



Pursuant to the Court’s September 29, 2008 Order, the State hereby submits its posttrial brief, and incorporates by reference the arguments made in its pretrial brief.

### ARGUMENT

As this Court and the Supreme Court acknowledged, the responsibility to fulfill the duties of article X, section (1)(3) rests upon the Legislature. The Legislature has satisfied the standard it set under its definition of a quality education in Mont. Code Ann. § 20-9-309.

While Plaintiffs critique the approach taken by the Legislature, not even their own experts agree on what a compliant funding formula would look like. (Myers, Copps, Messinger, Melton Test.) In the context of school funding, such disagreements are inevitable and not evidence of a constitutionally deficient formula. “The tension between what the districts believe is needed and what the state contends education should cost will always exist, particularly in a system such as ours that values and protects local control.” Campbell County Sch. Dist. v. State of Wyoming, 181 P.3d 43, 66 (Wyo. 2008) (upholding Wyoming Legislature’s school funding system). In a similar compliance proceeding, the Kansas Supreme Court ruled that its state legislature was not “bound to adopt, as suitable funding, the ‘actual costs’ as determined” by any particular study and had satisfied the court’s prior orders:

We are mindful of the fact that the funding of public education is extraordinarily complex, just as we are mindful of the realities of the legislative process. We conclude that the legislature’s efforts in 2005 and 2006 S.B. 549 constitute substantial compliance with our prior orders. . . .

Montoy v. Kansas, 138 P.3d 755, 765 (Kan. 2006); see also Hancock v. Comm’r of Ed., 443 Mass. 428, 435 (2005) (denying further relief where the Commonwealth had “embarked on a long-term, measurable, orderly and comprehensive process of reform ‘to provide a high quality public education to every child.’” )

Plaintiffs bear the burden of proving their contention that the funding formula has not changed in order to meet the mandates of the Supreme Court. 05/05/08 Order at 5. This placed upon Plaintiffs a different burden than they bore at trial. Given a definition of quality education, it was not enough for Plaintiffs to say that they have the same problems they did before trial. Instead, Plaintiffs must show that the funding formula’s alleged deficiencies cause their inability to offer the basic educational programs provided by statute. If most school districts are able to provide a quality education as defined in the statute under the revised funding formula--and the evidence showed the vast majority can and do provide a quality education--then Plaintiff districts had to prove that their problems are a function of the funding formula and not the result of local decisions to fund programs other than those provided by section 309. They did not do so.

**I. THE STATE HAS COMPLIED WITH SECTION 20-9-309(4).**

The single law controlling this case is Mont. Code Ann. § 20-9-309, the definition of and process for funding a basic system of free quality public elementary and secondary schools. In particular, the parties agree that the issue is whether the State has complied with subsection (4) of that statute, which requires, in short, a determination of the costs of

providing a quality education and establishment of a funding formula that reflects those costs. The State has shown its compliance with each element of the subsection.

**A. “Determine the Costs.”**

The State’s first step is to “determine the costs of providing the basic system of free quality public elementary and secondary schools.” Mont. Code Ann.

§ 20-9-309(4)(a). In adopting this subsection, the Legislature did not require the application of a particular cost methodology, but instead defined a flexible approach incorporating several studies, including “one or more of the following: (a) studies authorized or conducted by the committee; (b) existing studies completed by reputable and reliable experts.” S.B. 525, 2005 Mont. Laws 371, § 1(4) (Ex. 715).

The Quality Schools Interim Committee (QSIC) considered all of these sources, including studies authorized by the committee (e.g., Farrier & Robson on needs assessment (Ex. 721), Griffith on small and isolated schools (Ex. 722), Stoddard & Young on salaries (Ex. 738), R.C. Wood on “four methodologies” (Ex. 740)), studies conducted by the committee (e.g., Burke on facilities (Ex. 729), Lohse on at-risk (Ex. 748)), and existing studies (e.g., Augenblick & Myers (Ex. 725), and prior interim committees (Ex. 768)). (Ewer, Miller, Hall Test.)

“In implementing the educational needs and cost analyses,” the QSIC also followed the Legislature’s instructions to seek input from various state and private educational groups, request assistance from legislative and executive branch agencies, and “examine the state’s existing and projected financial resources.” S.B. 525, 2005 Mont. Laws 371, § 1(5) (Ex. 715). The QSIC began implementing the cost

analyses with the 2005 Select Committee's eight cost components: per-student, classroom, accredited program, operations and maintenance, special education, transportation, capital projects, and debt service. (Ex. 767 at 8; Hall Test.)

For each component, as instructed by the Legislature, the QSIC examined the existing resources in terms of the actual costs incurred by school districts to provide the services in each component, and projected to fiscal year 2007. (E.g., classroom entitlement cost matrix, Ex. 730; Hall Test.) Then the QSIC chose from several research-based options to determine the resources necessary for that component, and subcomponents where appropriate. (E.g., classroom options, Ex. 737; Hall Test.) The QSIC voted on the options for each component and the working group determined the associated cost. Those options and costs were recorded on the QSIC status sheet. (E.g., \$510,363,745 classroom component, Ex. 751; Hall, Quinlan, Standaert Test.)

In total, the QSIC estimated a cost of \$987,815,044 of "Total General Spending--permissive or required" for six primary components, the status quo for transportation and debt service, and one-time only expenditures for Indian Education for All startup (\$7 million) and capital projects (\$2 million for a facility study and \$23 million for weatherization and maintenance pending the study). (Ex. 751; Hall Test.) However, while the QSIC determined the costs of the components, it was unable to pass out a bill implementing those components in the face of serious concerns from the educational community and others that the components were too complicated to use as a distribution mechanism. (Ex. 727; Ewer, Melton Test.)

The members of QSIC and Director of Legislative Legal Services, Greg Petesch, generally concurred that the committee had performed all of its duties, and that the actual implementation of a funding formula in law depended on the Legislature itself.

(Ex. 756, 759; Ewer Test.) Plaintiffs claim that they were shut out of the process, but the record shows all meetings of the QSIC and its working group were public and publicly noticed, and some were even held at Plaintiffs' offices. (Ex. 818, Hall, Quinlan Test.) Beyond this, the working group that assisted the QSIC committee included three district superintendents. (Messinger, McNeil Test.) While some Plaintiffs allege a nebulous conspiracy to manipulate the QSIC process, there is no evidence to support it. Such a cynical suggestion disrespects the comprehensive work performed by senior legislative members of both parties and both houses, and the legislative and executive branch staff who dedicated countless hours assisting the QSIC process. See S.B. 525, 2005 Mont. Laws 371, § 1(5)(b) (Ex. 715).

**B. “Establish a funding formula . . . based on the definition.”**

The State's next step is to establish a funding formula that meets several criteria, the foremost of which is that it be “based on the definition of a basic system of free quality public elementary schools.” Mont. Code Ann. § 20-9-309(4)(b)(i). This subsection imports the definitional subsection (a) into the required formula, which requires “the educational program specified by the accreditation standards,” programs for special needs students, programs to implement Indian Education for All, qualified staff, facilities, transportation, assessment, and local control. Mont. Code Ann. § 20-9-309(2). In response to the education community's concerns about complexity and change that

would result under the QSIC bill, the State chose to modify, rather than abandon, the existing formula. (Ewer, Melton Test.) Notably, nothing in the Supreme Court's decision or the newly enacted statute required abandonment of the existing formula. Still, there are multiple ways to provide those programs and in order to fund the formula, the State had to develop its own model of how those programs should be offered.

**(a) Accreditation Standards.** As the definition suggests, that model should be based primarily on the accreditation standards. See Mont. Code Ann. § 20-9-309(2)(a). The Legislature maintained the basic and per-ANB entitlements that support the vast majority of schools in meeting the accreditation standards regardless of size or budget status. Together, these core entitlements fund the costs reflected in the per-student, classroom, accredited program, and operations and maintenance components as determined by QSIC. (Hall Test.; compare Pretrial Order Agreed Facts ¶¶ 46, 47 (basic & per-ANB entitlements) with Ex. 767 at 21-25 (cost component amounts per student or classroom).)

**(b) Special Needs Students.** The definition also requires educational programs for students with special needs. See Mont. Code Ann. § 20-9-309(2)(b). Although districts already provided those programs, including a substantial investment in class sizes far smaller than required by accreditation, the Legislature added new funding components to enable districts to fund at-risk student programs outside of the core entitlement funding. (Ex. 813 at 54-59; Hall Test.) The new At-Risk and American Indian Achievement Gap components address at-risk students generally, and a double-weighted component for American Indian students who also comprise most of the

limited English proficient students. (Hall Test.) Special education funding is already mandated by federal law, although the new Quality Educator component has augmented the State's share of funding a declining special education population. (Ex. 813 at 67-76; Manwaring Test.) The implementation of Full-Time Kindergarten is an important at-risk student strategy that exceeded the QSIC's recommendations. (Messinger, Lombardi Test.)

**(c) American Indian Education for All.** The Legislature adopted the QSIC's recommendation for Indian Education for All funding, plus another \$3 million of start-up funds (in addition to the \$7 million QSIC recommendation). See Mont. Code Ann. § 20-9-309(2)(c). Plaintiffs did not contest the funding of this program.

**(d) Qualified and Effective Teachers.** The definition requires "qualified and effective teachers or administrators and qualified staff to implement the programs" under the accreditation standards and for special needs students and American Indian Education for All. Mont. Code Ann. § 20-9-309(2)(d). The Quality Educator component supports higher teacher salaries at a regionally comparable level with a stable flow of funding. (Hall, Quinlan Test.) The Quality Educator Loan Assistance program provides teachers an additional payment in high-need subjects and rural areas. (Quinlan Test.)

**(e) Facilities.** The definition requires "facilities and distance learning technologies associated with meeting the accreditation standards." Mont. Code Ann. § 20-9-309(2)(e). In response, the Legislature authorized a comprehensive school facilities study, and provided continuous, increasing, and unprecedented bridge funding of \$23 million for fiscal year 2006, \$30 million for the 2009 biennium, and at least

\$41 million for the 2011 biennium. (Ewer, Hall Test.) Nothing in the statute prohibits the formula from incorporating one-time funding for immediate or potentially temporary needs, so long as it meets the requirements of subsection (4).

**(f) Transportation.** Plaintiffs did not contest transportation funding.

**(g) Student Assessment.** The definition requires “a procedure to assess and track student achievement in the programs established” under the accreditation standards and for special needs students and American Indian Education for All. Mont. Code Ann. § 20-9-309(2)(g). The Legislature has funded, and the OPI is implementing, a comprehensive student assessment tracking data system that not only meets the requirements of subsection (g), but also assesses the needs of special education and at-risk students. (Ex. 802; Quinlan Test.) These assessments show student achievement progressing well beyond the levels at trial (Ex. 813 at 35-42), responding to the Supreme Court’s concerns as to whether Montana’s level of student achievement would continue. Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, ¶ 30.

**(h) Local Control.** The definition requires “preservation of local control of schools in each district vested in a board of trustees.” Mont. Code Ann. § 20-9-309(2)(h). Nearly all of the new ongoing funding is provided to a school district’s general fund so districts have maximum flexibility in targeting the resources according to local preferences. (Quinlan, Hall Test.)

**C. “Establish a funding formula that ... reflects the costs.”**

Subsection (4) requires that the funding formula “reflects the costs associated with providing” the basic system of quality schools. While “cost-based” (the Plaintiffs’ term

at trial) suggests that the formula originate in some cost analysis, “reflects” suggests that the formula should fund costs comparable to those determined by the QSIC. Plaintiffs appear to agree with this point, because they have urged the Legislature not to abandon the existing formula in favor of new formulas suggested by various experts (including their own). (Copps, Messinger Test.) As the testimony at trial demonstrated, the funding formula reflects the costs determined by QSIC at both the aggregate and individual levels. (Hall, Seder Test.)

At the aggregate level, the actual available funding for school districts in 2007 (before significant additional increases for the Quality Educator and other payments), when compared to the baseline program costs QSIC analyzed as part of “Total General Spending--permissive or required,” was \$1.073 billion, \$85.1 million more than the QSIC cost estimate of \$987.8 million using the same baseline program costs. (Ex. 813, fig. 2.2; Seder, Hall Test.) By another measure, the \$148 million of new ongoing funding provided to school districts since fiscal year 2005 is substantially more than recommended by QSIC’s studies using the evidence-based methodology (\$20.6 million), statistical methodology (\$34.4 million), and the successful schools methodology (\$96.2-102 million). Only the professional judgment methodology, true to form, yielded a higher cost estimate (\$328.9 million). (Ex. 740 at 135-37.) Not all of this funding is from the state general fund, and some of the local funding depends on mill levies; however, reliance on local voter support is a critical part of Montana’s local control school funding system. (Ex. 813 at 27; Manwaring Test.)

The Legislature adopted the amounts of several new funding components directly from the QSIC cost estimates, including the Quality Educator component (adjusted to reflect actual regional pay disparities), the At-Risk and American Indian Achievement Gap components, the Weatherization and Deferred Maintenance facilities payment, and the Facilities Study. (Hall Test.) The Legislature increased funding for special education, transportation, and capital projects beyond the status quo QSIC recommendations. (Hall Test.) As discussed above, at an individual level the remaining components (per-student, classroom, accredited program, and operations and maintenance) had estimated per-student costs now covered by the increased per-ANB and basic entitlements. (Hall Test.) Therefore, the revised formula provides schools adequate resources to provide the quality education contemplated by the Legislature’s definition, according to the costs determined by the QSIC.

**D. “[E]ducationally relevant factors.”**

Subsection (4)(b)(ii) requires that the formula be adjustable by the Legislature based on “the educationally relevant factors” in the section, including the number of students, the needs of isolated and urban schools, special needs and American Indian students, and the ability of school districts to attract and retain qualified staff. See Mont. Code Ann. § 20-9-309(3). These factors must also be considered in developing the funding mechanism originally. Id. The law leaves it to the legislature’s discretion to weigh these factors, so long as all of the factors are considered.

The provision for adjustment of the formula is in addition to the ten-year review requirement of subsection (5). Thus, the legislature anticipated that the costs, programs,

and educationally relevant factors that are built into the formula would be changing constantly over the biennial cycle. After setting the formula in motion originally, and between the ten-year reviews, the legislature may consider one-time funding and adjustments to the formula, so long as each adjustment takes into consideration the appropriate educationally relevant factors (again, according to the legislature's weighing of those factors). The implementation of new data systems will assist the Legislature in making these adjustments going forward. (Ewer, Lombardi, Quinlan Test.)

**(a) Number of Students.** The legislature's retention of the per-ANB entitlement fundamentally considers the number of students in a district, with an incremental upward adjustment for high school districts of less than 800 ANB and elementary school districts of less than 1000 ANB to reflect reduced economies of scale in smaller districts. (Quinlan, McNeil Test.) Indian Education for All and American Indian Achievement Gap components also fund based on the number of students. Per-ANB averaging and removal of "soft caps," combined with the new Quality Educator component, smooth funding changes driven by enrollment changes, particularly to the benefit of districts with declining enrollment. (Standaert, Seder Test.)

**(b) Isolated Schools with Low Population Density.** In addition to the additional incremental per-ANB funding for smaller school districts, the basic entitlement is a critical supplement for a small district's fixed costs. (McNeil Test.) Qualified isolated schools also receive an additional per-school basic entitlement. The same policies targeted to declining enrollment, discussed above, also help smaller isolated schools that are especially sensitive to enrollment changes. (Quinlan, Seder Test.)

(c) **Urban Schools with High Population Density.** The stop-loss for per-ANB funding creates a steady source of enrollment-based funds to the benefit of larger districts. (Standaert, Seder Test.)

(d) **Special Needs Students.** The funding components described above, in addition to class sizes far below the accreditation standards, are designed to meet the increased demands of special needs students beyond the core entitlement funding. (Lombardi, Hall Test.)

(e) **The Needs of American Indian Students.** Indian Education for All ensures the integration of the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on the tribes of Montana. The American Indian Achievement Gap component allows the Legislature to provide targeted payments to meet the educational needs of that population, and adjust that funding according to new assessment data. (Lombardi Test.)

(f) **Qualified Educators.** The funding components described above, and the biennial evaluation of the Quality Educator component in comparison with regional salaries, allows the Legislature to respond to trends in recruiting teachers. (Hall Test.)

**E. “Self-executing and includes a mechanism for annual inflationary adjustments.”**

Subsection (4)(b)(iii) requires that the funding formula be self-executing, and as part of that self-execution that it include annual inflationary adjustments. This provision must be read consistent with the Legislature’s constitutional duties to appropriate funds biennially. See Mont. Const. art. VIII, § 14. In other words, “self-executing” does not

mean “automatically funded.” Each biennium the legislature must revisit and adjust the formula as provided above, and appropriate funds accordingly. Within these limitations, the legislature has provided schools the unique benefit of automatic inflation of the budget for school district entitlements, which gives school funding increases higher priority in the budget process than all other programs funded by present law adjustments. See Mont. Code Ann. § 20-9-326; (Ewer Test.). Although the Plaintiffs critique the inclusion of a 3 percent cap in section 20-9-326, the 3 percent cap is consistent with historical inflation trends. (Ex. 22-08.)

**F. “Based on state laws” and “federal education laws consistent with Montana’s constitution and laws.”**

Subsection (4)(b)(iv) is clear for present purposes and uncontroversial. Subsection (4)(b)(v), on the other hand, is critical to a proper understanding of the Legislature’s mandate in section 309. The legislature has not required that the funding formula be based on all federal education laws, but only those laws consistent with Montana’s constitution and laws, which is a significant limitation on the legislature’s definition, particularly when considering the demands of the federal No Child Left Behind (“NCLB”) law. Given the State’s and the Plaintiffs’ serious concerns with infringement of local control by NCLB, concerns that should also be credited to the Legislature in drafting this condition, the consistency condition does not simply (and redundantly) restate the preemptive effect of federal law, or the funding requirements of federal programs. (Ex. 793.) Instead, it is a refusal to import federal standards into the

Legislature's definition where those standards are, like some NCLB requirements, antithetical to the very system that is being defined.

**G. “Distributes . . . in an equitable manner the state's share.”**

Subsection (4)(b)(vi) quotes the constitutional equity language of article X, section 1(3). Plaintiffs did not prevail on their equity claim, and do not contest equity here. Plaintiffs have made allegations concerning the State's share apart from the equity issue, but this issue was not addressed as a constitutional deficiency by the Supreme Court's Opinion. Therefore, it is not a basis for finding the State in noncompliance with that order or section 309.

**H. “Provide school districts with ... flexibility, accountability and efficiency.”**

Subsection (4)(c) directs the Legislature to “consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.” Mont. Code Ann. § 20-9-309(4)(c). Although the QSIC recommended consolidation of a few funds, school districts use these dedicated funds for specific operating and non-operating expenses (e.g., flexibility fund). (Hall Test.) A few of the smallest funds are rarely used by most districts (e.g., state mining impact, litigation reserve), but their elimination would harm those few districts that need those dedicated funds without any benefit for districts that ignore those funds in the first place. (Hall Test.)

The overarching purpose of this provision is not budgetary accounting but budgetary flexibility. In this respect, the State has made flexibility a cornerstone of its

formula revisions by devoting major new funding components to the general fund without restrictions on their use. (Quinlan, Hall Test.) Given this, the State appropriately relies on the “accountability and efficiency” guarantee to monitor school expenditures and student achievement, and expects that schools implement the funding formula efficiently. (Ex. 813 at 31-44; Manwaring Test.)

## **II. SCHOOLS RECEIVE ADEQUATE FUNDS TO PROVIDE A QUALITY EDUCATION DEFINED BY SECTION -309(2).**

Although Plaintiffs requested what they characterized as a compliance hearing concerning the State’s actions, they presented what can only be characterized as an abbreviated adequacy challenge based on just three large districts and one smaller district. In the face of the comprehensive statewide analyses presented by the State that show no relationship between funding under the revised formula and the concerns raised by those four districts, Plaintiffs’ limited adequacy challenge cannot bear their burden of proof on the State’s compliance with section 20-9-309(4). Another court concluded in a supplemental relief proceeding even where, unlike here, the quality of schools was in doubt, “[w]hile the plaintiffs have amply shown that many children in the focus districts are not being well served by their school districts, they have not shown that the defendants are acting in an arbitrary, nonresponsive, or irrational way to meet the constitutional mandate.” Hancock v. Commissioner of Education, 822 N.E.2d 1134, 1140 (Mass. 2005).

**A. District Budgets Reflect Local Choices, Not Inadequate Funding.**

In the context of the revised funding formula, increased resources for schools, and a systematic statewide analysis of school district resource allocation since 2005, Plaintiffs did not show that the budget choices being made in those districts represented at trial are a consequence of the state funding formula rather than a reflection of the budget priorities and preferences of local superintendents and trustees. (Ex. 813, Fig. 4.26.)

Helena Superintendent Messinger testified that Helena now offers the most competitive teacher compensation package in the State and has seen its applicant pool grow to around 600 applicants. (Messinger Test.) At the same time that Helena has increased its teacher salaries, it has also increased its staffing levels and added new programs for special needs students, literacy, a summer program, and expanded gifted and talented services at the high school level. (Ex. 785; Messinger Test.)

Like Helena, the Billings district has also made significant advancements in its efforts to recruit and retain quality teachers. Like most Plaintiff districts, Billings has increased teacher salaries while at the same time adding additional staff to the district. (Ex. 813, Figs. 4.10, 4.26.) Superintendent Copps also acknowledged that even after closing schools that were opened in 2007-2008, the district is able to accommodate its student population and maintain regular accreditation and that it continues to provide full-day kindergarten to students in the district. (Copps Test.)

The Bozeman district has also seen significant increases in teacher salary and is now able to recruit and retain quality teachers. The district's budget grew by \$5.8 million or 12.7 percent in 2008-2009 over the previous year, and added a net gain of 9 teaching

positions unrelated to either full-time kindergarten or special education. (Miller, Johnson Test.; Ex. 801.) In addition to the staff expansion described above the district was able to maintain its programs at the elementary and high school level for 2008-2009. (Miller, Johnson Test.)

Wade Johnson, Superintendent of Cut Bank, testified to recruitment and retention concerns but acknowledged that Cut Bank has made a choice to maintain student-teacher ratios that are between one-half to one-third the class sizes required by the accreditation standards. (Johnson Test.; Ex. 602.) While rural school districts may still face challenges in their efforts to recruit and retain teachers, Cut Bank shows these challenges result from local decisions to apply additional resources toward maintaining very small classes, not from an unconstitutional funding formula.

Plaintiffs admit, as they did at trial in 2004, that schools in Montana are providing a quality education. They argue, however, that the budget issues described by the four districts represented at the hearing are evidence that the state school funding formula does not provide funding that is constitutionally adequate. In fact, given these local choices, the budget shortfalls cited by the testifying districts--the greatest of which was less than 3 percent in the Billings district--fall well below the 30 percent of new and additional funding Plaintiffs experts argue are necessary to meet the costs of districts in implementing Montana's definition of quality. (Miller Test.) Plaintiffs have not borne their burden of proof that the isolated and locally driven funding issues described by their witness are of a constitutional magnitude.

**B. Districts Have Invested New Resources Into Already Small Classes.**

Over the past decade when Montana experienced a decline of around 20,000 students, the total number of teachers in the state increased by 250 prior to the implementation of Full-Time Kindergarten. (Ex. 779.) More significantly, in the two years immediately following the State's enactment of changes to the school funding formula, and during a period in which the state continued to see a decline in enrollment, Montana school districts hired an additional 140 teachers. (Ex. 813, Figure 4.9 (comparing 2005 and 2007 staffing levels)). The State's implementation of Full-Time Kindergarten then resulted in the addition of approximately 124 teachers. (Id.; Ex. 778). Again, these increases coincide with the State's adoption of four new funding components funded entirely by State dollars, and show the significant statewide impact of increased resources combined with local decisions to increase staffing over a period of declining enrollment. (Ex. 808, State Summary Chart.)

**C. Budget Maximums Reflect Declining Enrollment, Not Inadequacy.**

While schools are increasingly budgeting near, at, or above their maximum budget authority, this is a function of declining enrollment rather than financial constraint. (Standaert Test.) More than 68 percent of the school districts budgeting over 97 percent of the maximum have had declining enrollment over the past five years, and more than 70 percent of the school districts budgeting over the maximum have had at least a 10 percent decline in enrollment in the past five years. (Ex. 781.) Conversely, more than 87 percent of the school districts with stable or increasing enrollment budget under the maximum, and more than half of those districts budget at or under 97 percent of the

maximum. (Id.) These statutory budget maximums are a reflection of equality, not inadequacy, as districts continue to maintain their highest operating budget levels despite declining enrollment.

**D. Accreditation Issues Are Unrelated to Current Funding Levels.**

Plaintiffs' reliance on the percentage of districts who are accredited with advice or deficiency does not indicate that the state funding formula fails to provide districts with constitutionally adequate funding. The most common deviations by schools in advice or deficiency status are nonlicensed staff and misassigned teachers, many of which are transitory technical issues involving paperwork rather than teacher qualifications. (Ex. 791; Seder Test.) Out of 37,643 classes taught last year, the number of classes taught by misassigned or nonlicensed teachers was 396 and 170, respectively. (Ex. 797.) Out of 10,518 teachers last year, just 159 or less than 2 percent were misassigned and 48 or less than 1 percent were nonlicensed. The Plaintiffs did not refute the fact that there was no measurable difference in spending per pupil in districts with regular accreditation status versus districts accredited with advice or deficiency. (Ex. 814.)

**CONCLUSION**

Since this Court's decision in 2004, the State engaged in a rigorous and comprehensive process to determine the costs of a quality education and develop a funding formula that reflects those costs. The Plaintiffs have not met their burden to show otherwise. The Court should deny the Petition and relinquish jurisdiction.

Respectfully submitted this 16th day of October, 2008.

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