T. 3586). Gorham acknowledged that the teacher-student ratio went up over time as the student needs were increasing. (T. 3588).

737. School facilities in Poughkeepsie are in a state of disrepair, and buildings have been shut down due to facilities issues and classroom locations have been rescheduled due to mold and mildew issues. (T. 96-97, 328-29; C.X. 2, Report, p. 27).

738. Buildings in Poughkeepsie are 79.8 years old on average, and boilers are 30-50 years old on average. (T. 96, 328-29). Roofs in school buildings leak on a daily basis. (T. 97). Old T-1 lines in school buildings falter when weather conditions are poor. (T. 112-13).

739. Clinton Elementary School in Poughkeepsie was erected in 1912. (T. 115). In the previous year a class of students at Clinton Elementary had to be moved from the basement due to mold and poor air quality. (T. 116). Floors at Clinton have buckled due to rain, and there are air quality problems at the school. (T. 117, 120).

740. Poughkeepsie's superintendent and president of the board of education each estimated that it would take approximately $70 million to bring the buildings in the district up to minimum standards. (T. 117, 329-30; C.X. 2, Report, p. 27).

741. The gym at Poughkeepsie's Early Learning Center has been converted to a cafeteria, and there is no age-appropriate playground. (T. 327).

742. Buildings in the Poughkeepsie are not compliant with the needs of students with disabilities. (T. 380-81).

743. Thurnau confirmed that, in Poughkeepsie, eight of eight student-occupied buildings assessed had an overall building rating of unsatisfactory. (T. 4347).

744. Approximately only 163 out of 266 classrooms in Poughkeepsie have some SMART board technology and on average these SMART boards are almost 7 years old. (T. 122).

745. There is approximately a 2 to 25 students to computer ratio at the middle school, as well as limited computers at the elementary level. (T. 24, 231-32, 299).

746. Some computers within Poughkeepsie, such as those at Morris Elementary, are earmarked for specific, limited purposes, such as standardized testing. (T. 232-33). Approximately 30-35 computers in the district can only be used for common core testing. (T. 349).

747. The President of the Board of Education of Poughkeepsie called the state of technology in the district embarrassing and stated that he was ashamed by it. (T. 353-54).He further stated that the district does not have the access or capability to provide 21st century technology. (T. 355).

748. Technology failures in Poughkeepsie have caused missed days of school. (T. 279-280).

749. There are no art rooms at the middle school. (T. 25).

750. Science labs in Poughkeepsie are not fully equipped. (T. 20).

751. Library books throughout Poughkeepsie are outdated, with some books dating as earlier as the 1970's and 1980's. (T. 352).

752. A 2012 state review of the Middle School stated that there is limited access across all grade levels to technology and resources in the classroom. (C.X. 2, Report, p. 21).

753. Dr. Wozniak stated that the science labs and library media center at Poughkeepsie Middle School have inadequate resources and technology for student use is limited. (C.X. 2, Report, p. 22). She further stated that textbooks are outdated at the Middle School and that fine arts materials are either outdated or lacking. (C.X. 2, Report, pp. 22-23).

754. A 2012 state review of George Clinton Elementary School found that there was a limited number of desktop computers in classrooms (1-3) and that there was a need for more computers and handheld devices in classrooms at the school. (C.X. 2, Report, p. 24).

755. There is neither a dedicated library nor appropriate play equipment at the Early Learning Center. (C.X. 2, Report, p. 26).

756. The state's expert agrees that teachers, in order to reach their potential, may need coaching, assistance, and additional resources, which he recognized cost money. (T. 3633-64).

757. The new Common Core standards require professional training in order to be successfully implemented. Trainings such as these may occur during the school day, which means that the district will have to pay for a substitute on those days. (T. 1496-99).

758. The state's expert testified that more money can make a difference in teaching skills, and that Poughkeepsie would be better off if it received more money than it currently was receiving. (T. 3610-11).

759. A 2012 Middle School Quality Review by the state said that budget constraints have caused limited opportunities for after-school academic and extracurricular programs. (C.X. 2, Report, p. 22).

760. $50,000 was cut from extracurricular activities by budget cuts for year 2013-2014. (C.X. 2, Report, p. 31).

761. Dr. Wozniak reported that the Homework Center at the Middle School is no longer open for drop-in help by teachers at the time of her site visit in December 2012. (C.X. 2, Report, p. 22).

762. Poughkeepsie has been out of compliance with standards for students with disabilities for the past five years. (T. 157, 386).

763. Poughkeepsie is also out of compliance with respect to its special education program and the president of the board of education stated that lack of funding was the "whole reason" as to why more special education professionals hadn't been hired. (T. 344-45).

764. Poughkeepsie's special needs programs are at capacity, which requires some special needs students must attend programs outside of the district. (T. 140-41, 381-82).

765. Special education expenditures in Poughkeepsie are below similar district averages as well as below the statewide average. (T. 401-02). Poughkeepsie spends over $1300 less than the statewide average on students with disabilities. (C.X. 2, Report, p. 28).

766. Poughkeepsie is unable to offer the extended learning day at the high school. (T. 356).

767. Poughkeepsie's summer course offerings had been dramatically reduced due to budget constraints. (T. 356).

768. Poughkeepsie used to offer an alternative program for students with special emotional needs. The program was cut due to budget cuts. Students who would have been in the

alternative program are now placed with students in classrooms in the general population, which are not as attuned to those students' special needs and has a disruptive effect on students in the general population. (T. 359-60). According to an October 2011 review by the State, teachers reported that the cut of the alternative program lead to an increase in disruptive behavior throughout the High School. (C.X. 2, Report, pp. 18-19).

769. Approximately 90% of the students in Poughkeepsie are entitled to AIS. (T. 136). Poughkeepsie has been out of compliance with AIS services for the past seven years. (T. 140, 345-46, 361, 384). Despite the fact that 90% of students in grades 3-8 are eligible for AIS due to their performance on standardized tests, "[n]o where near" the number of students who are eligible for AIS are receiving it. (T. 361).Poughkeepsie was out of compliance with respect to AIS due to inadequate funding. (T. 347).

770. Poughkeepsie has a diverse language population with 13 to 14 languages spoken by students in the district. (T. 155).The Hispanic/Latino population in Poughkeepsie has grown from 18% to 30% from 2006 to 2014, heightening the need for adequate ELL classes. (P.X. 1). Both the superintendent and the president of the board of education testified that Poughkeepsie is out of compliance with respect to ELL state requirements. (T. 156, 342-43). Poughkeepsie is not currently able to provide the types of dual-language programs necessary for the number of native Spanish speakers in the schools. (T. 156-57). In order to achieve compliance with respect to ELL students, the Poughkeepsie would need to hire more staff, but does not currently have the funds to do so. (T. 343-44).

771. Approximately four years ago, the kindergarten program in Poughkeepsie was cut from a full-day program to a half-day program due to budget cuts. (T. 102, 320-21).

Poughkeepsie is the only district in the Hudson Valley without a full-day kindergarten program. (T. 102, 320-21). A half-day of kindergarten poses difficulties for parents, especially in low income districts, because it is difficult to find half-day transportation and child care arrangements. (T. 322-23).Some families chose not to participate in the kindergarten program due to the fact that it was not a full day program. (T. 1427, 1440; C.X. 2, Report, p. 25).

772. Plaintiffs' expert Dr. Wozniak called the cut to the full-day kindergarten program "one of the biggest deficiencies in the district." (T. 1494). Plaintiffs' expert Dr. Peggy Wozniak testified that students from low-income backgrounds especially benefit from a full day of kindergarten because of the importance of education in the formative years of a child developing core reading, oral language, and basic math skill. (T. 1494). Dr. Wozniak testified that the differences in children who have had full-day kindergarten as compared to those who have had only a half-day can be "shockingly different" with the risk that students will not be able to be proficient by the time of their third grade Common Core learning assessments. (T. 1495).

773. Vanessa Weeks, the Director of Special Education in Poughkeepsie testified that students with disabilities are also better served by a full day of kindergarten as the half-day program does not leave sufficient time for regular academic courses for students with disabilities after completing their individual education programs. (T. 382-83).For all students, a full-day kindergarten program would allow for more time for services to be offered and remediate weaknesses at an earlier age to improve outcomes at the high school level. (T. 387).

774. Poughkeepsie had to cut the number of places from 40 students to 10 in the BOCES program, offering technical education programming for students interested in careers such as nursing and cosmetology. (T. 153).Other vocational programming providing students with alternative opportunities have been cut over the past 5-7 years. (T. 332, 330-31).

775. A 2012 state review of the Middle School stated there was limited availability of instructional materials to support learning for students with disabilities and students with language-based needs. (C.X. 2, Report, p. 21).

776. According to the superintendent of Poughkeepsie, the $16 million that was slashed by the state would have helped bring the district into compliance with respect to students with disabilities and other high-needs groups. (T. 159-60).

777. The principal of the High School stated that budget cuts caused the loss of three security staff. (C.X. 2, Report, p. 19).

778. The state's own expert agreed that more resources would be beneficial to Poughkeepsie and that if Poughkeepsie had more money, the district would be able to save programs from elimination and could have smaller class sizes. (T. 3607-08).

Utica

779. Utica Superintendent Bruce Karam recognized that Utica faces major challenges, including financial challenges, student safety and discipline and "meeting the needs of our at risk and high at risk very needy student population." (T. 617-18).

780. Utica lost 292 staff members (23.7% of its total staff) from 2007-08 to 2012-13. (C.X. 40, p. 21; C.X. 42, p. 6).

781. The State's expert acknowledged that Utica had to cut 11 percent of its teaching staff in one single year due to budgetary reasons, even as it had an increasing student population.

(T. 3662-65). The State's expert also acknowledged that this cut was "dramatic" and "detrimental." (T. 3664-65). There was no educational reason for the cuts, which were made solely for budget reasons. (T. 469, 486-87).

782. Over the five years from 2010-2011 through 2014-2015, Utica had to cut 364.6 positions in total, including the following (P.X. 44):

Position	**Number of Staff Cut**
Administrators	23
Elementary Teachers	70
Elementary Facilitators	5
Secondary Teachers	58.6
Secondary Facilitators	3
Special Education Teachers	16
Physical Education	9
Social Workers	16
Guidance Counselors	12
Attendance Officers	3
Psychologists	5
Teachers of the Visually Impaired	1
Teacher Assistants	41
Clerical	24
Part-time Clerks	28
Custodial/Maintenance	10
Parent Liaisons	9
Literacy Coach Consultants	2

Position	Number of Staff Cut
Academic Intervention Services (AIS) Teachers	11
Project Alert/Science Facilitator	.5
ESL Facilitator	1
Reading Teachers	16.5
Total FTE	364.6

783. The secondary teachers cut included: reading teachers, teachers that provided additional AIS services, English and Math program elective teachers, language programs, social studies teachers, and science teachers. (T. 468-69).

784. The special education teachers that were cut worked particularly with students who had a difficult time adjusting to a special education classroom or a resource room. (T. 471). ("[T]he majority of [special education teachers cut] were what we call alternative education transition special education teachers, so they worked with special ed students who had a very difficult time, adjusting to a special education classroom or a resource room, and the regular classroom for behavioral needs, so those classrooms were small and they were transition programs, in the middle school and high school, to work with this really high needs group of special education students.").

785. Utica cut twenty-three administrative positions over the last five years. (T. 456). The administrative positions included central office positions such as: supporting administrative staff, assistant principals, a CSE chair, the ESL director, the fine arts director, and the Director of Athletics. (T. 457).

786. Without the assistant principals, the principal now has the burden of dealing with disciplinary issues for nearly 800 kids. (T. 457-58). Utica's Director of Early Instruction

Lori Eccleston explained: "[n]ow it's incumbent upon him or her to do all of that in the building and that impacts the administrative cuts." (T. 457). As the Utica Superintendent Bruce Karam noted: "now that means the principal has to step up, maintain the law and order and enforce the student code of conduct, over which takes a lot of time, during the day, and then on top of that having that tl [sic] do the rest of their principle duties which would include, evaluating teachers, okay, managing the rest of the school staff, okay, and all the other functions that they do, have their meetings, and so on and so forth, okay." (T. 630).

787. The role of principals is essential but they no longer have the time to give feedback and coach teachers on improving their instructional skills. (T. 1497). As Plaintiffs' expert Dr. Peggy Wozniak explained: "[t]he role of principal, assistant principal in this model is very, very important. It's not just coming in and scripting a lesson you saw someone do. It is how do you give them feedback and coach them to improve their practice and have better instructional skills so the student output is better? That takes training of administrators too." (T. 1497).

788. With no athletic director, the Director of Early Instruction must oversee the athletic department notwithstanding, even though she is not particularly qualified or trained to do so. (T. 472).

789. As a result of the cuts, guidance counselors have caseloads of over 400 students. (T. 476).

790. Five psychologists have been cut in five years, leaving only eight. (T. 478). As a result of the cuts to psychologists, there's one psychologist in the high school for about 2800 students. (T. 478). The psychologists were responsible for a large caseload of mandatory cognitive testing, achievement testing and reevaluations for students with disabilities. (T.

478). The reduction in the number of psychologist was made for budgetary reasons (T. 479).

791. Teaching assistants were also cut, putting the school in noncompliance with the State Commissioner's regulations for students with disabilities' student – to – teacher ratio. (T. 480). Many of the teaching assistants providing ELL and AIS services were also cut. (T. 480).

792. Last year, Utica had to cut administrators for budgetary reasons. (T. 629). Cutting the administrators reduced the district's ability to monitor instruction from a central office location or at school, or to oversee certain departments in the schools. (T. 637). If the district had the personnel to monitor instruction more closely, it would improve student test scores and graduation rates. (T. 638).

793. The part-time clerks that were let go aided the secretaries by doing ancillary job duties around the office, allowing secretaries to go to lunch and work with principals. (T. 481-82).

794. Not only has the district been forced to reduce its staff, but the student body population for the district is larger than before the cuts began and is only getting larger. (T. 492).

795. In 2013-2014 Utica's average class sizes were much higher than those in the surrounding county and region (P.X. 12):

	Utica	**Oneida County**	**Upper Mohawk Valley Region**
Kindergarten Class Size	28.5	21.2	20.5
First Grade Class Size	27.7	20.9	20.5
Common Branch (1-6) Total Class Size	26.3	21.5	21.1

796. In the 2014-2015 school year, all of Utica's kindergarten classes were at 30 students or higher. (T. 461).

797. There are also first grade classes and second grade classes with 30 or high students. (T. 461).

798. Class sizes of 30 or higher pose not only educational risks, but fire safety issues as well. (T. 461).

799. Classrooms spaces are not adequately equipped for the large class sizes. (T. 460).

800. Most of the classrooms in Utica exceed 30 students, which according to the Director of Early Instruction is "not educationally sound." (T. 460).

801. Many children come to kindergarten form the City of Utica with a developmental age of two-and-a-half, and they need to acquire all kinds of functional skills to bring them to the level of their peers. (T. 463-64). If children do not get extra attention and intervention in the early years, and do not develop appropriate skills, they never really acquire the foundation to move to the next level. (T. 464-65). Consequently, not only do they do poorly on state tests, they are also often identified as students with disabilities. (T. 465).

802. State expert Roger Gorham stated that 28 students are more than he would want in his kindergarten classes. (T. 3673). Gorham also acknowledge that Utica's 27.7 average students in first grade also gives him "concern." (T. 3678).

803. Gorham acknowledged that Utica's ratio of staff to students is a reason for concern. (T. 3685-86).

804. Gorham acknowledged that additional funding would enable Utica to hire more teachers, bringing down to bring the student-to-teacher ratio, providing students with a better education. (T. 3689).

805. Gorham acknowledge that additional resources would improve the quality of the teachers and the school leadership. (T. 3702). Gorham also acknowledged that additional resources are needed for Utica's high-need student population. (T.3669-3670).

806. Gorham agreed that Utica's loss of eleven percent of its staff in one year was "dramatic" and detrimental. (T. 3663-65). Specifically, he recognized that Utica's cut of 70 elementary school teachers over five years was a "dramatic number." (T. 3666). Gohram also recognized that the Utica staff was decreasing as the student population increased and that "[a]s time goes on, the issue has become more critical." (T. 3668-69).

807. Money that was originally allocated to fund building upgrades and improvements has instead been spent to fix deteriorated walls, a sudden roof collapse, and removing asbestos. (T. 505 ("[T]hey found the roof was significantly deteriorated so what they had to do is it was to amend what they were doing, for that building, and funnel more money in to repair the roof and many of the buildings were undergoing the project had significant asbestos, and they have to have had abatement jobs done and so that's taken more of the money that was funded originally and designated for the building itself.")).

808. Elementary school facilities will not be upgraded to adequate and appropriate levels. (T. 507-08).

809. At one school in Utica, the Curran School the roof "is so unsafe they have to close off some sections." (T. 544).

810. Thurnau confirmed that, in Utica, seven out of seven student-occupied buildings assessed had an overall building rating of unsatisfactory. (T. 4444).

811. Utica lacks full physical education program for its elementary students and instead requires classroom teachers provide physical education in the classroom. (T. 490-91).

812. The middle and high school kids receive physical education in class sizes of 45-50. (T. 491).

813. The twenty-eight hundred high school students have their art elective facilitated by four art teachers. (T. 492).

814. Utica is not in compliance with the State's own regulations regarding Academic Intervention Services ("AIS"). (T. 467). The only way to come into compliance would be to hire more teachers and staff. (T. 466-68, 494).

815. Utica had to cut its academic intervention science and social studies programs at the high school. (T. 493). These programs helped kids pass the state mandatory Regents exams to graduate from high school. (T. 494). The result is that more kids will fail the Regents and less will graduate high school than before. (T. 495).

816. Utica also had to cut programs that were necessary to comply with the State's own regulations regarding AIS. (T. 467) ("[W]e've had to cut programs, we have had to cut reading teachers who did direct face-to-face instruction with the most intense needs, high intensive AIS students who were identified as needing high intensive needs and we have had to cut AIS teachers and that also worked with small groups of students.").

817. AIS teachers have now had to double-up on providing AIS services at multiple levels of intensity. (T. 467). ("So the class of teachers are now providing AIS services to the two level of AIS intensity, and we are using some TA's to pitch in and help and work under the auspices of the classroom teachers, but they have to provide AIS services within the regular classroom.").

818. Teachers whose previous job was to provide AIS academic intervention services, and had the most success at it, were "rewarded" by now being forced to serve as general

classroom teachers. (T. 493-94). Students who needed remedial services were than lumped into the general class. (T. 493-94 ("We had to reduce the teaching staff so how we did that was to take teachers who had made a state scheduled teaching goal teaching students, AIS students, we combined those schedules with their teaching only actual classes in social studies, global studies I & II, US History that kind of thing, any of the remedial classes were cut and any staff that as of a result of cutting of those programs, were let go.")).

819. The elementary summer program was cut for budgetary reasons. (T. 503 ("[W]e used it as a program for students who were not only failing in the elementary schools, students were promoted for skilled development, we introduced the students in those programs to the next year's beginning curriculum so they can get a head start in school and kids at risk.")).

820. Utica also had to cut a young scholar program for at-risk students. (T. 495-96). Students that graduated from the young scholar program were given a full scholarship to Utica College to further their education. See Testimony of Director of Early Instruction Lori Eccleston, (T. 496 ("[I]f they graduate with a Regents diploma or an advanced Regents designation, they're taken to Utica College and their education is paid for, at risk students only, and we provided the majority of the funding for that program, and we cut $250,000 which was left for that program.")).

821. Utica cut a night school program for at-risk students. (T. 497-98). The night school program gave alternate education to single parents, students that were mothers, kids who were absent during the day, and a served as a credit recovery for students who were missing credits to graduate on time. (T. 497-98). Utica found "success" because the

program provided students with small group supervision at night. (T. 499). The program accommodated troubled students and Utica's demographic subgroups (T. 500). The program was cut in 2012-2013 for budgetary reasons. (T. 500).

822. Another important service had to be cut, was an alternative education transition program designed for students who could not function in a traditional large school setting, including special education students. (T. 498). The program provided "the structure of a smaller classroom" for those students (T. 501). Additionally, the program had "an on-campus probation officer, that worked with those students, social workers that worked with the students and teachers that were pushed into those classrooms and worked with those kids." (T. 501-02).

823. Elementary facilitators were also amongst the cuts for budgetary reasons. (T. 466). Elementary facilitators oversee reading teachers and AIS teachers and oversee implementation of the AIS program for students in need of AIS services. (T. 466). Elementary facilitators also managed all of the testing procedures required by the State. (T. 466).

824. Utica does not have the resources to provide ELL services in all the 42 different languages spoken by students. (T. 439). ELL classes are necessary to help refugee students assimilate and become functional members of the community. (T. 439).

825. The guidance counselors that were cut provided student scheduling services, career planning, addressed attendance issues and supported at-risk students. (T. 476). Due to cuts in staff, guidance counselors have caseloads of over 400 students. (T. 476). Due to cuts and increased caseload, theye have also have been reassigned, preventing students from the having continuity of services which can be benfit at-risk students. (T. 476).

826. Utica cut nine parent liaisons that were responsible to contact parents and meet with them to bridge the information gap between a student's performance in school and his needs at home. (T. 482 ("[T]he parent liaisons performed a really important duty, in that they reached out to parents, they made contact with parents, many of our parents don't have phones, many of our parents don't have transportation so the family liaison would go out to the home and meet with the parent, to give parents a letter about what's happening with the kids, and often times bring that parent in for a meeting.")). The liaisons were essential to building relationships between the school district and the families as they were familiar with the community, spoke Spanish, and served as translators at parent teacher conferences and acted as go-betweens between parents and school personnel. (T. 483). The liaisons were trained mediators and could sit down and mediate when students fought. (T. 483). Liaisons also helped parents plan appointments for students with mental health issues. (T. 484).

827. The two literary coaches that were cut helped diagnose problems and prescribe program solutions for children that were failing in reading. (T. 485 ("[T]hey would help prescribe the program for children that were failing in reading, and not able to read at grade level and at least make progress or better progress then and help diagnosis what the process would be to move forward.")). As a result, Utica has moved reading teachers from the elementary level to service the entire district and cannot provide sufficient services to promote reading and literacy in the district. (T. 486).

828. Utica is required to provide services to the non-public schools (i.e. parochial schools, religious school) including AIS teaches and services, which further detracts resources

away from public school students who are in danger of failing, as "the district cuts had to come from the public schools." (T. 488).

829. Additional social workers in Utica are needed for the homeless students population to address housing and related services for those approximately 105 students. (T. 440-41).

830. Students who live within a mile and a half of the school must walk home through dangerous high crime neighborhoods due to the lack of busing for students. (T. 511).

831. Utica dedicates requires substantial resources to provide security personnel to maintain a safe and orderly environment for students. (T. 620). The Superintendent described providing student discipline and safety as "big challenge." (T. 617).

V. OUTPUTS

832. As the New York State Education Department said in a 2012 publication:

> The focus of school finance, particularly in New York State, has shifted from equity to the provision of an adequate education. By the term adequate education is meant the greater equalization of academic outcomes (not resource inputs) so that all children are provided the opportunity to receive an education, which will subsequently allow them to lead meaningful and productive adult lives.

(P.X. 112, p. 1).

833. The State Education Department further stated that:

> If a district is providing the opportunity for 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 determined 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 providing an adequate education. . . .

(P.X. 112, p. 3).

834. Based on the State Education Department considerations described above, an adequate education was operationally defined as a district:

> With a simple, unweighted average of 80 percent of its test takers scoring at Level 3 or above on eight examinations (Fourth Grade English Language Arts, Fourth Grade Mathematics, Integrated Algebra, Global History, U.S. History, English, Living Environment and Earth Science) in [three successive years]. Note that, given this operational definition, a district could have less than 80 percent of its test takers with a score at Level 3 on one or more of the tests and still be providing an adequate education.

(P.X. 112, p. 4).

835. Districts in which on average less than 80 percent of the students tested score at levels 3 or 4 were identified as districts which may need to increase instructional expenditures in order to improve academic performance. (P.X. 112, p. 6).

A. <u>Graduation Rates</u>

836. The State's standard is that 80% of students graduate within four years of commencing high school. The State has indicated that it deems a district with an 80% graduation rate to be providing its students with a sound basic education. (P.X. 7). The average graduation rate for New York State in 2014 was 76%. (P.X. 7).

837. Each of Plaintiffs' Districts has a graduation rate below the state standard of 80% and the state average of 76%. (P.X. 7).

838. State witness Ira Schwartz acknowledged that the outputs in all eight of the Maisto Districts are not adequate. (T. 4802).

839. A Regents Diploma is awarded to students who accumulate twenty-two (22) credits over their four years in high school and who also pass at least five regular examinations with a score of 65% or better. (T. 1677). If students accumulate 22 credits but are unable to pass five regular exams with a 65% score or higher, they receive a local diploma. (T. 1677).

840. Graduating with a local diploma instead of a Regents Diploma impacts a student's opportunities after high school. (T. 1678).

841. Some four year colleges and universities will only accept Regents Diplomas. (T. 1678). The military only accepts Regents Diplomas. (T. 1678). Beginning in 2015, the State of New York will no longer recognize local diplomas. (T. 1678-9).

842. Students who show a mastery of the material tested by New York State examinations receive a Regents Diploma with Advanced Designation.[11] (T. 446).

1. *Jamestown*

843. In 2013-2014, the graduation rate in the Jamestown was 72%. (P.X. 3; T. 684). Out of 675 school districts in the state of New York, Jamestown is ranked 603 (i.e. the bottom 11% of school districts in New York). (T. 684).

844. Jamestown had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 3) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 1):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	69%	74%	67%	72%
Economically Disadvantaged	59%	67%	60%	76%
Students with Disabilities	32%*	37%*	34%	33%
Limited English Proficient	--	--	12%	22%
White	71%	77%	69%	75%
Black/African-American	--	--	81%	47%
Hispanic/Latino	53%	62%	49%	64%

[11] To earn the Regents Diploma with Advanced Designation, the student must complete one of the following: two additional units in a language other than English (3 LOTE credits total) and a passing score on the Regents Exam, a locally developed Check Point B LOTE Exam or a Department approved alternative; a career and technical education (5 credit CTE sequence); or an Arts (5 credit sequence). Students with disabilities who are exempt from the LOTE requirements as indicated on the IEP may earn the Advanced Designation and do not have to complete a 5 unit sequence described above as long as the required number of credits to graduate are met. See (P. X. 1, 2, 3, 45, 50, 56, 74, 79).

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
Asian	--	--	--	--

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

845. State expert, Gregory Scott Hunter, acknowledged that the Jamestown graduation rate is lower than he would like it to be if he were superintendent. (T. 3714).

2. *Kingston*

846. Kingston had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 45) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 2):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	73%	71%	73%	76%
Economically Disadvantaged	62%	64%	56%	67%
Students with Disabilities	49%*	49%*	46%	47%
Limited English Proficient	--	--	13%	50%
White	78%	78%	79%	82%
Black/African-American	55%	57%	54%	63%
Hispanic/Latino	62%	56%	55%	60%
Asian	--	--	70%	100%

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

847. State expert, Gregory Aidala, agrees with Dr. Uebbing that too many Kingston students are not graduating and too many did poorly on state assessments. (T. 3501; T. 3503). He noted that the 76% statewide graduation rate is "not at all" adequate. (T. 3545).

3. *Mt. Vernon*

848. Forty-eight percent (48%), *i.e*. less than half, of Mt. Vernon students graduated from high school in 2013-2014. (T. 2317; P.X. 7).

849. Mt. Vernon had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 79) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 3):

Student Group	**2010-2011**	**2011-2012**	**2012-2013**	**2013-2014**
All Students	62%	68%	54%	48%
Economically Disadvantaged	72%	72%	59%	54%
Students with Disabilities	36%*	51%*	39%	23%
Limited English Proficient	--	--	18%	11%
White	--	--	79%	58%
Black/African-American	62%	69%	52%	49%
Hispanic/Latino	64%	60%	56%	39%
Asian	--	--	88%	--

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

850. State expert John McGuire stated that he finds unacceptable levels of graduation in Mt. Vernon. (T. 3768). He further noted that the levels were getting even worse in 2013-14.

(T. 3770). He acknowledged that the graduation rates districtwide are unacceptable. (T. 3799).

4. *Newburgh*

851. Newburgh had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 74) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 4):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	69%	69%	66%	67%
Economically Disadvantaged	62%	60%	53%	59%
Students with Disabilities	44%*	36%*	40%	33%
Limited English Proficient	27%**	43%**	6%	24%
White	85%	82%	81%	86%
Black/African-American	59%	60%	57%	56%
Hispanic/Latino	62%	63%	60%	63%
Asian	--	--	--	79%

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

**According to the data reported by the state, this number "[i]ncludes former limited English proficient students because the number of limited English proficient students in the current year is equal to or greater than 30."

852. Newburgh Superintendent Dr. Padilla described Newburgh's graduation rate of 67% as a crisis. (T. 2068).

853. State expert, Gregory Aidala, agrees with Plaintiffs' expert Dr. Uebbing that too many Newburgh students are not graduating and too many did poorly on state assessments. (T.

3400). Aidala acknowledged that the 69 percent graduation rate is not acceptable. (T. 3439).

5. ***Niagara Falls***

854. In 2013-2014, the graduation rate in the Niagara Falls was 60%. (T. 1546). Niagara Falls had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 56; T. 1547-8; 1674-6) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 5):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	69%	69%	63%	60%
Economically Disadvantaged	74%	72%	70%	60%
Students with Disabilities	52%*	50%*	46%	39%
Limited English Proficient	--	--	--	--
White	73%	75%	69%	68%
Black/African-American	67%	62%	56%	56%
Hispanic/Latino	--	--	35%	26%
Asian	--	--	92%	100%

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

855. Of those economically disadvantaged students in Niagara Falls who graduate high school, less than half earn a Regents Diploma. (T. 1677). Of those African-American students in Niagara Falls in Niagara Falls who graduate high school, less than half earn a Regents Diploma. (T. 1678). Of those Latino students in Niagara Falls who graduate high school, less than half earn a Regents Diploma (T. 1678). Of those students with disabilities who

in Niagara Falls who graduate high school, less than 25% earn a Regents Diploma. (T. 1678).

856. State expert, Tomas Coseo, acknowledged that Niagara Falls's 60% graduation rate is not adequate. (T. 3863).

6. *Port Jervis*

857. Port Jervis had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 50) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 6):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	73%	72%	76%	75%
Economically Disadvantaged	67%	69%	67%	67%
Students with Disabilities	31%*	40%*	48%	43%
Limited English Proficient	--	--	--	--
White	75%	72%	78%	73%
Black/African-American	--	--	86%	84%
Hispanic/Latino	--	--	41%	--
Asian	--	--	--	--

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

7. *Poughkeepsie*

858. The four-year graduation rate for all Poughkeepsie students in 2013-2014 was 57%. (P.X. 1).

859. Poughkeepsie had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 1) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 7):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	57%	61%	51%	57%
Economically Disadvantaged	57%	62%	47%	55%
Students with Disabilities	40%*	52%*	40%	44%
Limited English Proficient	--	--	10%	0%
White	66%	69%	--	74%
Black/African-American	57%	64%	46%	56%
Hispanic/Latino	51%	44%	48%	52%
Asian	--	--	--	--

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

860. Defendant's expert for Poughkeepsie stated that a graduation rate of 57% in Poughkeepsie was not adequate and acknowledged that at least four out of every ten students in Poughkeepsie are not graduating. (T. 3569-71).

861. Graduation rates for students with disabilities are consistently lower than for those without disabilities. (C.X. 2, Report, p. 14).

862. State expert Roger Gorham acknowledged he would prefer a higher graduation rate. (T. 3570). Gorham stated that the graduation rate needs to improve. (T. 3570-1).

863. Gorham noted that at some point, the opportunity to receive a meaningful high school education is over for a child who does not graduate; those who do not graduate face the prospect of menial, low-paying jobs with limited opportunity. (T. 3571).

8. *Utica*

864. The overall graduation rate for the Utica was 58% in 2013-2014 and 59% in 2012-2013. (P.X. 2; T. 446).

865. Utica had the following graduation rates for the 2010-2011 through 2013-2014 schools years (P.X. 2) (Stipulated in Joint Findings of Fact, Appendix F, ¶ 8):

Student Group	2010-2011	2011-2012	2012-2013	2013-2014
All Students	63%	62%	59%	58%
Economically Disadvantaged	61%	57%	56%	56%
Students with Disabilities	37%	45%*	38%	43%
Limited English Proficient	46%**	37%**	38%	27%
White	75%	76%	71%	71%
Black/African-American	50%	53%	47%	50%
Hispanic/Latino	56%	52%	48%	--
Asian	57%	43%	--	48%

*According to the data reported by the state, this number "[i]ncludes former students with disabilities because the number of students with disabilities in the current year is equal to or greater than 30."

**According to the data reported by the state, this number "[i]ncludes former limited English proficient students because the number of limited English proficient students in the current year is equal to or greater than 30."

866. Of the Utica students who graduated in 2013-2014, only 14% graduated with an Advanced Designation Diploma. (P.X. 2; Tr. 446). In 2012-2013, the number of students who graduated with an Advanced Designation Diploma was 13%. (P.X. 2).

B. Dropout and Suspension Rates

867. The dropout rates for the 2012-2013 and 2013-2014 school years are as follows (P. X. 1, 2, 3, 45, 50, 56, 74, 79) (Stipulated in Joint Findings of Fact, Appendix G, ¶ 1):

District	Dropout Rate 2012-2013	Dropout Rate 2013-2014
Jamestown	19%	16%
Kingston	13%	13%
Mt. Vernon	9%	10%
Newburgh	13%	11%
Niagara Falls	20%	22%
Port Jervis	13%	15%
Poughkeepsie	25%	24%
Utica	14%	15%
State	8%	7%

868. The suspension rates for the 2011-2012 school year is as follows (P. X. 1, 2, 3, 45, 50, 56, 74, 79) (Stipulated in Joint Findings of Fact, Appendix G, ¶ 2):

District	Suspension Rate 2011-2012
Jamestown	7%
Kingston	5%
Mt. Vernon	15%
Newburgh	7%

District	Suspension Rate 2011-2012
Niagara Falls	17%
Port Jervis	9%
Poughkeepsie	16%
Utica	10%
State	4%

1. *Jamestown*

869. In 2013-2014, the dropout rate for Hispanic or Latino students was 12% and in 2012-2013 it was 25%. (P.X. 3) For students with disabilities, the dropout rate in 2013-2014 was 23%, and in 2012-2013 it was 27%. (P.X. 3).

870. State expert Gregory Scott Hunter stated The Jamestown City School District High School suspension rate of 14% "should be a cause for concern by school officials." (C.X. 65, p. 6).

871. State expert Gregory Scott Hunter also acknowledged that the dropout rate in Jamestown is very high. (T. 3729).

2. *Kingston*

872. For students with disabilities, the dropout rate was 26% in 2013-2014 and 18% in 2012-2013. (P.X. 45).

873. The dropout rate for Hispanic or Latino students was 22% in 2013-2014 and 32% in 2012-2013. (P.X. 45)

874. The dropout rate for Black or African American students was 19% in 2013-2014 and 18% in 2012-2013. (P.X. 45).

3. *Mt. Vernon*

875. The dropout rate for students with limited English proficiency was 22% in 2013-2014 and 29% in 2012-2013. (P.X. 79).

4. *Newburgh*

876. For students with limited English proficiency, the dropout rate was 24% in 2013-2014 and 49% in 2012-2013. (P.X. 74).

877. For students with disabilities, the dropout rate was 22% in 2013-2014 and 24% in 2012-2013. (P.X. 74).

5. *Niagara Falls*

878. In 2013-2014, the suspension rate in Niagara Falls High School was 17%. (T. 1695).

879. State expert Tomas Coseo stated that Niagara Falls's 22% dropout rate is not acceptable. (T. 3864). High school dropouts typically are not prepared for productive citizenship. (T. 3868).

6. *Port Jervis*

880. The dropout rate for students with disabilities was 25% in 2012-2013 and 24% in 2013-2014. (P.X. 50). In 2013-2014, the dropout rate for economically disadvantaged students was 22% and in 2012-2013 it was 16%. (P.X. 50).

881. State expert Jeffrey McLellan acknowledged that a dropout has not received a sound basic education. (T. 4571). He also acknowledged that someone without a high school diploma is going to have a very difficult time having a successful career. (T. 4572).

882. McLellan stated that Port Jervis's 15% dropout rate is unacceptably high. (T. 4572). He further noted that the 24% dropout rate for students with disabilities and the 22% dropout rate for economically disadvantaged students are unacceptably high. (T. 4573).

7. *Poughkeepsie*

883. For students with limited English proficiency, the dropout rate was 43% in 2013-2014 and 40% in 2012-2013. (P.X. 1).

884. State expert Roger Gorham acknowledged that the Poughkeepsie dropout rate is unacceptable. (T. 3572).

8. *Utica*

885. For students with disabilities, the dropout rate was 27% in 2013-2014 and 23% in 2012-2013. (P.X. 2).

886. For Black or African American students, the dropout rate was 22% in 2013-2014 and 17% in 2012-2013. (P.X. 2).

C. Test Scores

887. The New York Department of Education evaluates student proficiency in math and English language arts in grades three through eight. (P.X. 56; T. 1551).[12]

888. A score of a three or a four on the state assessment is considered proficient. (P.X. 56; T. 1550).

889. It is well understood in the profession that that students who are unable to demonstrate proficient skills by grades 3 or 4 will be irremediably behind and will "never [be] able to close those gaps." (T. 2327).

890. Students who are unable to demonstrate proficiency by the third or fourth grade, "become disaffected, disengaged, [and] they begin to present behavioral issues for many of our students and our teachers." (T. 2328).

[12] Individual grade level results for 2013-2014 were not in the report cards available at the time of trial. Instead aggregate results for grades 3-8 are provided herein. Additionally, for some districts, additional 2013-2014 results are provided based upon other exhibits and testimony in the record.

891. A score of one is the lowest possible score on the state assessments for both Math and ELA. (D.X. BBBB, p. 14). According to the State's own reports, a score of level one indicates that the "[s]tudent is well below proficient in the learning standards for this grade level." (D.X. BBBB, p. 14).

892. According to the State, a student scoring at level one is not on track to meet either current or aspirational high school graduation requirements. (D.X. BBBB, p. 14).

1. *Jamestown*

893. The percentage of Jamestown students who scored at or above level three on the New York State Education Department's ("SED") English Language Arts ("ELA") assessment in 2010-2011 through 2012-2013 are as follows (P.X. 3, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶1):

Percentage of Jamestown Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	46%	39%	13%
Grade 4 ELA	52%	47%	20%
Grade 5 ELA	37%	39%	14%
Grade 6 ELA	41%	41%	19%
Grade 7 ELA	34%	43%	24%
Grade 8 ELA	39%	43%	29%

894. The aggregate percent of Jamestown students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 20%. (P.X. 3, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 2). Additionally, for 2013-2014,

19% of 4th graders scored at or above level three on the New York State Education Department's ELA assessment, and 28% of 8th graders scored at or above level three. (P.X. 61).

895. The percentage of Jamestown students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 3, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶3):

Percentage of Jamestown Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	45%	42%	15%
Grade 4 Math	60%	54%	24%
Grade 5 Math	52%	47%	14%
Grade 6 Math	49%	50%	20%
Grade 7 Math	60%	52%	22%
Grade 8 Math	57%	55%	24%

896. The aggregate percent of Jamestown students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 22%. (P.X. 3, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 4). Additionally, for 2013-2014, 24% of 4th graders scored at or above level three on the New York State Education Department's Math assessment, and 17% of 8th graders scored at or above level three. (P.X. 61).

897. The results of the New York State Education Department's English Language Arts and Math standardized test for Jamestown students with disabilities are as follows (P.X. 3):

Percentage of Jamestown Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	0%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	0%
Grade 7 ELA	2%	**Grade 7 Math**	4%
Grade 8 ELA	0%	**Grade 8 Math**	2%

898. The aggregate percentage of Jamestown students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 3). The aggregate percentage of Jamestown students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 0%. (P.X. 3).

899. The results of the New York State Education Department's ELA and Math standardized test for economically disadvantaged students are as follows (P.X. 3):

Percentage of Jamestown Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	9%	**Grade 3 Math**	10%
Grade 4 ELA	12%	**Grade 4 Math**	16%
Grade 5 ELA	8%	**Grade 5 Math**	6%
Grade 6 ELA	12%	**Grade 6 Math**	12%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	15%	**Grade 7 Math**	16%
Grade 8 ELA	18%	**Grade 8 Math**	15%

900. The aggregate percentage of Jamestown economically disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 13%. (P.X. 3). The aggregate percentage of Jamestown economically disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 15%. (P.X. 3).

901. The results of the New York State Education Department's ELA and Math standardized test for students with limited English proficiency are as follows (P.X. 3):

Percentage of Jamestown Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	0%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	0%
Grade 7 ELA	0%	**Grade 7 Math**	0%
Grade 8 ELA	0%	**Grade 8 Math**	0%

902. The aggregate percentage of Jamestown Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 0%. (P.X. 3). The aggregate percentage of Jamestown Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 1%. (P.X. 3).

903. The results of the New York State Education Department's ELA and Math standardized test for Jamestown Hispanic/Latino students are as follows (P.X. 3):

Percentage of Jamestown Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	6%	**Grade 3 Math**	7%
Grade 4 ELA	7%	**Grade 4 Math**	12%
Grade 5 ELA	5%	**Grade 5 Math**	3%
Grade 6 ELA	7%	**Grade 6 Math**	6%
Grade 7 ELA	9%	**Grade 7 Math**	11%
Grade 8 ELA	8%	**Grade 8 Math**	3%

904. The aggregate percentage of Jamestown Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 8%. (P.X. 3). The aggregate percentage of Jamestown Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 10%. (P.X. 3).

905. The results of the New York State Education Department's ELA and Math standardized test for Jamestown Black/African-American students are as follows (P.X. 3):

Percentage of Jamestown Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	--	**Grade 3 Math**	--
Grade 4 ELA	--	**Grade 4 Math**	--
Grade 5 ELA	--	**Grade 5 Math**	--
Grade 6 ELA	--	**Grade 6 Math**	--

Test	2012-2013	Test	2012-2013
Grade 7 ELA	--	**Grade 7 Math**	--
Grade 8 ELA	21%	**Grade 8 Math**	5%

906. The aggregate percentage of Jamestown Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 5%. (P.X. 3). The aggregate percentage of Jamestown Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 9%. (P.X. 3).

907. The percentage of Jamestown students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 3):

ELA Results
Jamestown Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	48%	47%
Students With Disabilities	95%	92%
Limited English Proficient	94%	95%
Economically Disadvantaged	58%	54%
Black/African-American	63%	54%
Hispanic/Latino	68%	65%

908. The percentage of Jamestown students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 3):

Math Results
Jamestown Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	49%	47%
Students With Disabilities	93%	94%
Limited English Proficient	96%	95%
Economically Disadvantaged	59%	54%
Black/African-American	73%	65%
Hispanic/Latino	68%	63%

909. In the 2012-13 and 2013-14 school years, "[f]or the [Jamestown] District as a whole, none of the grade level results for [New York State's standardized testing in mathematics, English language arts, and science] met New York State averages." (C.X. 65, p. 10). Additionally, "[a]ll five elementary schools fell below expectations based on NYS averages." (T. 685).

910. On Regents exams for high school students, Jamestown students range from 5 to 20% below the state average for passing those exams in various subjects. (T. 685).

911. State expert Gregory Scott Hunter acknowledged outputs in Jamestown as a district are inadequate. (T. at 3712). Hunter further noted that Jamestown is not achieving adequate outputs. (T. 3721).

2. *Kingston*

912. The percentage of Kingston students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 45, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶5).:

Percentage of Kingston Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	55%	46%	19%
Grade 4 ELA	48%	60%	20%
Grade 5 ELA	47%	56%	27%
Grade 6 ELA	46%	51%	22%
Grade 7 ELA	42%	42%	21%
Grade 8 ELA	38%	50%	28%

913. The aggregate percent of Kingston students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 22%. (P.X. 45, 2013-14 report card). (Stipulated in Joint Findings of Fact, Appendix H, ¶6).

914. The percentage of Kingston students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 45, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶7):

Percentage of Kingston Students Scoring at or Above Level 3 – Math

	2010-2011	2011-2012	2012-2013
Grade 3 Math	51%	53%	19%
Grade 4 Math	62%	66%	23%
Grade 5 Math	62%	60%	19%
Grade 6 Math	54%	55%	15%
Grade 7 Math	57%	48%	17%
Grade 8 Math	45%	47%	13%

915. The aggregate percent of Kingston students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 24%. (P.X. 45, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶8).

916. The aggregate percentage of Kingston students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 4%. (P.X. 45). The aggregate percentage of Jamestown students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 7%. (P.X. 45).

917. The results of the New York State Education Department's ELA and Math standardized test for Kingston economically disadvantaged students are as follows (P.X. 45):

Percentage of Kingston Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	10%	**Grade 3 Math**	11%
Grade 4 ELA	9%	**Grade 4 Math**	12%
Grade 5 ELA	17%	**Grade 5 Math**	12%

Test	2012-2013	Test	2012-2013
Grade 6 ELA	10%	**Grade 6 Math**	6%
Grade 7 ELA	12%	**Grade 7 Math**	10%
Grade 8 ELA	16%	**Grade 8 Math**	6%

918. The aggregate percentage of Kingston Economically Disadvantaged, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 13%. (P.X. 45). The aggregate percentage of Kingston Economically Disadvantaged, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 14%. (P.X. 45).

919. The results of the New York State Education Department's ELA and Math standardized test for Kingston students with limited English proficiency are as follows (P.X. 45):

Percentage of Kingston Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	4%	**Grade 3 Math**	7%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	9%	**Grade 5 Math**	8%
Grade 6 ELA	13%	**Grade 6 Math**	0%
Grade 7 ELA	--	**Grade 7 Math**	--
Grade 8 ELA	0%	**Grade 8 Math**	0%

920. The aggregate percentage of Kingston Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 45). The aggregate percentage of Kingston Limited

English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 4%. (P.X. 45).

921. The results of the New York State Education Department's ELA and Math standardized test for Kingston Hispanic/Latino students are as follows (P.X. 45):

Percentage of Kingston Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	14%	**Grade 3 Math**	7%
Grade 4 ELA	4%	**Grade 4 Math**	8%
Grade 5 ELA	20%	**Grade 5 Math**	10%
Grade 6 ELA	11%	**Grade 6 Math**	4%
Grade 7 ELA	11%	**Grade 7 Math**	5%
Grade 8 ELA	22%	**Grade 8 Math**	6%

922. The aggregate percentage of Kingston Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 45) The aggregate percentage of Kingston Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 12%. (P.X. 45).

923. The results of the New York State Education Department's ELA and Math standardized test for Kingston Black/African-American students are as follows (P.X. 45):

Percentage of Kingston Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	7%	**Grade 3 Math**	10%
Grade 4 ELA	6%	**Grade 4 Math**	10%

Test	2012-2013	Test	2012-2013
Grade 5 ELA	13%	**Grade 5 Math**	12%
Grade 6 ELA	8%	**Grade 6 Math**	1%
Grade 7 ELA	4%	**Grade 7 Math**	0%
Grade 8 ELA	10%	**Grade 8 Math**	4%

924. The aggregate percentage of Kingston Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 7%. (P.X. 45). The aggregate percentage of Kingston Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 7%. (P.X. 45).

925. The percentage of Kingston students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 45):

ELA Results
Kingston Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	39%	43%
Students With Disabilities	76%	78%
Limited English Proficient	75%	93%
Economically Disadvantaged	50%	54%
Black/African-American	57%	59%
Hispanic/Latino	49%	56%

926. The percentage of Kingston students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 45):

Math Results
Kingston Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	43%	40%
Students With Disabilities	77%	72%
Limited English Proficient	78%	83%
Economically Disadvantaged	57%	53%
Black/African-American	63%	62%
Hispanic/Latino	58%	52%

927. State expert Gregory Aidala recognized that all children in Kingston can learn and come to school motivated to do so. (T. 3512). Aidala noted, however, that too many Kingston students are not graduating and too many did poorly on state assessments. (T. 3501, 3503).

928. Aidala doesn't consider any of the proficiency scores for 3-8 ELA to be adequate. (T. 3505-06). The number of 3-8 African-American students scoring level one on ELA statewide "is way too high" and "the number in Kingston is a lot higher" than that. (T. 3550). The number of Latino students scoring level one statewide "is way too high" and "the number in Kingston is much higher." (T. 3550-51))T.. The percentage of students

with disabilities scoring level one statewide is "way too high" and "the number is even higher in Kingston." (T. 3552).

929. Aidala further noted that 43% of the Kingston third through eighth graders are not on track to graduate high school. (T. 3507). He acknowledged that if you don't have a high school diploma you don't have good prospects for employment, and when a child leaves the school system without going to college or having a productive career path, it places a burden on society. (T. 3511-12).

3. *Mt. Vernon*

930. The percentage of Mount Vernon students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 79, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶9):

Percentage of Mount Vernon Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	53%	44%	17%
Grade 4 ELA	53%	56%	21%
Grade 5 ELA	47%	44%	18%
Grade 6 ELA	48%	43%	17%
Grade 7 ELA	27%	31%	9%
Grade 8 ELA	27%	26%	12%

931. The aggregate percent of Mount Vernon students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 12%. (P.X. 79, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶10).

932. The following are the individual grade level results for the percentage of Mount Vernon students scoring at or above level 3 on the New York State Education Department's ELA assessment for 2013-2014 (P.X. 96):

Percentage of Mount Vernon Students Scoring at or Above Level 3 – ELA

	2013-2014
Grade 3 ELA	15%
Grade 4 ELA	13%
Grade 5 ELA	12%
Grade 6 ELA	12%
Grade 7 ELA	7%
Grade 8 ELA	12%

933. The percentage of Mount Vernon students who scored at or above level three on SED's Math assessment in 2010-2011 through 2013-2013 are as follows (P.X. 79, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶11):

Percentage of Mt. Vernon Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	53%	49%	19%
Grade 4 Math	61%	66%	19%
Grade 5 Math	58%	52%	12%
Grade 6 Math	55%	50%	13%
Grade 7 Math	28%	34%	5%
Grade 8 Math	33%	28%	4%

934. The aggregate percent of Mount Vernon students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 15%. (P.X. 79, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 12).

935. The following are the individual grade level results for the percentage of Mount Vernon students scoring at or above level 3 on the New York State Education Department's Math assessment for 2013-14 (P.X. 97):

Percentage of Mt. Vernon Students Scoring at or Above Level 3 – Math

	2013-2014
Grade 3 Math	17%
Grade 4 Math	20%
Grade 5 Math	18%
Grade 6 Math	20%
Grade 7 Math	7%
Grade 8 Math	6%

936. The results of the New York State Education Department's English Language Arts and Math standardized test for students with disabilities are as follows (P.X. 79):

Percentage of Mt. Vernon Students-with-Disabilities Scoring at or above Level 3

Test	**2012-2013**	**Test**	**2012-2013**
Grade 3 ELA	3%	**Grade 3 Math**	9%
Grade 4 ELA	2%	**Grade 4 Math**	5%
Grade 5 ELA	3%	**Grade 5 Math**	2%
Grade 6 ELA	3%	**Grade 6 Math**	6%
Grade 7 ELA	1%	**Grade 7 Math**	0%

Test	2012-2013	Test	2012-2013
Grade 8 ELA	0%	**Grade 8 Math**	0%

937. The aggregate percentage of Mount Vernon students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2014-14 was 1%. (P.X. 79). The aggregate percentage of Mount Vernon students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 3%. (P.X. 79).

938. The results of the New York State Education Department's ELA and Math standardized test for Mt. Vernon economically disadvantaged students are as follows (P.X. 79):

Percentage of Mt. Vernon Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	14%	**Grade 3 Math**	16%
Grade 4 ELA	18%	**Grade 4 Math**	16%
Grade 5 ELA	14%	**Grade 5 Math**	9%
Grade 6 ELA	14%	**Grade 6 Math**	11%
Grade 7 ELA	7%	**Grade 7 Math**	5%
Grade 8 ELA	11%	**Grade 8 Math**	3%

939. The aggregate percentage of Mount Vernon economically disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 10%. (P.X. 79). The aggregate percentage of Mount Vernon economically disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 13%. (P.X. 79).

940. The results of the New York State Education Department's ELA and Math standardized test for Mt. Vernon students with limited English proficiency are as follows (P.X. 79):

Percentage of Mt. Vernon Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	8%	**Grade 3 Math**	17%
Grade 4 ELA	11%	**Grade 4 Math**	7%
Grade 5 ELA	2%	**Grade 5 Math**	4%
Grade 6 ELA	0%	**Grade 6 Math**	0%
Grade 7 ELA	0%	**Grade 7 Math**	2%
Grade 8 ELA	0%	**Grade 8 Math**	0%

941. The aggregate percentage of Mount Vernon Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 5%. (P.X. 79). The aggregate percentage of Mount Vernon Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 7%. (P.X. 79).

942. The results of the New York State Education Department's ELA and Math standardized test for Mt. Vernon Hispanic/Latino students are as follows (P.X. 79):

Percentage of Mt. Vernon Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	16%	**Grade 3 Math**	26%
Grade 4 ELA	21%	**Grade 4 Math**	22%
Grade 5 ELA	19%	**Grade 5 Math**	10%
Grade 6 ELA	16%	**Grade 6 Math**	11%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	8%	**Grade 7 Math**	5%
Grade 8 ELA	18%	**Grade 8 Math**	5%

943. The aggregate percentage of Mount Vernon Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 12%. (P.X. 79). The aggregate percentage of Mount Vernon Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 16%. (P.X. 79).

944. The results of the New York State Education Department's ELA and Math standardized test for Black/African-American students are as follows (P.X. 79):

Percentage of Mt. Vernon Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	16%	**Grade 3 Math**	14%
Grade 4 ELA	19%	**Grade 4 Math**	16%
Grade 5 ELA	16%	**Grade 5 Math**	9%
Grade 6 ELA	15%	**Grade 6 Math**	11%
Grade 7 ELA	8%	**Grade 7 Math**	5%
Grade 8 ELA	11%	**Grade 8 Math**	3%

945. The aggregate percentage of Mount Vernon Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 79). The aggregate percentage of Mount Vernon Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 13%. (P.X. 79).

946. The percentage of Mount Vernon students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 79):

ELA Results
Mt. Vernon Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	42%	47%
Students With Disabilities	73%	80%
Limited English Proficient	59%	69%
Economically Disadvantaged	44%	50%
Black/African-American	44%	49%
Hispanic/Latino	39%	43%

947. The percentage of Mount Vernon students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 79):

Math Results
Mt. Vernon Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	55%	53%
Students With Disabilities	77%	80%
Limited English Proficient	69%	69%
Economically	58%	55%

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
Disadvantaged		
Black/African-American	58%	55%
Hispanic/Latino	52%	51%

948. State expert, John McGuire, acknowledged that the level of school performance in Mt. Vernon is below the acceptable minimum for student performance. (T. 3752). According to the McGuire, there is a large gap between where Mt. Vernon is right now and the minimum acceptable level for student performance. (T. 3759). McGuire acknowledged that 47% of grade 3-8 students scoring at level 1 in ELA is "absolutely unacceptable." (T. 3795). McGuire also acknowledged the grade 3-8 math scores are unacceptable. (T. 3799). McGuire specifically acknowledged that the Cecil Parker Elementary School math results for grades 3 and 4 at 8% proficiency was unacceptable. (T. 3801-02). McGuire also specifically acknowledged the Parker School grade 3-8 ELA results are also unacceptable. (T. 3819).

949. State expert Eric Hanushek acknowledged that 95% of students at Cecil Parker Elementary School not passing in grades 3-8 ELA testing was a "problem" and that those students "are not receiving the education they should be receiving." (T. at 4399, 4402).

4. *Newburgh*

950. The percentage of Newburgh students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 74, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶13):

Percentage of Newburgh Students Scoring at or Above Level 3 – ELA

	2010-2011	2011-2012	2012-2013
Grade 3 ELA	38%	39%	18%
Grade 4 ELA	37%	42%	21%
Grade 5 ELA	37%	45%	18%
Grade 6 ELA	42%	40%	14%
Grade 7 ELA	31%	35%	16%
Grade 8 ELA	30%	36%	21%

951. The aggregate percent of Newburgh students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 17%. (P.X. 74, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 14).

952. The following are the individual grade level results for the percentage Newburgh students scoring at or above level 3 on the New York State Education Department's ELA assessment for 2013-2014 (D.X. AAAA):

Percentage of Newburgh Students Scoring at or Above Level 3 – ELA

	2013-2014
Grade 3 ELA	16%
Grade 4 ELA	21%
Grade 5 ELA	17%
Grade 6 ELA	13%
Grade 7 ELA	13%
Grade 8 ELA	25%

953. The percentage of Newburgh students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 74, 2010-11 report card

pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶15):

Percentage of Newburgh Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	41%	44%	17%
Grade 4 Math	46%	49%	20%
Grade 5 Math	50%	53%	16%
Grade 6 Math	49%	42%	12%
Grade 7 Math	45%	47%	13%
Grade 8 Math	36%	40%	11%

954. The aggregate percent of Newburgh students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 18%. (P.X. 74, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶16).

955. The following are the individual grade level results for the percentage Newburgh students scoring at or above level 3 on the New York State Education Department's Math assessment for 2013-2014 (D.X. AAAA):

Percentage of Newburgh Students Scoring at or Above Level 3 – Math

	2013-2014
Grade 3 Math	23%
Grade 4 Math	24%
Grade 5 Math	19%
Grade 6 Math	16%

	2013-2014
Grade 7 Math	15%
Grade 8 Math	6%

956. The results of the New York State Education Department's English Language Arts and Math standardized test for Newburgh students with disabilities are as follows (P.X. 74):

Percentage of Newburgh Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	1%	**Grade 3 Math**	3%
Grade 4 ELA	1%	**Grade 4 Math**	3%
Grade 5 ELA	2%	**Grade 5 Math**	1%
Grade 6 ELA	1%	**Grade 6 Math**	2%
Grade 7 ELA	1%	**Grade 7 Math**	0%
Grade 8 ELA	2%	**Grade 8 Math**	0%

957. The aggregate percentage of Newburgh students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 74). The aggregate percentage of Newburgh students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 3%. (P.X. 74).

958. The results of the New York State Education Department's ELA and Math standardized test for Newburgh economically disadvantaged students are as follows (P.X. 74):

Percentage of Newburgh Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	11%	**Grade 3 Math**	11%
Grade 4 ELA	14%	**Grade 4 Math**	13%
Grade 5 ELA	10%	**Grade 5 Math**	9%
Grade 6 ELA	8%	**Grade 6 Math**	7%
Grade 7 ELA	9%	**Grade 7 Math**	7%
Grade 8 ELA	13%	**Grade 8 Math**	6%

959. The aggregate percentage of Newburgh economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 74). The aggregate percentage of Newburgh economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 12%. (P.X. 74).

960. The results of the New York State Education Department's ELA and Math standardized test for students with Newburgh limited English proficiency are as follows (P.X. 74):

Percentage of Newburgh Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	4%	**Grade 3 Math**	4%
Grade 4 ELA	4%	**Grade 4 Math**	3%
Grade 5 ELA	3%	**Grade 5 Math**	2%

Test	2012-2013	Test	2012-2013
Grade 6 ELA	0%	**Grade 6 Math**	5%
Grade 7 ELA	0%	**Grade 7 Math**	0%
Grade 8 ELA	1%	**Grade 8 Math**	1%

961. The aggregate percentage of Newburgh Limited English proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 2%. (P.X. 74). The aggregate percentage of Newburgh Limited English proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 6%. (P.X. 74).

962. The results of the New York State Education Department's ELA and Math standardized test for Newburgh Hispanic/Latino students are as follows (P.X. 74):

Percentage of Newburgh Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	15%	**Grade 3 Math**	14%
Grade 4 ELA	16%	**Grade 4 Math**	16%
Grade 5 ELA	13%	**Grade 5 Math**	10%
Grade 6 ELA	10%	**Grade 6 Math**	8%
Grade 7 ELA	11%	**Grade 7 Math**	10%
Grade 8 ELA	15%	**Grade 8 Math**	5%

963. The aggregate percentage of Newburgh Hispanic/Latino students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 14%. (P.X. 74). The aggregate percentage of Newburgh Hispanic/Latino

students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 15%. (P.X. 74).

964. The results of the New York State Education Department's ELA and Math standardized test for Newburgh Black/African-American students are as follows (P.X. 74):

Percentage of Newburgh Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	11%	**Grade 3 Math**	9%
Grade 4 ELA	15%	**Grade 4 Math**	12%
Grade 5 ELA	10%	**Grade 5 Math**	12%
Grade 6 ELA	8%	**Grade 6 Math**	5%
Grade 7 ELA	13%	**Grade 7 Math**	6%
Grade 8 ELA	13%	**Grade 8 Math**	6%

965. The aggregate percentage of Newburgh Black/African-American students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 74). The aggregate percentage of Newburgh Black/African-American students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 11%. (P.X. 74).

966. The percentage of Newburgh students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2013-2014, categorized by demographic group, are as follows (P.X. 74):

ELA Results
Newburgh Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	45%	47%
Students With Disabilities	86%	87%
Limited English Proficient	75%	78%
Economically Disadvantaged	52%	55%
Black/African-American	55%	58%
Hispanic/Latino	48%	49%

967. The percentage of Newburgh students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2013-2014, categorized by demographic group, are as follows (P.X. 74):

Math Results
Newburgh Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	51%	49%
Students With Disabilities	86%	84%
Limited English Proficient	76%	72%
Economically Disadvantaged	58%	56%
Black/African-American	64%	63%
Hispanic/Latino	54%	50%

968. Dr. Uebbing noted his gravest concern about Newburgh is that ""[a]bout half of these kids are on level one right now in ELA K-8. A little less than that.… Level one suggests the kids cannot do school work effectively. So if you don't have extreme measures to catch those kids up, they have virtually no chance." (T. 2678).

969. State expert, Gregory Aidala, acknowledged student outcomes in Newburgh were "poor" and "very weak." (T. 3376, 3377). Aidala stated that proficiency levels in grade 3 ELA are absolutely unacceptable. (T. 3378). Aidala further acknowledged that, across the board for the district, outputs are unacceptable. (T. 3462).

5. *Niagara Falls*

970. The percentage of Niagara Falls students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 56, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶17):

Percentage of Niagara Falls Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	38%	45%	16%
Grade 4 ELA	43%	47%	18%
Grade 5 ELA	50%	42%	14%
Grade 6 ELA	52%	53%	19%
Grade 7 ELA	30%	39%	20%
Grade 8 ELA	40%	35%	22%

971. The aggregate percent of Niagara Falls students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 18%. (P.X. 56, 2013-14 report card)

(Stipulated in Joint Findings of Fact, Appendix H, ¶ 18). Additionally, for 2013-2014, 26.2% of 4th graders scored at or above level three on the New York State Education Department's ELA assessment, and 24.1% of 8th graders scored at or above level three. (C.X. 16, Report, pp. 47, 49).

972. The percentage of Niagara Falls students who scored at or above level three on SED's Math assessment in 2010-2011 through 2013-2014 are as follows (P.X. 56, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶19):

Percentage of Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	45%	52%	19%
Grade 4 Math	60%	57%	21%
Grade 5 Math	67%	57%	11%
Grade 6 Math	66%	60%	19%
Grade 7 Math	60%	51%	11%
Grade 8 Math	49%	46%	8%

973. The aggregate percent of Niagara Falls students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 18%. (P.X. 56, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 20). Additionally, for 2013-14, 24.2% of 4th graders scored at or above level three on the New York State Education Department's Math assessment, and 3.1% of 8th graders scored at or above level three. (C.X. 16, Report, pp. 48, 50).

974. The results of the New York State Education Department's English Language Arts and Math standardized test for Niagara Falls students with disabilities are as follows (P.X. 56):

Percentage of Niagara Falls Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	3%	**Grade 3 Math**	3%
Grade 4 ELA	2%	**Grade 4 Math**	4%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	6%	**Grade 6 Math**	3%
Grade 7 ELA	3%	**Grade 7 Math**	0%
Grade 8 ELA	3%	**Grade 8 Math**	1%

975. The aggregate percentage of Niagara Falls students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 2%. (P.X. 56). The aggregate percentage of Niagara Falls students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 4%. (P.X. 56).

976. The results of the New York State Education Department's ELA and Math standardized test for Niagara Falls economically disadvantaged students are as follows (P.X. 56):

Percentage of Niagara Falls Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	11%	**Grade 3 Math**	14%
Grade 4 ELA	11%	**Grade 4 Math**	14%

Test	2012-2013	Test	2012-2013
Grade 5 ELA	10%	**Grade 5 Math**	5%
Grade 6 ELA	14%	**Grade 6 Math**	14%
Grade 7 ELA	12%	**Grade 7 Math**	7%
Grade 8 ELA	15%	**Grade 8 Math**	5%

977. The aggregate percentage of Niagara Falls economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 12%. (P.X. 56). The aggregate percentage of Niagara Falls economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 12%. (P.X. 56).

978. The results of the New York State Education Department's ELA and Math standardized test for Niagara Falls students with limited English proficiency are as follows (P.X. 56):

Percentage of Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	8%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	--	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	20%
Grade 7 ELA	--	**Grade 7 Math**	--
Grade 8 ELA	--	**Grade 8 Math**	--

979. The aggregate percentage of Niagara Falls Limited English Proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 3%. (P.X. 56). The aggregate percentage of Niagara Falls

Limited English Proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 13%. (P.X. 56).

980. The results of the New York State Education Department's ELA and Math standardized test for Niagara Falls Hispanic/Latino students are as follows (P.X. 56):

Percentage of Niagara Falls Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	15%	**Grade 3 Math**	18%
Grade 4 ELA	7%	**Grade 4 Math**	7%
Grade 5 ELA	8%	**Grade 5 Math**	4%
Grade 6 ELA	11%	**Grade 6 Math**	22%
Grade 7 ELA	10%	**Grade 7 Math**	0%
Grade 8 ELA	7%	**Grade 8 Math**	0%

981. The aggregate percentage of Niagara Falls Hispanic/Latino students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 13%. (P.X. 56). The aggregate percentage of Niagara Falls Hispanic/Latino students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 15%. (P.X. 56).

982. The results of the New York State Education Department's ELA and Math standardized test for Niagara Falls Black/African-American students are as follows (P.X. 56):

Percentage of Niagara Falls Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	**9%**	**Grade 3 Math**	**5%**
Grade 4 ELA	**10%**	**Grade 4 Math**	**11%**

Grade 5 ELA	**9%**	**Grade 5 Math**	**6%**
Grade 6 ELA	**13%**	**Grade 6 Math**	**13%**
Grade 7 ELA	**13%**	**Grade 7 Math**	**8%**
Grade 8 ELA	**11%**	**Grade 8 Math**	**3%**

983. The aggregate percentage of Niagara Falls Black/African American students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 56). The aggregate percentage of Niagara Falls Black/African American students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 9%. (P.X. 56).

984. The percentage of Niagara Falls students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 56):

ELA Results
Niagara Falls Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	43%	46%
Students With Disabilities	83%	84%
Limited English Proficient	65%	71%
Economically Disadvantaged	50%	53%
Black/African-American	53%	58%
Hispanic/Latino	54%	48%

985. The percentage of Niagara Falls students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 56):

Math Results
Niagara Falls Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	45%	47%
Students With Disabilities	78%	77%
Limited English Proficient	47%	63%
Economically Disadvantaged	52%	53%
Black/African-American	59%	59%
Hispanic/Latino	46%	43%

986. State expert, Thomas Coseo, acknowledged "[T]he outputs for a sound, basic education continue to be less than acceptable in Niagara Falls City School District." (T. 3861).

6. *Port Jervis*

987. The percentage of Port Jervis students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 50, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶21):

Percentage of Port Jervis Students Scoring at or Above Level 3 – ELA

	2010-2011	2011-2012	2012-2013
Grade 3 ELA	55%	47%	18%
Grade 4 ELA	39%	48%	18%
Grade 5 ELA	43%	47%	19%
Grade 6 ELA	53%	47%	24%
Grade 7 ELA	42%	36%	21%
Grade 8 ELA	33%	37%	24%

988. The aggregate percent of Port Jervis students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 18%. (P.X. 50, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶22).

989. The following are the individual grade level results for the percentage Port Jervis students scoring at or above level 3 on the New York State Education Department's ELA assessment for 2013-2014 (P.X. 87):

Percentage of Port Jervis Students Scoring at or Above Level 3 – ELA

	2013-2014
Grade 3 ELA	13%
Grade 4 ELA	23%
Grade 5 ELA	14%
Grade 6 ELA	18%
Grade 7 ELA	15%
Grade 8 ELA	24%

990. The percentage of Port Jervis students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 50, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶23):

Percentage of Port Jervis Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	52%	57%	16%
Grade 4 Math	50%	60%	20%
Grade 5 Math	53%	63%	17%
Grade 6 Math	56%	62%	18%
Grade 7 Math	64%	55%	20%
Grade 8 Math	41%	37%	7%

991. The aggregate percent of Port Jervis students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 22%. (P.X. 50, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 24).

992. The following are the individual grade level results for the percentage Port Jervis students scoring at or above level 3 on the New York State Education Department's Math assessment for 2013-2014 (P.X. 87):

Percentage of Port Jervis Students Scoring at or Above Level 3 – Math

	2013-2014
Grade 3 Math	31%
Grade 4 Math	24%
Grade 5 Math	27%

	2013-2014
Grade 6 Math	28%
Grade 7 Math	20%
Grade 8 Math	6%

993. The results of the New York State Education Department's English Language Arts and Math standardized test for Port Jervis students with disabilities are as follows (P.X. 50):

Percentage of Port Jervis Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	0%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	0%
Grade 7 ELA	2%	**Grade 7 Math**	0%
Grade 8 ELA	7%	**Grade 8 Math**	5%

994. The aggregate percentage of Port Jervis students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 50). The aggregate percentage of Port Jervis students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 2%. (P.X. 50).

995. The results of the New York State Education Department's ELA and Math standardized test for Port Jervis economically disadvantaged students are as follows (P.X. 50):

Percentage of Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	10%	**Grade 3 Math**	10%
Grade 4 ELA	8%	**Grade 4 Math**	17%
Grade 5 ELA	13%	**Grade 5 Math**	11%
Grade 6 ELA	17%	**Grade 6 Math**	13%
Grade 7 ELA	13%	**Grade 7 Math**	10%
Grade 8 ELA	13%	**Grade 8 Math**	4%

996. The aggregate percentage of Port Jervis Economically Disadvantaged students with, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 12%. (P.X. 50). The aggregate percentage of Port Jervis Economically Disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 16%. (P.X. 50).

997. The results of the New York State Education Department's ELA and Math standardized test for Port Jervis students with limited English proficiency are as follows (P.X. 50):

Percentage of Port Jervis Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	--	**Grade 3 Math**	--
Grade 4 ELA	--	**Grade 4 Math**	--
Grade 5 ELA	--	**Grade 5 Math**	--
Grade 6 ELA	0%	**Grade 6 Math**	0%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	--	**Grade 7 Math**	--
Grade 8 ELA	0%	**Grade 8 Math**	0%

998. The aggregate test results for ELA for Limited English Proficient students were not reported in 2013-14. The aggregate percentage of Port Jervis Economically Disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 0%. (P.X. 50).

999. The results of the New York State Education Department's ELA and Math standardized test for Port Jervis Hispanic/Latino students are as follows (P.X. 50):

Percentage of Port Jervis Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	**10%**	**Grade 3 Math**	**11%**
Grade 4 ELA	**17%**	**Grade 4 Math**	**24%**
Grade 5 ELA	**18%**	**Grade 5 Math**	**17%**
Grade 6 ELA	**14%**	**Grade 6 Math**	**14%**
Grade 7 ELA	**17%**	**Grade 7 Math**	**18%**
Grade 8 ELA	**14%**	**Grade 8 Math**	**14%**

1000. The aggregate percentage of Port Jervis Hispanic/Latino students with, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 12%. (P.X. 50). The aggregate percentage of Port Jervis Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 25%. (P.X. 50).

1001. The results of the New York State Education Department's ELA and Math standardized test for Port Jervis Black/African-American students are as follows (P.X. 50):

Percentage of Port Jervis Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	5%	**Grade 3 Math**	10%
Grade 4 ELA	0%	**Grade 4 Math**	14%
Grade 5 ELA	--	**Grade 5 Math**	--
Grade 6 ELA	--	**Grade 6 Math**	--
Grade 7 ELA	0%	**Grade 7 Math**	0%
Grade 8 ELA	21%	**Grade 8 Math**	4%

1002. The aggregate percentage of Port Jervis Black/African American students with, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 9%. (P.X. 50). The aggregate percentage of Port Jervis Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 14%. (P.X. 50).

1003. The percentage of Port Jervis students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 50):

ELA Results
Port Jervis Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	44%	45%
Students With Disabilities	89%	88%
Limited English Proficient	67%	--
Economically Disadvantaged	55%	55%
Black/African-American	58%	55%
Hispanic/Latino	43%	43%

1004. The percentage of Port Jervis students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 50):

Math Results
Port Jervis Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	43%	43%
Students With Disabilities	83%	83%
Limited English Proficient	83%	43%
Economically Disadvantaged	54%	53%
Black/African-American	57%	50%
Hispanic/Latino	49%	43%

1005. State expert Jeffrey McLellan acknowledged that student achievement at the Port Jervis middle and high schools were consistently below the state average. (T. 4573).

1006. McLellan agreed that the Math and ELA test results were a baseline to measure student progress and preparedness for college and careers.(T. at 4580).

1007. McLellan agreed that the tests scores for Port Jervis were "not acceptable," "disappointing" and need to improve. (T. 4580-82).

7. *Poughkeepsie*

1008. The percentage of Poughkeepsie students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 1, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶25):

Percentage of Poughkeepsie Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	34%	35%	9%
Grade 4 ELA	26%	37%	11%
Grade 5 ELA	26%	30%	7%
Grade 6 ELA	27%	25%	13%
Grade 7 ELA	26%	28%	9%
Grade 8 ELA	20%	24%	11%

1009. The aggregate percent of Poughkeepsie students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 10%. (P.X. 1, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 26). Additionally, for 2013-14, 9% of 4th graders scored at or above level three on the New York State Education

Department's ELA assessment, and 13% of 8th graders scored at or above level three. (P.X. 61).

1010. The percentage of Poughkeepsie students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 1, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶27):

Percentage of Poughkeepsie Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 Math	35%	32%	9%
Grade 4 Math	29%	36%	10%
Grade 5 Math	37%	33%	4%
Grade 6 Math	20%	30%	5%
Grade 7 Math	27%	22%	3%
Grade 8 Math	25%	23%	3%

1011. The aggregate percent of Poughkeepsie students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 7%. (P.X. 1, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 28). Additionally, for 2013-14, 9% of 4th graders scored at or above level three on the New York State Education Department's Math assessment, and 5% of 8th graders scored at or above level three. (P.X. 61).

1012. The results of the New York State Education Department's English Language Arts and Math standardized test for students with disabilities are as follows (P.X. 1):

Percentage of Poughkeepsie Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	0%
Grade 4 ELA	2%	**Grade 4 Math**	0%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	2%	**Grade 6 Math**	2%
Grade 7 ELA	2%	**Grade 7 Math**	0%
Grade 8 ELA	0%	**Grade 8 Math**	0%

1013. The aggregate percentage of Poughkeepsie students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 1). The aggregate percentage of Poughkeepsie students with disabilities, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 1%. (P.X. 1).

1014. The results of the New York State Education Department's ELA and Math standardized test for economically disadvantaged students are as follows (P.X. 1):

Percentage of Poughkeepsie Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	8%	**Grade 3 Math**	6%
Grade 4 ELA	10%	**Grade 4 Math**	9%
Grade 5 ELA	6%	**Grade 5 Math**	4%
Grade 6 ELA	11%	**Grade 6 Math**	4%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	7%	**Grade 7 Math**	2%
Grade 8 ELA	7%	**Grade 8 Math**	2%

1015. The aggregate percentage of Poughkeepsie economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 8%. (P.X. 1). The aggregate percentage of Poughkeepsie economically disadvantaged students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 6%. (P.X. 1).

1016. The results of the New York State Education Department's ELA and Math standardized test for students with limited English proficiency are as follows (P.X. 1):

Percentage of Poughkeepsie Limited English Proficient Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	0%	**Grade 3 Math**	0%
Grade 4 ELA	0%	**Grade 4 Math**	0%
Grade 5 ELA	3%	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	4%
Grade 7 ELA	0%	**Grade 7 Math**	0%
Grade 8 ELA	0%	**Grade 8 Math**	0%

1017. The aggregate percentage of Poughkeepsie Limited English Proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 1). The aggregate percentage of Poughkeepsie Limited English Proficient students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 1%. (P.X. 1).

1018. The results of the New York State Education Department's ELA and Math standardized test for Poughkeepsie Hispanic/Latino students are as follows (P.X. 1):

Percentage of Poughkeepsie Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	9%	**Grade 3 Math**	6%
Grade 4 ELA	13%	**Grade 4 Math**	11%
Grade 5 ELA	5%	**Grade 5 Math**	4%
Grade 6 ELA	13%	**Grade 6 Math**	6%
Grade 7 ELA	7%	**Grade 7 Math**	1%
Grade 8 ELA	8%	**Grade 8 Math**	3%

1019. The aggregate percentage of Poughkeepsie Hispanic/Latino students, grades 3-8, scoring at or above a level three on the New York Department of Education's ELA assessment in 2013-14 was 11%. (P.X. 1). The aggregate percentage of Poughkeepsie Hispanic/Latino students, grades 3-8, scoring at or above a level three on the New York Department of Education's Math assessment in 2013-14 was 8%. (P.X. 1).

1020. The results of the New York State Education Department's ELA and Math standardized test for Poughkeepsie Black/African-American students are as follows (P.X. 1):

Percentage of Poughkeepsie Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	5%	**Grade 3 Math**	6%
Grade 4 ELA	8%	**Grade 4 Math**	8%
Grade 5 ELA	7%	**Grade 5 Math**	3%
Grade 6 ELA	8%	**Grade 6 Math**	2%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	8%	**Grade 7 Math**	2%
Grade 8 ELA	6%	**Grade 8 Math**	2%

1021. The aggregate percentage of Poughkeepsie Black/African-American students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 8%. (P.X. 1). The aggregate percentage of Poughkeepsie Black/African-American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 5%. (P.X. 1).

1022. The percentage of Poughkeepsie students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 1):

ELA Results
Poughkeepsie Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	59%	60%
Students With Disabilities	94%	94%
Limited English Proficient	92%	90%
Economically Disadvantaged	62%	62%
Black/African-American	61%	64%
Hispanic/Latino	60%	58%

1023. The percentage of Poughkeepsie students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 1):

Math Results
Poughkeepsie Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	**2013-14 Aggregate Percentage Grades 3-8**
All Students	67%	68%
Students With Disabilities	95%	95%
Limited English Proficient	91%	90%
Economically Disadvantaged	70%	70%
Black/African-American	71%	73%
Hispanic/Latino	65%	65%

1024. State expert Roger Gorham noted that outputs in Poughkeepsie are unsatisfactory, not what they should be, and not acceptable. (T. 3567).

1025. Gorham further acknowledged that all Poughkeepsie elementary schools fell significantly below New York state expectations. (T. 3572).

1026. Gorham noted that Poughkeepsie has the highest needs population of any district in Dutchess county. (T. 3582-83). Gorham also acknowledged that Poughkeepsie does not have acceptable academic achievement. (T. 3574).

1027. The state's expert testified that he would advocate for more resources in Poughkeepsie, and that more resources, if applied well, would help to generate better outcomes for students in Poughkeepsie. (T. 3598).

8. *Utica*

1028. The percentage of Utica students who scored at or above level three on SED's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 2, 2010-11 report card pp. 18, 20, 23, 25, 27, 29; 2011-12 report card pp. 6, 8, 11, 13, 15, 17; 2012-13 report card pp. 8-13) (Stipulated in Joint Findings of Fact, Appendix H, ¶29):

Percentage of Utica Students Scoring at or Above Level 3 – ELA

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	39%	36%	15%
Grade 4 ELA	35%	42%	11%
Grade 5 ELA	32%	37%	14%
Grade 6 ELA	38%	36%	16%
Grade 7 ELA	30%	31%	15%
Grade 8 ELA	31%	33%	15%

1029. The aggregate percent of Utica students, grades 3-8, scoring at or above level three on SED's ELA assessment in 2013-2014 was 15%. (P.X. 2, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 30). Additionally, for 2013-14, 17% of 4th graders scored at or above level three on the New York State Education Department's ELA assessment, and 19% of 8th graders scored at or above level three. (P.X. 61).

1030. The percentage of Utica students who scored at or above level three on SED's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 2, 2010-11 report card pp. 19, 21, 24, 26, 28, 30; 2011-12 report card pp.7, 9, 12, 14, 16, 18; 2012-13 report card pp. 14-19) (Stipulated in Joint Findings of Fact, Appendix H, ¶31):

Percentage of Utica Students Scoring at or Above Level 3 – Math

	2010-2011	2011-2012	2012-2013
Grade 3 Math	46%	46%	18%
Grade 4 Math	50%	50%	17%
Grade 5 Math	47%	44%	11%
Grade 6 Math	33%	41%	20%
Grade 7 Math	44%	41%	6%
Grade 8 Math	36%	43%	9%

1031. The aggregate percent of Utica students, grades 3-8, scoring at or above level three on SED's Math assessment in 2013-2014 was 19%. (P.X. 2, 2013-14 report card) (Stipulated in Joint Findings of Fact, Appendix H, ¶ 32). Additionally, for 2013-14, 27% of 4th graders scored at or above level three on the New York State Education Department's Math assessment, and 5% of 8th graders scored at or above level three. (P.X. 61).

1032. The results of the New York State Education Department's English Language Arts and Math standardized test for Utica students with disabilities are as follows (P.X. 2):

Percentage of Utica Students-with-Disabilities Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	1%	**Grade 3 Math**	5%
Grade 4 ELA	0%	**Grade 4 Math**	3%
Grade 5 ELA	0%	**Grade 5 Math**	1%
Grade 6 ELA	0%	**Grade 6 Math**	2%
Grade 7 ELA	2%	**Grade 7 Math**	0%
Grade 8 ELA	1%	**Grade 8 Math**	0%

1033. The aggregate percentage of Utica students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 1 %. (P.X. 2). The aggregate percentage of Port Jervis students with disabilities, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 3%. (P.X. 2).

1034. The results of the New York State Education Department's ELA and Math standardized test for Utica economically disadvantaged students are as follows (P.X. 2):

Percentage of Utica Economically Disadvantaged Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	11%	**Grade 3 Math**	15%
Grade 4 ELA	10%	**Grade 4 Math**	16%
Grade 5 ELA	10%	**Grade 5 Math**	8%
Grade 6 ELA	12%	**Grade 6 Math**	16%
Grade 7 ELA	12%	**Grade 7 Math**	5%
Grade 8 ELA	12%	**Grade 8 Math**	6%

1035. The aggregate percentage of Utica Economically Disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 12%. (P.X. 2). The aggregate percentage of Utica Economically Disadvantaged students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 16 %. (P.X. 2).

1036. The results of the New York State Education Department's ELA and Math standardized test for students with limited English proficiency are as follows (P.X. 2):

Percentage of Utica Limited English Proficiency Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	1%	**Grade 3 Math**	4%
Grade 4 ELA	1%	**Grade 4 Math**	1%
Grade 5 ELA	0%	**Grade 5 Math**	0%
Grade 6 ELA	0%	**Grade 6 Math**	3%
Grade 7 ELA	0%	**Grade 7 Math**	0%
Grade 8 ELA	1%	**Grade 8 Math**	1%

1037. The aggregate percentage of Utica Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 1%. (P.X. 2). The aggregate percentage of Utica Limited English Proficient students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 3%. (P.X. 2).

1038. The results of the New York State Education Department's ELA and Math standardized test for Utica Hispanic/Latino students are as follows (P.X. 2):

Percentage of Utica Hispanic/Latino Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	9%	**Grade 3 Math**	13%
Grade 4 ELA	11%	**Grade 4 Math**	17%
Grade 5 ELA	10%	**Grade 5 Math**	7%
Grade 6 ELA	12%	**Grade 6 Math**	18%

Test	2012-2013	Test	2012-2013
Grade 7 ELA	6%	**Grade 7 Math**	4%
Grade 8 ELA	11%	**Grade 8 Math**	4%

1039. The aggregate percentage of Utica Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 10%. (P.X. 2). The aggregate percentage of Utica Hispanic/Latino students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 15 %. (P.X. 2).

1040. The results of the New York State Education Department's ELA and Math standardized test for Utica Black/African-American students are as follows (P.X. 2):

Percentage of Utica Black/African-American Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	8%	**Grade 3 Math**	10%
Grade 4 ELA	5%	**Grade 4 Math**	7%
Grade 5 ELA	6%	**Grade 5 Math**	2%
Grade 6 ELA	9%	**Grade 6 Math**	10%
Grade 7 ELA	7%	**Grade 7 Math**	3%
Grade 8 ELA	8%	**Grade 8 Math**	3%

1041. The aggregate percentage of Utica Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 7%. (P.X. 2). The aggregate percentage of Utica Black/African American students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 8%. (P.X. 2).

1042. The results of the New York State Education Department's ELA and Math standardized test for Utica Asian or Native Hawaiian/Other Pacific Islander students are as follows (P.X. 2):

Percentage of Utica Asian or Native Hawaiian/Other Pacific Islander Students Scoring at or above Level 3

Test	2012-2013	Test	2012-2013
Grade 3 ELA	12%	**Grade 3 Math**	18%
Grade 4 ELA	11%	**Grade 4 Math**	19%
Grade 5 ELA	16%	**Grade 5 Math**	13%
Grade 6 ELA	12%	**Grade 6 Math**	22%
Grade 7 ELA	14%	**Grade 7 Math**	8%
Grade 8 ELA	13%	**Grade 8 Math**	14%

1043. The aggregate percentage of Utica Asian or Native Hawaiian/Other Pacific Islander students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 15%. (P.X. 2). The aggregate percentage of Utica Asian or Native Hawaiian/Other Pacific Islander students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 19 %. (P.X. 2).

1044. The percentage of Utica students who scored a level one (the lowest possible score) on the New York Department of Education's ELA assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 2):

ELA Results
Utica Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	53%	51%
Students With Disabilities	89%	89%
Limited English Proficient	88%	87%
Economically Disadvantaged	58%	57%
Black/African-American	64%	64%
Hispanic/Latino	58%	59%
Asian/Native Hawaiian/Other Pacific Islander	57%	57%

1045. The percentage of Utica students who scored a level one (the lowest possible score) on the New York Department of Education's Math assessment in 2012-13 and 2013-2014, categorized by demographic group, are as follows (P.X. 2):

Math Results
Utica Students Scoring at Level 1

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
All Students	54%	50%
Students With Disabilities	84%	89%
Limited English Proficient	82%	80%
Economically Disadvantaged	57%	52%

	2012-13 Aggregate Percentage Grades 3-8	2013-14 Aggregate Percentage Grades 3-8
Black/African-American	66%	63%
Hispanic/Latino	56%	53%
Asian/Native Hawaiian/Other Pacific Islander	56%	54%

1046. Kids who cannot read by the 6th grade will likely never learn to read. (T. 486). As Lori Eccleston noted, "[I]f your kids don't learn to read by 6th grade, it's probably not going to happen." (T. 486).

1047. State expert Roger Gorham acknowledged that Utica currently has unacceptable outputs. (T. 3622).

9. ***New York State***

1048. The percentage of New York State students who scored at or above a level three on the New York Department of Education's ELA assessment in 2010-2011 through 2012-2013 are as follows (P.X. 7):

Percentage of New York State Students Scoring at or Above Level 3 – ELA

	2010-2011	2011-2012	2012-2013
Grade 3 ELA	56%	56%	31%
Grade 4 ELA	57%	59%	30%
Grade 5 ELA	54%	58%	30%
Grade 6 ELA	56%	56%	30%
Grade 7 ELA	48%	52%	31%
Grade 8 ELA	47%	50%	34%

1049. The percentage of New York State students who scored at or above a level three on the New York Department of Education's Math assessment in 2010-2011 through 2012-2013 are as follows (P.X. 7):

Percentage of New York State Students Scoring at or Above Level 3 – Math

	2010-2011	**2011-2012**	**2012-2013**
Grade 3 ELA	60%	61%	34%
Grade 4 ELA	67%	69%	36%
Grade 5 ELA	66%	67%	30%
Grade 6 ELA	63%	65%	31%
Grade 7 ELA	65%	65%	28%
Grade 8 ELA	60%	61%	28%

1050. The aggregate percent of New York State students, grades 3-8, scoring at or above a level three on New York Department of Education's ELA assessment in 2013-14 was 31%. (P.X. 7).

1051. The aggregate percent of New York State students, grades 3-8, scoring at or above a level three on New York Department of Education's Math assessment in 2013-14 was 36%. (P.X. 7).

D. <u>Focus and Priority School Designations</u>

1052. A "focus school" has been identified by New York State as falling in the lowest 10% of schools as measured by performance on state exams for one or more student subgroup and in need of improvement. (T. 4764-65)

1053. A "priority school" is has been identified by New York State as falling in the lowest 5% of schools as measured by performance on state exams for one or more student subgroup and in need of improvement. (T. 4765).

1054. A "focus district" has at least one or more focus or priority schools. (T. 4764).

1055. A school with a "local assistance plan" is identified because they have failed to make adequate yearly progress for three consecutive years on accountability measures for particular subgroups, have a large performance gap between student subgroups and the general population or are otherwise not designated as in a focus district, but performing at comparable levels. (T. 4765-66).

1. *Jamestown*

1056. Jamestown is a focus district. (T. 682-83, 3706; 4765; P.X. 27).

1057. All nine schools in Jamestown are classified as focus schools: Carlyle C. Ring Elementary School, Clinton v. Bush Elementary School, Milton J. Fletcher Elementary School, Samuel G. Love Elementary School, Abraham Lincoln Elementary School, Thomas Jefferson Middle School, Persell Middle School, George Washington Middle School and Jamestown High School. (T. 806; P.X. 27).

2. *Kingston*

1058. Kingston is a focus district. (T. 4765; P.X. 27).

1059. Eight schools in Kingston are classified as focus schools: Chambers School, George Washington School, Ernest C. Myer School, John F. Kennedy School, Harry L. Edson School, M. Clifford Miller Middle School, J. Watson Bailey Middle School and Kingston High School. (P.X. 27; T. 1051).

3. *Mt. Vernon*

1060. Mt. Vernon is a focus district. (T. 4765; P.X. 27).

1061. Six schools in Mt. Vernon are classified as focus schools: Edward Williams School, Graham School, Grimes School, Longfellow Middle School, Mt. Vernon High School and Thornton High School. (P.X. 27).

1062. Davis Middle School is a Priority School. (P.X. 27).

4. *Newburgh*

1063. Newburgh is a focus district. (T. 4765; P.X. 27).

1064. Six Schools in Newburgh are focus schools: Balmville School, Horizon-on-the-Hudson Magnet School, Vails Gate High Tech Magnet School, South Middle School, Newburgh Free Academy-Main Campus and Meadow Hill Global Explorations Magnet. (P.X. 27).

1065. Temple Hill School is a priority school. (P.X. 27).

5. *Niagara Falls*

1066. Five schools in Niagara Falls are on Local Assistance Plans: Seventy Ninth Street School, Maple Avenue School, Niagara Street School, Gaskill Prepatory School and Cataract Elementary School. (P.X. 27).

6. *Poughkeepsie*

1067. Poughkeepsie is a focus district. (T. 4765; P.X. 27; C.X. 2, Report, p. 4).

1068. Four schools in Poughkeepsie are focus schools: Warring Magnet Academy of Science and Technology, Gov. George Clinton School, G.W. Krieger School, Morse Young Magnet School. (P.X. 27).

1069. Poughkeepsie Middle School and High School are both priority schools. (P.X. 27).

7. *Port Jervis*

1070. Three schools in Port Jervis are on local assistance plans: Anna S. Kuhl Elementary School, Port Jervis Middle School and Port Jervis Senior High School. (P.X. 27).

8. *Utica*

1071. Utica is a focus district. (T. 4765; P.X. 27).

1072. Nine schools in Utica are focus schools: Christopher Columbus Elementary School, Watson Williams Elementary School, Thomas Jefferson Elementary School, John F. Hughes Elementary School, Kernan Elementary School, Roscoe Conkling Elementary School, John F. Kennedy Middle School, Senator James H. Donovan Middle School and Thomas R. Proctor High School. (P.X. 27).

1073. Martin Luther King Jr. Elementary School is a priority school. (P.X. 27).

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

LARRY J. AND MARY FRANCES MAISTO, et al., Plaintiffs, - against - STATE OF NEW YORK, Defendant.	Index No. 8997-08 Hon. Kimberly A. O'Connor

PLAINTIFFS' PROPOSED FINDINGS OF FACT