

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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WILLIAM PENN SCHOOL	:	
DISTRICT, <i>et al.</i> ,	:	
	:	NO. 587 MD 2014
Petitioners,	:	
	:	
vs.	:	
	:	
PENNSYLVANIA DEPARTMENT	:	
OF EDUCATION, <i>et al.</i> ,	:	
	:	
Respondents.	:	
_____	:	

EXECUTIVE RESPONDENTS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Governor Tom Wolf (“Governor Wolf”), the Secretary of Education for the Commonwealth of Pennsylvania, and the Pennsylvania Department of Education (collectively, the “Executive Respondents”), by and through their undersigned counsel, hereby submit the following Proposed Findings of Fact and Conclusions of Law.

PROPOSED FINDINGS OF FACT

A. The Parties

1. The Executive Respondents are the Governor of the Commonwealth of Pennsylvania, the Secretary of Education, and the Pennsylvania Department of Education (the “Department” or “PDE”).¹ (*See generally* Petition for Review.)

2. The Department’s designated witnesses at trial were the former Deputy Secretary for the Office of Postsecondary and Higher Education and then current Secretary of Education Noe Ortega,² the former Deputy Secretary for the Office of Elementary and Secondary Education Matthew Stem, the current Deputy Secretary for the Office of Childhood Development and Early Learning Tracy Campanini, and the Division Chief of the Department’s Division of Subsidy Administration Benjamin Hanft. (*See generally* Stem, NT 1586; Campanini, NT 4728; Ortega, NT 8659; Hanft, NT 12093.)

¹ The Governor and the Secretary of Education have been named as parties in their official capacities in this matter. Currently, the Governor of the Commonwealth is Tom Wolf and the acting Secretary of Education is Eric Hagarty. At the time this matter was initiated, the Governor of the Commonwealth was Tom Corbett and the Secretary of Education was Carolyn Dumaesq. (*See* Petition for Review ¶ 88, 90.)

² At the time Noe Ortega testified as the Department’s Pa.R.C.P. 4007.1(e) designee on topics related to postsecondary and higher education matters, he served in the role of Deputy Secretary for the Office of Postsecondary and Higher Education. At the time of trial, Dr. Ortega was serving in the role of Secretary of Education but was testifying as the Department’s designated witness on postsecondary and higher education matters. At the time of this filing, Dr. Ortega has resigned as the Secretary of Education as of April 29, 2022.

3. The Legislative Respondents are the Speaker of the House and the President of the Senate *pro tempore*, named in their official capacities. (*See generally* Petition for Review.)

4. An additional Respondent is the Pennsylvania State Board of Education (the “State Board”). (*See generally* Petition for Review.)

5. The Petitioners currently include the following school districts, individuals, and organizations: William Penn School District, Panther Valley School District, The School District of Lancaster, Greater Johnstown School District, Wilkes-Barre Area School District, Shenandoah Valley School District, Jamella and Bryant Miller (parents of K.M., minor), Sheila Armstrong (parent of S.A., minor), Tracey Hughes (parent of P.M.H., minor), Pennsylvania Association of Rural and Small Schools, and the National Association for the Advancement of Colored People – Pennsylvania State Conference.³ (*See generally* Petition for Review.)

B. The Commonwealth’s System of Public Education

6. Public education is important to the Commonwealth of Pennsylvania. (*See e.g.*, Pa. Const. art. III, § 14; ESSA Plan, PX-01830-0013.⁴)

³ At the time of the filing of the Petition for Review, petitioners included Tyesha Strickland (parent of E.T., minor), Angel Martinez (parent of A.M., minor), and Barbara Nemeth (parent of C.M., minor). (*See generally* Petition for Review.) However, these petitioners have since withdrawn from this matter and have been dismissed from the case. (*See* Court Orders dated August 15, 2019 and August 12, 2021.)

⁴ The Every Student Succeeds Act (“ESSA”) and its requirements are discussed in greater detail, *infra*, starting at ¶ 107.

7. Pennsylvania’s state Constitution, signed in 1790, was among the first in the nation to establish a system of public education by providing children with the opportunity to learn regardless of the circumstances of their families. (*See* ESSA Plan, PX-01830-0013.)

8. As of 2018, the Commonwealth’s K-12 education system served more than 1.7 million students across 500 school districts. (*See* ESSA Plan, PX-01830-0013.)

9. Across the Commonwealth, 135,000 students are educated in more than 160 brick-and-mortar charter schools and 14 cyber charter schools. (*See* ESSA Plan, PX-01830-0013.)

10. The Commonwealth is home to nearly 300 postsecondary and higher education institutions, including 14 community colleges. (*See* ESSA Plan, PX-01830-0013.)

11. The Commonwealth also provides for an early learning system which is designed to “support children in reaching foundational skills prior to entry into the K-12 system, to engage families early in their child’s education, to support an effective workforce with knowledge of child development and effective instructional skills for young children, to encourage school and community partnerships, and to support school age children in out of school time programming.” (*See* ESSA Plan, PX-01830-0013.)

12. The Secretary of Education is the only cabinet-level official required by the Constitution of Pennsylvania. *See* Pa. Const. Art. 4, §§ 1, 8.

13. The Department of Education, formerly named the “Department of Public Instruction,” was created by The Administrative Code of 1929.⁵ *See generally* Act of April 9, 1929, P.L. 177, No. 175, 71 P.S. § 1301.

14. By statute, cooperation is required between the Department and the State Board:

Statements of policy, standards, rules and regulations promulgated by the board shall be binding upon the Department of Education. The department shall submit to the board for approval, modification or rejection, all rules and regulations proposed by the department in the areas under the control of the board. The Department of Education shall furnish upon request of the board such data and information as the board may, from time to time, require, and the department shall provide administrative services for and on behalf of the board for the implementation of the board's statements of policy, standards, rules and regulations.

24 P.S. § 26-2606-B.

15. The General Assembly created the State Board and has delegated authority to it. *See generally* 24 P.S. § 26-2603-B.

⁵ All of the “functions, powers and duties of the Department of Public Instruction” were transferred to the Department of Education by Act 74 of 1969. *See* Act of July 23, 1969, P.L. 181, No. 74, 71 P.S. § 1039.

16. The State Board is charged by the General Assembly to “adopt broad policies and principles, and establish standards governing the educational program of the Commonwealth.” 24 P.S. § 26-2603-B.

17. The State Board is comprised of twenty-one (21) members: Seventeen (17) members of the State Board are appointed by the Governor and an additional four (4) members are the majority and minority chairs of the House and Senate Education Committees. 24 P.S. §§ 26-2602-B(a)-(b).

18. The Secretary of Education serves as the chief executive officer of the State Board. 24 P.S. § 26-2602-B(g).

19. By regulation, the State Board defines the purpose of public education and its relationship with the academic standards. 22 Pa. Code § 4.11(a).

20. The purpose of public education is to prepare students “for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible.” 22 Pa. Code § 4.11(b). Furthermore, “[i]n conjunction with families and other community institutions, public education prepares students to become self-directed, life-long learners and responsible, involved citizens.” *Id.*

21. The State Board has determined that public education “provides opportunities for students to: (1) acquire knowledge and skills; (2) develop integrity;

(3) process information; (4) think critically; (5) work independently; (6) collaborate with others, [and] (7) adapt to change.” 22 Pa. Code §§ 4.11(c)(1)-(4).

22. “The academic standards describe the knowledge and skills that students will be expected to demonstrate before graduating from a public school.” 22 Pa. Code § 4.11(d).

23. “It is the policy of the [State] Board that the local curriculum be designed by school entities to achieve the academic standards under [22 Pa. Code] § 4.12 (relating to academic standards) and any additional academic standards as determined by the school entity.” 22 Pa. Code § 4.4(a). Further, “[i]t is the policy of the [State] Board that local school entities have the greatest possible flexibility in curriculum planning consistent with providing quality education and in compliance with the School Code.” 22 Pa. Code § 4.4(b).

24. “Achievement of high academic standards in public education is dependent upon the quality of instruction in schools and student effort supported by the involvement of family and community.” 22 Pa. Code § 4.11(e).

25. The role of the Department, pursuant to the State Board’s regulations, is to provide support to local school entities in “developing educational programs that enable students to attain [the] academic standards” set by the State Board. 22 Pa. Code § 4.4(e).

C. Academic Standards

26. The General Assembly has delegated to the State Board authority for defining and adopting the academic standards of the Commonwealth. 24 P.S. § 26-2603-B(a); 22 Pa. Code § 4.1.

27. The State Board engaged the Department to support the development of the academic standards and bring those standards through the regulatory process. (*See Stem, NT 1599:12-1600:12.*)

28. The academic standards set by the State Board are uniform, rigorous, and achievable and are designed to prepare students to be “college and career ready” upon graduation. (*See Stem, NT 1609:19-20; 1603:11-1604:1; 1611:22-1614:13.*)

29. “College and career ready” is an inseparable concept expressing the goal that graduating students are prepared for postsecondary education and the workforce by possessing knowledge and skills that allow them to access opportunities in the changing workforce and economy of the 21st Century. (*See Stem, NT 1612:5-23.*)

30. The academic standards reflect the input and recommendations of stakeholders, educators, and community members across the Commonwealth. (*See Stem, NT 1599:12-1600:12.*)

31. The academic standards adopted by the State Board define what students should be able to know and do at each grade level from K-12. (*See Stem, NT 1599:4-11.*)

32. The academic standards are required by the State Board’s regulations to cover the following areas: (1) science and technology; (2) environment and ecology; (3) social studies; (4) arts and humanities; (5) career education and work; (6) health, safety, and physical education; (7) family and consumer science; (8) reading, writing, speaking and listening; and (9) mathematics. 22 Pa. Code §§ 4.12(a)(1)-(9).

33. The State Board’s regulations state that, “[a] school entity’s curriculum shall be designed to provide students with planned instruction needed to attain these academic standards.” 22 Pa. Code § 4.12(d).

D. STEM Education and Computer Science Standards

34. “STEM (Science, Technology, Engineering, and Math) education is an integrated, interdisciplinary, and student-centered approach to learning that encourages curiosity, creativity, artistic expression, collaboration, computational thinking, communication, problem solving, critical thinking, and design thinking.” (PDE STEM Webpage, LR-04202-00001.)

35. The system of STEM education in the Commonwealth is built on the foundational belief that “[a]ll students are capable of STEM literacy.” (PDE STEM Webpage, LR-04202-00001.)

36. The State Board, upon request from Governor Wolf’s Administration, acted to make computer science education available to all students across the

Commonwealth by endorsing the Computer Science Teacher Association (CSTA) K-12 Standards. (*See* PDE STEM Webpage, LR-04202-00002.)

37. This resolution “provides for the implementation of standards on computer science education in the [C]ommonwealth, and will position Pennsylvania as one of fewer than a dozen states to endorse such standards.” (PDE STEM Webpage, LR-04202-00002.)

E. The State Assessment System

38. The State Board’s regulations require the Commonwealth to measure whether a student is achieving proficiency on the state’s academic standards through the use of standardized tests in the State Assessment system. 22 Pa. Code §§ 4.51(a)(1)-(2); (*see* Stem, NT 1614:16-1615:15.)

39. The two state assessment methods required by the State Board’s regulations are the Pennsylvania System of School Assessment (“PSSA”) exams and the Keystone exams. 22 Pa. Code § 4.51(b).

40. The regulations duly promulgated by the State Board require that the PSSA exams be “standards-based and criterion referenced” assessments which cover the areas of “English Language Arts, Mathematics, and Science and Technology and Environment and Ecology.” 22 Pa. Code § 4.51a(a).

41. The Keystone exams are end-of-course tests given in the grade level in which students complete the relevant coursework. *See generally* 22 Pa. Code § 4.51b.

42. Student performance on the assessment is scored as either “advanced, proficient, basic, or below basic.” 22 Pa. Code § 4.51a(a)(4).

43. A score at the “Advanced” level “reflects superior academic performance, and work at this level demonstrates a thorough command of and ability to apply the knowledge, skills, and practices represented in the Pennsylvania standards. Consistent performance at this level indicates advanced academic preparation for engaging successfully in further studies in this content area.” (2019 PSSA Technical Report, PX-02067-00192.)

44. A score at the “Proficient” level “reflects satisfactory academic performance, and work at this level demonstrates an adequate command of and ability to apply the knowledge, skills, and practices represented in the Pennsylvania standards. Consistent performance at this level indicates academic preparation for engaging successfully in further studies in this content area.” (2019 PSSA Technical Report, PX-02067-00192.)

45. A score at the “Basic” level “reflects marginal academic performance, and work at this level demonstrates a partial command of and ability to apply the knowledge, skills, and practices represented in the Pennsylvania standards.

Consistent performance at this level indicates additional academic support may be needed for engaging successfully in further studies in this content area.” (2019 PSSA Technical Report, PX-02067-00192.)

46. A score at the “Below Basic” level “reflects inadequate academic performance, and work at this level demonstrates a minimal command of and ability to apply the knowledge, skills, and practices represented in the Pennsylvania standards. Consistent performance at this level indicates extensive additional academic support may be needed for engaging successfully in further studies in this content area.” (2019 PSSA Technical Report, PX-02067-00192.)

47. The State Assessment system is designed to serve the following six purposes:

- a. “Provide students, parents, educators and citizens with an understanding of students and school performance.” 22 Pa. Code § 4.51(a)(1).
- b. “Determine the degree to which school programs enable students to attain proficiency of academic standards under § 4.12.” 22 Pa. Code § 4.51(a)(2).
- c. “Provide information to State policymakers, including the General Assembly and the [State] Board, on how effective

schools are in promoting and demonstrating student proficiency of academic standards.” 22 Pa. Code § 4.51(a)(3).

- d. “Provide information to the general public on school performance.” 22 Pa. Code § 4.51(a)(4).
- e. “Provide results to school entities based upon the aggregate performance of all students.” 22 Pa. Code § 4.51(a)(5).
- f. “Assess student proficiency in the Academic Standards for English Language Arts (Appendix A-2), Mathematics (Appendix A-2), Science and Technology and Environment and Ecology (Appendix B) and Civics and Government (Appendix C) for the purpose of determining, in part, a student’s eligibility for high school graduation.” 22 Pa. Code § 4.51(a)(6).

F. The Development of the PSSAs

48. The State Board’s regulations require the Department to “develop or cause to be developed PSSA assessments based on Pennsylvania Core Standards in Mathematics and English Language Arts under § 4.12 (relating to academic standards) and contained in Appendix A-2 and academic standards in Science and Technology and Environment and Ecology under § 4.12 and contained in Appendix B.” 24 Pa. Code § 4.51a(b). Throughout this development process the Department

must “consult with educators, students, parents and citizens regarding the specific methods of assessment.” *Id.*

49. The Department engages in an intensive and rigorous development process to ensure the validity and reliability of the PSSA exams in accordance with the law. (*See Stem, NT 1648:2-17.*) This process is documented annually in technical reports which are made publicly available. (*See id.; See, e.g., 2019 PSSA Technical Report, PX-02067.*)

50. The State Board’s regulations require that performance on the PSSA assessments be determined based on the following criteria:

- a. “Performance on PSSA English Language Arts assessments shall be demonstrated by students’ responses to comprehension questions about age-appropriate reading passages, by their written responses to in-depth comprehension questions about the passages and by the quality of their written compositions on a variety of topics and modes of writing.” 24 Pa. Code § 4.51a(a)(1).
- b. “Performance on PSSA mathematics assessments shall be demonstrated by students’ responses to questions about grade-appropriate content and by the quality of their responses to

questions that require a written solution to a problem.” 24 Pa. Code § 4.51a(a)(2).

- c. “Performance on PSSA science assessments shall be demonstrated by students’ responses to grade appropriate content and by the quality of their responses to questions that demonstrate knowledge of each category of the standards for science and technology and environment and ecology.” 24 Pa. Code § 4.51a(a)(3).

51. To ensure that questions, or “items,” on the PSSA exams measure students’ performance according to the criteria required by law, the PSSA exams are subject to a fifteen (15) step development cycle which occurs over the course of each year. (*See* 2019 PSSA Technical Report, PX-02067-0046 at Figure 3-1.)

52. This development cycle generally includes developing new items; reviewing them for bias, fairness, and sensitivity at multiple levels; field testing those items; reviewing the data from field test results; and modifying items throughout the cycle to ensure alignment with the scope and criteria of the PSSA. (*See* 2019 PSSA Technical Report, PX-02067-0047 at Figure 3-2.)

53. This cycle begins with the development of items that specifically measure academic standards: “As part of the item construction process each item was reviewed by content specialists and editors at DRC [the ‘Data Recognition

Corporation’].⁶ Content specialists and editors evaluated each item to make sure that it measured the intended Eligible Content and/or Assessment Anchor Content Standard. They also assessed each item to make certain that it was appropriate for the intended grade and that it provided and cued only one correct answer ([Multiple Choice] items only).” (2019 PSSA Technical Report, PX-02067-0049.) “Following this internal process items were reviewed by content specialists at the Pennsylvania Department of Education.” (*Id.*)

54. The PSSA Technical Guide explains the Eligible Content and Assessment Anchors as follows:

The PSSA Assessment Anchor Content Standards and Eligible Content are based on the Pennsylvania Core Standards in English language arts and mathematics and the Pennsylvania Academic Standards in science. Although the Academic Standards indicated what students should know and be able to do, educator concerns regarding the number and breadth of Academic Standards led to an initiative by the Pennsylvania Department of Education (PDE) to develop Assessment Anchor Content Standards (Assessment Anchors) to indicate which parts of the Academic Standards (Instructional Standards) would be assessed on the PSSA. Based on recommendations from Pennsylvania educators, the Assessment Anchors were designed as a tool to improve the articulation of curricular, instructional, and assessment practices.

...

The Assessment Anchors clarify what is expected across each grade span and focus the content of the standards into what

⁶ The Data Recognition Corporation is the organization that creates and provides the annual PSSA technical reports on behalf of the Department. (See 2019 PSSA Technical Report, PX-02067-0001.)

is assessable on a largescale test. The Assessment Anchor documents also serve to communicate **Eligible Content also called assessment limits or the range of knowledge and skills from which the PSSA would be designed.**

(2019 PSSA Technical Report, PX-02067-0033 (emphasis added).)

55. The items are then reviewed by a “content committee” which “consist[s] of Pennsylvania educators from school districts throughout the Commonwealth of Pennsylvania, some with postsecondary university affiliations.”

(2019 PSSA Technical Report, PX-02067-0050.)

56. At this stage of review, “[t]he primary responsibility of the content committee was to evaluate items with regard to quality and content classification, including grade-level appropriateness, estimated difficulty, depth of knowledge, and source of challenge.” (2019 PSSA Technical Report, PX-02067-0050.)

57. Subsequent to the content committee process and prior to field testing, “all newly developed test items for English language arts, mathematics, and science were also submitted to a Bias, Fairness, and Sensitivity Committee for review.” (2019 PSSA Technical Report, PX-02067-0051.) The Bias, Fairness, and Sensitivity Committee members evaluate each item to identify concerns “related to ageism, disability, ethnicity, culture, gender, region, religion, socioeconomic status, or stereotyping.” (*Id.*)

58. Items are then field tested through placement on the current year’s PSSA exam in order to “compute and obtain statistics to (a) review items prior to

operational use and to (b) obtain item parameters for pre-equating purposes.” (2019 PSSA Technical Report, PX-02067-0058.) Performance on field tested items do not count towards a student’s score for that year’s PSSA exam. (*See Stem*, NT 2185:18-2186:3.)

59. After field testing is complete, the data received and the items themselves are subject to further review with the expectation that “[i]n general more capable students are expected to respond correctly to easy items and less capable students are expected to respond incorrectly to difficult items. If either of these situations does not occur the item will be reviewed by DRC test development staff and committees of Pennsylvania educators to determine the nature of the problem and the characteristics of the students affected.” (2019 PSSA Technical Report, PX-02067-0058.) If an item is determined to need further review for this reason, it is said to be “flagged.” (*Id.*; *Stem*, NT 2186:18-2187:18.)

60. The 2019 PSSA Technical Report details the review process for “flagged” items as follows:

Items not identified for this review were those that had good statistical characteristics and consequently were regarded as statistically acceptable. Likewise, items of extremely poor statistical quality were regarded as unacceptable and needed no further review. However, there were some items – relatively few in number – that DRC content area test development specialists and DRC psychometric specialists regarded as needing further review by a committee of Pennsylvania educators. The intent was to capture all items that needed a closer look thus the criteria

employed tended to over identify rather than under identify items.

The review of the items with data was conducted by over 50 Pennsylvania educators (teachers and PDE staff) broken out into subject-area and/or grade level or span committees. The review for mathematics Grades 3-8 took place July 24-26, 2018. The review for ELA Grades 3-8 took place July 24-25, 2018. The review for science took place on July 24, 2018. In these sessions committee members were first trained by a representative from DRC's psychometrics staff with regard to the statistical indices used in item evaluation. This was followed by a discussion with examples concerning reasons that an item might be retained regardless of the statistics. The committee review process involved a brief exploration of possible reasons for the statistical profile of an item (e.g., possible bias, grade appropriateness, instructional issues) and a decision regarding acceptance. DRC content-area test development specialists facilitated the review of the items. Each committee reviewed the pool of field tested items and made recommendations on each item and/or scenario/passage.

(2019 PSSA Technical Report, PX-02067-0059.)

61. As former Deputy Secretary Matt Stem explained, items that are flagged for review are not removed “just because too many students got a question right or wrong.” (Stem, NT 2195:17-2196:3.)

62. The State Board's regulations require the Department to “develop and recommend to the [State] Board for its approval specific criteria for advanced, proficient, basic and below basic levels of performance.” 24 Pa. Code § 4.51a(a)(4).

63. The process for establishing the score cut-off levels, or “cut scores,” for the PSSA exams is known as “bookmarking.” (See Stem, NT 1654:2-19.) Educators

and members of the technical advisory committee “draw the lines” of what scores must be attained to be considered advanced, proficient, basic, and below basic, as required by law. (*See id.*); 24 Pa. Code § 4.51a(a)(4).

64. The cut scores measure “what students should know and be able to do based on the standards, the performance level descriptors, and the eligible content” and are “**not** designed to generate a bell curve.” (*See Stem, NT 2201:2-2202:17* (emphasis added).)

G. PSSA and Keystone Achievement Gaps

65. The PSSA and Keystone exam proficiency rates show evidence of longstanding achievement gaps between student subgroups that are prevalent throughout the Commonwealth. (*See Stem, NT 1800:3-24; ESSA Plan, PX-01830-0021-22.*)

66. For example, on the PSSA and Keystone exams in the 2018-19 assessment year, Black students scored advanced or proficient at a rate 34% lower than their White peers in English Language Arts, 37% lower than their White peers in math, and 39% lower than their White peers in science. (*See Stem, NT 1803:8-1804:7; 2018-2019 Statewide Assessment Measures by Demographic, PX-04843.*)

67. Also, in the 2018-19 assessment year, economically disadvantaged students saw lower rates of advanced or proficient scoring by 16% in English Language Arts, 17% in math, and 16% in science than their non-economically

disadvantaged peers. (*See* Stem, NT 1804:8-1805:13; 2018-2019 Statewide Assessment Measures by Demographic, PX-04843.)

68. One of the primary reasons that all districts, particularly low-socioeconomic districts, suffer from achievement gaps among these student subgroups is the lack of resources to provide high-quality teachers in every classroom, ongoing professional development, a robust curriculum, and sufficient teachers to work with smaller groups of students. (*See* Stem, NT 1907:24-1908:8.)

H. The Pennsylvania Value-Added Assessment System (“PVAAS”)

69. PVAAS is a tool designed to measure individual student growth over time based on the student’s performance on PSSA and Keystone exams, assessments mandated by both the Public School Code and the State Board regulations. (*See* Stem, NT 1955:18-1956:13); *See also* 24 P.S. § 2-221; 22 Pa. Code § 403.3.

70. As the Guide to PVAAS Public Reporting states:

Value-added follows the growth of groups of students over time in order to estimate their growth. With value-added assessment, educators get a sense of whether they are making appropriate academic growth for their students. More specifically, value-added accomplishes this by following the same students over time thus looking at the growth of groups of students in order to make an accurate estimate of educational effectiveness. These schooling influences accumulate across the years and measurably thus affect students’ attainment at least four years beyond the grade in which students encountered them. Without a value-added metric for measuring effective schooling, districts and schools have no way of knowing if they are capitalizing on the academic growth opportunities for all students. Student

opportunities to grow each year must be maximized to allow more students to be college and career ready.

(Guide to PVAAS Public Reporting, PX-02118-0005.)

71. “Value-added is a statistical analysis used to measure districts’ and schools’ impact on the academic growth rates of groups of students from year to year.” (Guide to PVAAS Public Reporting, PX-02118-0006.)

72. Growth is measured by comparing current achievement with prior achievement, with achievement being measured by Pennsylvania state assessments. (See Guide to PVAAS Public Reporting, PX-02118-0006.)

73. PVAAS calculates and reports a “Growth Measure” which is an “estimate of a district’s or school’s influence on students’ academic growth in each state assessed grade and subject or Keystone content area.” (Guide to PVAAS Public Reporting, PX-02118-0009.)

74. PVAAS also calculates and reports an “Average Growth Index” (“AGI”) which is “a measure of student growth across the tested grade levels in a district or school.” (Guide to PVAAS Public Reporting, PX-02118-0009.) AGI, as an index, is a value “based on the Growth Measure over grade levels and its relationship to the standard error so that comparison among districts and schools is meaningful.” (Guide to PVAAS Public Reporting, PX-02118-0010.) “If the

standard error is not accounted for, users might get a skewed picture of the relative effectiveness of different districts and schools.” (*Id.*)

75. “The Standard Error allows users to establish a confidence band around the Growth Measure to determine if growth is evident for the group of students in question. The inclusion of more data (i.e., more students, more data points) generally yields a smaller Standard Error and makes the Growth Measure more precise.” (Guide to PVAAS Public Reporting, PX-02118-0018.)

76. AGI is also “color-coded to aid in the interpretation of the information” which indicates, on average, whether “students gain, maintain, or fall behind regarding their achievement.” (Guide to PVAAS Public Reporting, PX-02118-0010.)

77. AGI color-coding utilizes five colors (Dark Blue, Light Blue, Green, Yellow, and Red) that correspond to the following indications:

- a. “A Dark Blue or Light Blue indicates there is evidence the group of students gained ground. A Dark Blue would indicate more evidence of students gaining ground than a Light Blue.” (Guide to PVAAS Public Reporting, PX-02118-0010.)
- b. “A Green indicates there is evidence that the group of students maintained their achievement.” (Guide to PVAAS Public Reporting, PX-02118-0010.)

- c. “A Yellow or Red indicates there is evidence the group of students fell behind. A Red would indicate more evidence of students falling behind than a Yellow.” (Guide to PVAAS Public Reporting, PX-02118-0010.)

78. When AGI results in the color-code Green, “educators would want to determine if green is good enough for that group of students.” (PVAAS Methodologies: Measuring Growth & Projecting Achievement, LR-00618-00009.)

As the PVAAS Methodologies guide explains:

If the achievement of the group is high, then many teachers, schools, and districts may say “that green is good.” However, even with a green, there are certainly opportunities for students to increase their average achievement and for educators to support students in making academic growth.

If the group of students is lower achieving, some educators might say that it’s good that the group did not slip further behind. **However, most educators would agree that green is not sufficient, or good enough, for a lower achieving group of students since this means that the group would simply be maintaining a lower level of achievement.** For students with lower achievement, the goal of teachers, schools, and districts should be to raise the achievement of the student group.

(*Id.* (emphasis added).)

79. While PVAAS measures growth, *both* achievement *and* growth are important in measuring student and school performance: “By measuring students’ academic achievement AND growth, schools and districts have a more

comprehensive picture of their own effectiveness in raising student achievement.”

(Guide to PVAAS Public Reporting, PX-02118-0004.)

80. The Department “does not believe that PVAAS is a better measure of the impact of school on a student. The Department believes that coupling achievement with growth . . . the two together are the measure for a school.” (Stem, NT 2270:21-2271:4.)

81. The Department measures the impact of school on students using both achievement data and PVAAS measures. (*See* Stem, NT 2273:10-15.)

I. High School Graduation Rates

82. High school graduation rates demonstrate attainment gaps in student subgroups based on race/ethnicity and socioeconomic status. (*See* ESSA Plan, PX-01830-0023.)

83. The ESSA Plan states that in the 2014-2015 school year, the four-year adjusted cohort high school graduation rate for White students was 89.3%, compared to rates of 71.8% and 69.5% for Black and Hispanic students respectively. (*See* ESSA Plan, PX-01830-0023.)

84. For this same year, the high school graduation rate of economically disadvantaged students was 75.9%, while the overall rate for the Commonwealth was 84.8%. (*See* ESSA Plan, PX-01830-0023.)

J. Act 158 of 2018

85. To ensure that all graduating high school students have the knowledge and skills defined by the academic standards to be college and career ready, Governor Wolf signed into law Act 158 on October 24, 2018. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see also* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0003.)

86. Act 158 of 2018, which applies starting with the graduating class of 2023, shifted the high school graduation requirements for public schools across the Commonwealth to allow high school students to demonstrate college, career, and community readiness through multiple pathways. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see also* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0003; Stem, NT 1625:24-1626:14.)

87. Act 158's requirements were adopted based upon recommendations made by the Department, as directed by the General Assembly, after engaging stakeholders across the Commonwealth for input and reporting on the consensus as to the knowledge and skills that high school students must attain to demonstrate college and career readiness. (*See* Stem, NT 1634:11-1635:10.)

88. The new graduation requirements under Act 158 are more rigorous than those currently in effect. (*See* Stem, NT 1643:16-22.)

89. Act 158's new graduation requirements prescribe five pathways through which a student can demonstrate college and career readiness and graduate

from a public institution of secondary education. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0003-5; Stem, NT 1629:4-1632:7.)

90. The Keystone Proficiency Pathway allows for a student to graduate by scoring proficient on each Keystone exam – Algebra I, Literature, and Biology. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0003; Stem, NT 1630:16-22.)

91. The Keystone Composite Pathway allows for a student to graduate through a combination of Keystone exam scores, such that a score of less than proficient on one Keystone exam may be offset by a score of advanced on another. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0004; Stem, NT 1630:23-1631:5.)

92. The Alternate Assessment Pathway allows for a student to graduate through an alternative exam to the Keystone exams alongside successful completion of Keystone associated courses. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0004; Stem, NT 1631:6-11.)

93. The Evidence-Based Pathway allows for a student to graduate without scoring proficient on the Keystone exams but instead by demonstrating college and career readiness through additional pieces of evidence alongside successful completion of Keystone associated courses. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0004; Stem, NT 1631:12-21.)

94. The Career and Technical Pathway allows for a student to graduate by attaining an industry certification alongside the successful completion of Keystone associated courses. *See* Act of October 24, 2018, P.L. 1146, No. 158; (*see* Statewide High School Graduation Requirement Guidance Act 158 of 2018, PX-00059-0004-5; Stem, NT 1631:22-1632:3.)

K. STEM Workforce Needs

95. The Commonwealth needs students who are equipped with the knowledge and skills to enter into, and be successful in, the tech-driven global economy of the 21st century. (*See* PDE STEM Webpage, LR-04202-00001.)

96. “There will be 590,000 new and replacement jobs in Pennsylvania through 2026, with STEM jobs growing at over 9 percent.” (PDE STEM Webpage, LR-04202-00001.)

97. “Over the next ten years, 71 percent of new jobs will require computer science skills.” (PDE STEM Webpage, LR-04202-00001.)

98. The ESSA Plan states that in 2014, only 2,820 students graduated from a postsecondary Computer Science program, with only one in five of those graduates being women. (*See* ESSA Plan, PX-01830-0101.)

99. In 2014, the Commonwealth had approximately 21,000 unfilled computer science and software jobs. (*See* ESSA Plan, PX-01830-0101.)

100. The ESSA Plan states that by 2020, employers across the nation would need an additional 1.6 million workers fluent in STEM skills. (*See* ESSA Plan, PX-01830-0100-01.)

L. Postsecondary Attainment

101. The Commonwealth's need for a skilled and educated workforce that can thrive in the global economy of the 21st century led to the adoption of a Postsecondary Attainment goal by the State Board in 2018. (*See* Ortega, NT 8668:24-8670:6.)

102. Secretary of Education Noe Ortega testified that the objective of the Postsecondary Attainment goal is to have 60% of the working-age population between the ages of 25 and 64 attain a postsecondary credential by 2025. (*See* Ortega, NT 8668:24-8670:6.)

103. This goal was established by examining data related to postsecondary enrollment, persistence and attainment rates across the Commonwealth between

2010 and 2016. (*See generally* PDE 2018 State Board Presentation, PX-3338-0008-0016.)

104. Data shows that Black, Hispanic, and economically disadvantaged students enroll in and complete postsecondary programs at almost half the rate of their White counterparts. (*See* Ortega, NT 8699:15-24; PDE 2018 State Board Presentation, PX-3338-0013.)

105. As of May 1, 2019, only 41% of Pennsylvanians had obtained a postsecondary degree or other industry-valued credential, with 1.4 million adults across the Commonwealth earning at least 20 postsecondary credits but not completing a postsecondary degree. (*See* ESSA Plan, PX-01830-0107.)

106. Currently, the Commonwealth is not positioned to meet the Post-Secondary Attainment goal and is approximately 10% short of the number of postsecondary credential holders needed. (*See* Ortega, NT 8671:14-8672:9.)

M. Pennsylvania’s Consolidated ESSA Plan

107. On December 10, 2015, the “Every Student Succeeds Act” (“ESSA”) was signed into law by President Barack Obama to reauthorize the Elementary and Secondary Education Act (“ESEA”) of 1965. (*See* ESSA Plan, PX-01830-0013.) Developed and passed with strong, bipartisan agreement, ESSA replaced No Child Left Behind (“NCLB”) as the nation’s main education law. (*Id.*)

108. ESSA “advances ESEA’s promise of ensuring that all students – from pre-kindergarten to postsecondary, and especially low-income students, students of color, students with disabilities, English Learners, and other historically marginalized students — have access to a world-class education that prepares them for college, career, and life.” (ESSA Plan, PX-01830-0013.)

109. As further explained in the ESSA Plan:

ESSA provides state education agencies with new flexibility – especially in designing systems to measure school and local education agency (“LEA”) performance – in determining how and when to deliver school improvement strategies. Pennsylvania welcomes this flexibility. It provides our state with the opportunity to accelerate important reforms that pre-date ESSA’s enactment, continue transitioning education policy away from a strict focus on compliance, and toward the establishment of rigorous expectations for students, and collaboration and assistance for all schools to help them to meet this standard.

(ESSA Plan, PX-01830-0013.)

110. ESSA requires that each State Education Agency (“SEA”) develop and submit a State Plan that details how the SEA would implement the new requirements. (*See* ESSA Plan, PX-01830-0013.)

111. “As part of its commitment to ensuring that state policy is inclusive and representative of the needs and experiences of students, educators, and communities across the commonwealth the [Department] developed a stakeholder engagement process to draft framework recommendations for the development of Pennsylvania’s ESSA State Plan.” (ESSA Plan, PX-01830-0013.)

112. “The Department sought input from parents and families, educators, community leaders, education advocates, researchers, experts, policymakers, and other individuals throughout this process.” (ESSA Plan, PX-01830-0013.)

113. The Commonwealth’s Consolidated Plan (the “ESSA Plan”) was submitted to the United States Department of Education on May 31, 2019, and was approved on August 1, 2019. (*See* ESSA Plan, PX-01830-0001-2.)

114. The ESSA Plan confirms the Commonwealth’s commitments to “advancing equity and success for all students throughout the pre-K through 12 and postsecondary continuum; maintaining local control and flexibility; investing in evidenced-based strategies; and promoting transparency and meaningful engagement.” (ESSA Plan, PX-01830-0017.)

115. The ESSA Plan established long-term goals for proficiency on all Pennsylvania assessments, which were informed by the “analyses of historical, aggregate level achievement and graduation rate data.” (ESSA Plan, PX-01830-0021.)

116. Rather than one “uniform, aspirational goal for all student groups and schools,” the long-term goals contained in the ESSA Plan differ for different student groups, which is intended to avoid “minimizing the cumulative impact of decades of systemic inequity in the nation’s public education system.” (ESSA Plan, PX-01830-0021.)

117. “Student groups with lower baseline performance will be expected to achieve at a faster rate” to meet these long-term goals. (ESSA Plan, PX-01830-0021.)

118. The long-term goals target a goal year of 2030 and utilize baseline data from the 2015 school year. (See ESSA Plan, PX-01830-0021.)

119. In 2015, White students had a baseline proficient or advanced rates on Pennsylvania assessments of 69.4% in English Language Arts and 50.5% in Mathematics, while Black students had proficient or advanced rates of 35.9% and 17.1%, and Hispanic students had rates of 40% and 22.7%, respectively. (See ESSA Plan, PX-01830-0021.)

120. The 2030 goals for proficient or advanced for White students are 84.7% in English Language Arts and 75.3% in Mathematics, while the goals for Black students are 68% and 58.6%, and for Hispanic students 70% and 61.4%, respectively. (See ESSA Plan, PX-01830-0021.)

121. The ambitious 2030 long-term achievement goals are aimed at “reduc[ing], by half, the statewide percentage of non-graduating students as measured by both the four- and five-year adjusted cohort graduation rates (ACGR) by the end of the 2029-30 school year.” (ESSA Plan, PX-01830-0022.)

122. “Pennsylvania believes this timeline promotes an appropriate sense of urgency, while providing sufficient opportunity to reach ambitious goals.” (ESSA Plan, PX-01830-0022.)

N. Future Ready PA Index

123. The Future Ready PA Index is a tool designed to aid educators, stakeholders, school districts and the Commonwealth at large in evaluating the performance of educational institutions. (See ESSA Plan, PX-01830-0015.)

124. The purpose of the Future Ready PA Index is to provide a holistic snapshot of the performance of schools and includes metrics such as student growth, PSSA and Keystone proficiency, attendance, early indicators of success and workforce and military programs. (See ESSA Plan, PX-01830-0015; Stem, NT 1699:6-15.)

125. In developing the Future Ready PA Index, the Department “facilitated 30 sessions, reaching more than 1,000 stakeholders to identify nearly two dozen research-based indicators of school performance.” (ESSA Plan, PX-01830-0015.)

126. The Future Ready PA Index reports on State Assessment Measures, including proficiency levels on PSSA and Keystone Exams, on Academic Growth Measures, such as PVAAS, on On-Track Measures, including English Language Growth and Attainment, Regular Attendance, and Early Indicators of Success, and also reports on College and Career Measures, including the Career Standards

Benchmark, High School Graduation Rates, Industry-Based Learning, Rigorous Courses of Study, and Postsecondary Transition to School, Military, or Work. (*See generally* Stem, NT 1700-1800.)

127. Future Ready PA Index also provides interim targets for schools to close at least half of any existing achievement gaps by 2030. (*See* Stem, NT 1706:15-1708:4.)

O. Strategies and Supports

128. It is a fundamental tenet of education in the Commonwealth that every child can learn. (*See* Stem, NT 1760:20-24.)

129. It is not only important to have rigorous and realistic academic standards, but also to ensure that every student has the resources, strategies and supports they need to achieve those standards. (*See* Stem, NT 1906:20-1908:8.)

130. The Department’s mission is to “ensure that every learner has access to a world-class education system that academically prepares children and adults to succeed as productive citizens. Further, the Department seeks to establish a culture that is committed to improving opportunities throughout the Commonwealth by ensuring that technical support, resources, and optimal learning environments are available for all students, whether children or adults.” (Stem, NT 1904:12-1904:21; ESSA Plan, PX-01830-0013.)

131. The Department’s “technical assistance, interventions, and supports are rooted in the belief that it is necessary to meet the academic and non-academic needs of students in order to promote their achievement and long-term success.” (ESSA Plan, PX-01830-0074.)

132. The Department has identified specific strategies to effectively educate children, make them more proficient and close the achievement gaps in the Commonwealth. (*See* Stem Dep. p. 385; ESSA Plan, PX-01830-0074.)

133. While not an exhaustive list, some of the important strategies and supports that the Department has identified include: pre-kindergarten education; early, intensive resources from kindergarten to third grade; well-rounded, rigorous and personalized learning experiences that spark curiosity, build confidence and help students prepare for meaningful postsecondary success; making students feel safe and respected; meeting their social-emotional needs so they can learn and grow; academic support; Multi-Tiered Systems of Support (“MTSS”); Positive Behavioral Interventions and Support (“PBIS”); sufficient numbers of effective, experienced educators; lack of teacher turnover; access to Advanced Placement, International Baccalaureate and college-level courses, and adequate supports for students to take advantage of those courses; sufficient professional development for teachers; sufficient counselors and librarians, interventions to address absenteeism and

attendance problems; and individuals able to remediate students' gaps in reading and math. (*See* Stem Dep. pp. 385-89; *see generally* ESSA Plan, PX-01830-0013-0019.)

134. The Department considers early learning experiences and supports focused on addressing absenteeism as “increasingly important” strategies for high-poverty schools. (*See* Stem Dep. pp. 390.)

P. Early Childhood Education

135. Providing students with a strong foundation through high-quality pre-kindergarten programs is a proven path to achievement and a hallmark of Pennsylvania's commitment to education. (*See* ESSA Plan, PX-01830-0014.)

136. The Office of Childhood Development and Early Learning (“OCDEL”), a joint deputate of the Departments of Education and Human Services led by Deputy Secretary Tracy Campanini, monitors and oversees early childhood education in the Commonwealth. (*See* Campanini, NT 4729:3-4731:3.)

137. A “high quality” early childhood educational program is one that utilizes the Commonwealth's early learning standards and implements those standards in its curriculum, utilizes qualified staff with ongoing professional development and actively supports community and family engagement. (*See* Campanini, NT 4770:2-21.)

138. High quality early childhood education is among the most beneficial, cost-effective investments in the Commonwealth's future because it prepares

children for school and life success. (*See* Campanini, NT 4763:15-4764:7; House Democratic Policy Committee Hearing Testimony, PX-00073-0003.)

139. Children who have access to high quality early childhood education are more likely to enter kindergarten with the necessary skills to succeed, more likely to do well in school, graduate and attend college or career training, more likely to be employed, and are less likely to require costly special education and remediation services. (*See* Campanini, NT 4763:15-4764:7; House Democratic Policy Committee Hearing Testimony, PX-00073-0003.)

140. The value and impact of quality early education is especially important for vulnerable children across the Commonwealth. (*See* Campanini, NT 4763:15-4764:7; House Democratic Policy Committee Hearing Testimony, PX-00073-0003.)

141. High quality early education programs can help mitigate the impacts of adverse childhood experiences (“ACEs”) on young children – experiences such as living in poverty, mental health challenges, lack of nutrition, and other traumas. (*See* Campanini, NT 4736:2-4737:13.)

142. Early childhood education prepares students for pivotal transformations in learning, such as the transition in third grade when students move from “learning to read” to “reading to learn.” (*See* Stem, NT 1700:13-15.)

Q. Multi-Tiered Systems of Support (MTSS) and Positive Behavioral Interventions and Support (PBIS)

143. MTSS and PBIS are two of the Commonwealth’s foundational strategies to address non-academic barriers to academic success. (See ESSA Plan, PX-01830-0074.)

144. “MTSS practices include: [d]elivery of standards-based instruction and differentiated learning opportunities to meet the needs of all students; [a]ggregation and analysis of multiple data points to support informed decisions regarding curriculum, instruction, and assessment; and [i]mplementation of a tiered system of support to differentiate programmatic interventions for all students.” (ESSA Plan, PX-01830-0075.)

145. “PBIS is a proactive, data-informed approach to managing discipline that promotes appropriate student behavior and increased learning.” (ESSA Plan, PX-01830-0075.) It is based on a three-tiered framework. (*Id.*)

146. “Tier one is a system of universal preventive practices and supports for all students across all school settings that emphasizes teaching and reinforcing expected student behaviors.” (ESSA Plan, PX-01830-0075.)

147. “Tier two provides targeted, small group interventions for students classified as ‘at-risk,’ who require additional support beyond that which is typically provided for all learners through tier one practices.” (ESSA Plan, PX-01830-0075.)

148. “Tier three provides the most intensive level of interventions that are administered individually for students with the most significant behavioral/emotional support needs.” (ESSA Plan, PX-01830-0075.)

149. The strategies and supports reviewed, approved and recommended by the Department are contained both in the ESSA Plan and in Pennsylvania’s Evidence Resource Center, which is a database that was developed by the Department prior to ESSA as a repository of an extensive and growing list of evidence-based strategies that can be used by schools to improve student outcomes. (*See Stem*, NT 1892:23-1894:2; 2090:18-2091:15.)

150. The Department researches, develops and promotes these evidenced-based strategies and supports to aid school districts in serving the diverse needs of students and to overcome social or emotional barriers to learning so that all students have the ability to become college and career ready. (*See Stem*, NT 1889:18-1895:4.)

151. As former Deputy Secretary Stem explained, these strategies are designed to help close the achievement gaps that exist in the Commonwealth between student subgroups. (*See Stem*, NT 1793:14-1794:3.)

152. As Pennsylvania is a “local control” state, the strategies prioritized by the Department are designed to “promote flexibility for LEAs and ensure that decisions about how to use federal funds are driven first and foremost by students’

needs, determined within a local context as appropriate.” (ESSA Plan, PX-01830-0018.)

R. Achievements of the Wolf Administration

153. Over the last seven years, in recognition of longstanding inequities in school funding, the Executive Respondents have worked to improve the educational opportunities for every student across the Commonwealth, regardless of zip code, and address the achievement gaps identified in the ESSA Plan. *See generally* Act 35 of 2016, P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53.

154. Governor Wolf sought to restore the historic cuts to education funding made by the previous administration. (*See generally* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

155. Over the last seven years, the Governor has proposed, and the General Assembly has appropriated, total education budgets (excluding higher education budget appropriations) in the following amounts:

- a. In 2014-15, the Governor proposed \$10,659,139,000 in support of public education, and the Commonwealth appropriated \$10,602,327,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- b. In 2015-16, the Governor proposed \$10,136,666,000 in support of public education, and the Commonwealth appropriated

\$11,079,262,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

- c. In 2016-17, the Governor proposed \$11,872,390,000 in support of public education, and the Commonwealth appropriated \$11,781,340,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- d. In 2017-18, the Governor proposed \$12,239,421,000 in support of public education, and the Commonwealth appropriated \$12,211,115,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- e. In 2018-19, the Governor proposed \$12,816,783,000 in support of public education, and the Commonwealth appropriated \$12,668,783,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- f. In 2019-20, the Governor proposed \$13,142,086,000 in support of public education, and the Commonwealth appropriated \$13,127,581,000. (*See* Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- g. In 2020-21, the Governor proposed \$13,409,425,000 in support of public education, and the Commonwealth appropriated

\$13,339,556,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

- h. In 2021-22, the Governor proposed \$15,128,176,000 in support of public education and the Commonwealth appropriated \$13,927,969,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

156. Basic Education Funding, the line item in the Commonwealth's education budget that provides funding specifically for K-12 public education, has increased year after year. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

157. Over the last seven years, the Governor has proposed, and the General Assembly has appropriated, Basic Education Funding budgets in the following amounts:

- a. In 2014-15, the Governor proposed \$5,526,129,000 for basic education funding, and the Commonwealth appropriated \$5,526,129,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- b. In 2015-16, the Governor proposed \$6,130,079,000 for basic education funding, and the Commonwealth appropriated

\$5,680,079,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

- c. In 2016-17, the Governor proposed \$6,306,969,000 for basic education funding, and the Commonwealth appropriated \$5,895,079,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- d. In 2017-18, the Governor proposed \$5,995,079,000 for basic education funding, and the Commonwealth appropriated \$5,995,079,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- e. In 2018-19, the Governor proposed \$6,095,079,000 for basic education funding, and the Commonwealth appropriated \$6,095,079,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- f. In 2019-20, the Governor proposed \$6,537,078,000 for basic education funding, and the Commonwealth appropriated \$6,742,838,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)
- g. In 2020-21, the Governor proposed \$6,857,471,000 for basic education funding, and the Commonwealth appropriated

\$6,805,954,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

- h. In 2021-22, the Governor proposed \$8,133,774,000 for basic education funding, and the Commonwealth appropriated \$7,066,773,000. (See Basic Education Funding and Commonwealth Totals 2014-2022, ER-045.)

158. Beginning in the 2019-2020 funding year, the allocation for Basic Education Funding also includes social security payments. 24 P.S. § 25-2599.7; (see Basic Education Funding and Commonwealth Totals 2014-2022, ER-045; 2019-2020 Basic Education Funding, PX-1913-0001; 2021-2022 Basic Education Funding, PX-04778-0001.)

159. Over the last seven years, Governor Wolf has proposed over \$150 million in total budgetary increases to early childhood programs in the Commonwealth, specifically to the Pre-K Counts and Head Start Supplemental Assistance programs. (See generally Commonwealth Early Childhood Education Appropriations 2014-2022, ER-046.)

160. Over the last seven years, Governor Wolf, together with the General Assembly, increased the appropriation for Pre-K Counts from \$97,284,000 in 2014-2015 to \$242,284,000 in 2021-22, for a total increase of \$145 million. (See Commonwealth Early Childhood Education Appropriations 2014-2022, ER-046.)

161. Over the last seven years, Governor Wolf, together with the General Assembly, increased the appropriation for Head Start Supplemental Assistance from \$39,178,000 in 2014-15 to \$69,178,000 in 2021-22, for a total increase of \$30 million. (*See Commonwealth Early Childhood Education Appropriations 2014-2022, ER-046.*)

162. Even with the historic increased funding investments made by Governor Wolf's Administration, without additional funding, the Commonwealth is currently only able to serve 40% of income-eligible children through its high quality early education programs, leaving 60% of income-eligible three- and four-year old children unserved. (*See Campanini, NT 4905:18-4906-9; ESSA Plan, PX-01830-0014.*)

S. Act 35 of 2016 – The Fair Funding Formula

163. Governor Wolf and the General Assembly recognized that additional funding should be provided to districts to help them close achievement gaps, and on June 1, 2016, Governor Wolf signed House Bill 1552 into law, which established the “Fair Funding Formula.” 72 P.S. § 1722-L(17.1). This Fair Funding Formula was made permanent in Act 35 of 2016, P.L. 252, No. 35 (June 1, 2016), 24 P.S. § 25-2502.53 (“Act 35”).

164. Act 35 was enacted to establish a fair, equitable formula for allocating new state funds to Pennsylvania schools to move closer to ensuring that all students

receive a quality public education and that schools with the greatest needs receive funding necessary for the resources they require. *See generally* 24 P.S. § 25-2502.53; (*see also* Stem, NT 2378:20-2381:3.)

165. The Fair Funding Formula addresses each district’s unique needs by accounting for district-based factors such as the district’s wealth, current tax effort, and ability to raise revenue. *See generally* 24 P.S. § 25-2502.53; (*see* Stem, NT 2378:6-18.) It also includes student-based factors, such as the number of students in the district who live in poverty, the number enrolled in charter schools, and the number who are English language learners. (*See id.*)

166. Establishing the Fair Funding Formula as a permanent formula for the distribution of Basic Education Funding is a historic accomplishment for the Commonwealth and a transition away from having to enact new legislation to determine basic education funding allocations for each year’s education budget. *See generally* 24 P.S. §§ 25-2502.46-53.

167. It is of paramount importance to the Executive Respondents that the Commonwealth address the historic and structural inequities in Basic Education Funding. (*See* Senate Ed. Cmte. Hearing Testimony, PX-04899-0002.)

168. Without directing funding through Act 35, “many school districts will continue to be underfunded perpetually – perpetuating the reliance on increasing

property taxes.” (Ortega, NT 8859:21-8860:4; *see also* House of Representatives Appropriations Cmte. Hearing Testimony, PX-07016.)

169. Since the enactment of Act 35, the amount of Basic Education Funding directed through the student-weighted formula is as follows:

- a. In the 2015-16 appropriation year, 2.8%, or \$152,398,840 out of the \$5,680,079,000 appropriated for Basic Education Funding, flowed through Act 35’s Fair Funding Formula. (*See* 2015-2016 Basic Education Funding, PX-01909-0001.)
- b. In the 2016-17 appropriation year, 5.9%, or \$352,398,839 out of the \$5,895,079,000 appropriated for Basic Education Funding, flowed through Act 35’s Fair Funding Formula. (*See* 2016-2017 Basic Education Funding, PX-01910-0001.)
- c. In the 2017-18 appropriation year, 7.5%, or \$452,700,000 out of the \$5,995,079,000 appropriated for Basic Education Funding, flowed through Act 35’s Fair Funding Formula. (*See* 2017-2018 Basic Education Funding, PX-01911-0001.)
- d. In the 2018-19 appropriation year, 8.8%, or \$538,667,243.72 out of the \$6,095,079,000 appropriated for Basic Education Funding, flowed through Act 35’s Fair Funding Formula. (*See* 2018-2019 Basic Education Funding, PX-01912-0001.)

- e. In the 2019-20 appropriation year, 10.3%, or \$698,667,194 out of the \$6,742,838,000 appropriated for Basic Education Funding, flowed through Act 35's Fair Funding Formula. (*See* 2019-2020 Basic Education Funding, PX-01913-0001.)
- f. As of the 2021-22 appropriation year, only 12.7%, or \$898,667,244 out of the \$7,055,773,000 appropriated for Basic Education Funding, is flowing through Act 35's Fair Funding Formula. (*See* 2021-2022 Basic Education Funding, PX-04778-0001.)

170. In 2021, recognizing that low wealth school districts are still underfunded, Governor Wolf and the General Assembly allocated an additional \$100 million in Level Up funding to the 100 lowest wealth school districts in the Commonwealth to further address inequities in education funding. (*See* Stem, NT 2483:14-2485:1.)

171. While the enactment of Act 35, the provision of Level Up funding, and the historical increases in education funding over the last seven years represent significant achievements, more can be done to address the current inequities in education and to meet the educational needs of the Commonwealth. (*See* Stem, NT 1907:18-1908:8, 2037:21-2038:8, 2437:14-2438:6.)

T. Basic Education Funding Enabling Legislation and the Calculation of an “Adequacy Target”

172. Prior to the enactment of Act 35, the formula for determining how the amount of appropriated Basic Education Funding dollars was allocated to the school districts changed on a yearly basis, and each new formula was contained in “enabling legislation” in the Public School Code or Fiscal Code. *See e.g.*, 24 P.S. §§ 25-2502.47-.52; 72 P.S. § 1722-J(17); 72 P.S. § 1722-L(14).

173. The Department’s Division of Subsidy Administration, led by Division Chief Benjamin Hanft, administers the Public School Code and Fiscal Code to determine the bi-monthly payment that is to be made to each school district in the Commonwealth from the Basic Education Funding appropriation and produces spreadsheets detailing the results of the calculations and the amounts to be allocated. (*See Hanft*, NT 12093:12-5, 12095:2-15, 12100:1-9.)

174. The Basic Education Funding allocation formula for the 2006-2007 allocation year is contained in the Public School Code. 24 P.S. § 25-2502.47; (*see Hanft*, NT 12109:4-15.) In this allocation year and all earlier allocations years extending back to at least 1963, no allocation formula required the calculation of, or referred to, an adequacy target. *See* 24 P.S. §§ 25-2502.1-.46.

175. The Basic Education Funding allocation formula for the 2007-2008 allocation year is contained in Public School Code. 24 P.S. § 25-2502.48. The

allocation formula for this year required the calculation of an “adequacy target” and a “State funding target” that were calculated by the Department’s Division of Subsidy Administration and published in a publicly available document. 24 P.S. §§ 25-2502.48(b), (c)(1); (*see* Hanft, NT 12111:3-16.)

176. The adequacy target set forth in 24 P.S. § 25-2502.48 was calculated in furtherance of the Commonwealth’s goal to meet State funding targets by fiscal year 2013-2014. 24 P.S. § 25-2502.48(c)(2) (“In furtherance of the General Assembly’s long-standing commitment to providing adequate funding that will ensure equitable State and local investments in public education and in order to enable students to attain applicable Federal and State academic standards, it is the goal of this Commonwealth to review and meet State funding targets by fiscal year 2013-2014.”).

177. The Basic Education Funding allocation formula for the 2008-2009 allocation year is contained in the Fiscal Code. 72 P.S. § 1722-J(17). The formula contained in this enabling legislation contains references to subsections of 24 P.S. § 25-2502.48 and the formula therein. 72 P.S. § 1722-J(17)(i)(A).

178. The Basic Education Funding allocation formula for the 2009-2010 allocation year is contained in the Fiscal Code. 72 P.S. § 1722-L(14). The formula contained in this enabling legislation contains references to subsections of 72 P.S. §

1722-J(17) and subsections of 24 P.S. § 25-2502.48 and the formula therein. 72 P.S. §§ 1722-L(14)(i)(A)-(ii).

179. The Basic Education Funding allocation formula for the 2010-2011 allocation year is contained in Public School Code. 24 P.S. § 25-2502.50.

180. Beginning with the enactment of 24 P.S. § 25-2502.50 for the 2010-2011 allocation year, the Basic Education Funding allocation formula no longer contained references to, or required the calculation of, an “adequacy target” in order to allocate funds. (*See* Hanft, NT 12127:20-23.)

181. In Act 24 of 2011, the General Assembly amended the Public School Code and repealed the language in 24 P.S. § 25-2502.48(c)(2) relating to the General Assembly’s long-standing commitment to providing adequate funding that is quoted, *infra*, in ¶ 176. 24 P.S. § 25-2502.48(c)(2).

182. The Basic Education Funding allocation formula for the 2011-2012 allocation year is contained in Public School Code. 24 P.S. § 25-2502.51.

183. The Basic Education Funding allocation formula for the 2012-2013 allocation year is contained in Public School Code. 24 P.S. § 25-2502.52.

184. The Basic Education Funding allocation formula for the 2015-2016 allocation year and each year thereafter is contained in Public School Code. 24 P.S. § 25-2502.53.

185. It is the administrative interpretation of the Department that since the enabling legislation no longer referenced to or required the calculation of an adequacy target, the Department was not required to and therefore did not calculate an adequacy target subsequent to the passage of 24 P.S. § 25-2502.50. (*See Hanft, NT 12127:1-12128:21.*)

186. Since the enactment of 24 P.S. § 25-2502.50, neither the General Assembly nor any individual LEA has contacted the Department to either request the calculation of an adequacy target or register a complaint that the adequacy target has not been calculated. (*See Hanft, NT 12128:8-12129:1.*)

PROPOSED CONCLUSIONS OF LAW

187. The Commonwealth Court of Pennsylvania has original jurisdiction over this matter pursuant to 42 Pa.C.S. § 761(a).

188. This matter was remanded to the Commonwealth Court of Pennsylvania by the Supreme Court of Pennsylvania to, *inter alia*, “develop the historic record concerning what, precisely, thoroughness and efficiency were intended to entail” and “develop a record enabling assessment of the adequacy of the current funding scheme relative to any particular account of the Constitution’s meaning.” *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 642 Pa. 236, 306, 317 (2017).

189. Article IV, Section 1 of the Constitution of Pennsylvania declares that “[t]he Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Attorney General, Auditor General, State Treasurer, and Superintendent of Public Instruction and such other officers as the General Assembly may from time to time prescribe.”⁷ Pa. Const. Art. 4, § 1.

190. Article III, Section 14 of the Constitution of Pennsylvania declares that “[t]he General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” Pa. Const. Art. 3, § 14.

191. Article III, Section 32 of the Constitution of Pennsylvania, which by its language proscribes the enactment of “local or special laws” when the circumstance “can be provided for by general law,” has long been held as containing equal protection principles “substantially coterminous with the federal Equal Protection Clause.” Pa. Const. Art. 3, § 32; *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 642 Pa. 236, 242 n.3 (2017).

192. Any assessment of damages or monetary relief against the Executive Respondents is barred by the doctrine of sovereign immunity. *See* 1. Pa.C.S. § 2310.

⁷ The title of Superintendent of Public Instruction changed to the Secretary of Education in 1969. *See* 71 P.S. § 1038.

BLANK ROME LLP

By: /s/ Christopher Lewis
Christopher A. Lewis
PA Attorney ID: 29375
Sophia Lee
PA Attorney ID: 86239
Nicolas B. Bednarek
PA Attorney ID: 330439
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
Tel.: (215) 569-5500
Fax: (215) 569-5555
Chris.lewis@blankrome.com
SLee@blankrome.com
Nbednarek@blankrome.com

*Counsel for Executive
Respondents*

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