

**THE UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

SCHENECTADY CITY SCHOOL DISTRICT, BOARD OF
EDUCATION OF THE SCHENECTADY CITY SCHOOL
DISTRICT, LAURENCE T. SPRING IN HIS CAPACITY AS
SUPERINTENDENT OF SCHOOLS OF THE
SCHENECTADY CITY SCHOOL DISTRICT ON BEHALF
OF THE STUDENTS OF THE SCHENECTADY CITY
SCHOOL DISTRICT AND J.L., M.M., D.C., D.R., S.M. AND
OTHERS AS PARENTS OF STUDENTS ATTENDING THE
SCHENECTADY CITY SCHOOL DISTRICT,

Complainants,

v.

STATE OF NEW YORK, NEW YORK STATE
LEGISLATURE, GOVERNOR OF THE STATE OF NEW
YORK, NEW YORK STATE EDUCATION DEPARTMENT,
NEW YORK STATE BOARD OF REGENTS AND NEW
YORK STATE COMMISSIONER OF EDUCATION,

Respondents.

**COMPLAINT UNDER
THE CIVIL RIGHTS ACT
OF 1964 AND THE EQUAL
EDUCATIONAL
OPPORTUNITIES ACT OF
1974**

Complainant Contact:

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I. OVERVIEW OF COMPLAINT

This complaint is brought against New York State by and through Respondents, the New York State Legislature, the Governor of the State of New York, the New York State Education Department, the New York State Board of Regents, and the New York State Commissioner of Education (hereinafter, “Respondents”).

New York State is a recipient of federal financial assistance and named in this complaint because its actions, by and through Respondents, have discriminated against the students of the Schenectady City School District (herein, “District”), a publicly-funded educational system, on the basis of race and/or due to their being English Language Learners (herein, “ELLs”) and or their having disabilities, in violation of the Civil Rights Act of 1964 and/or the Equal Educational Opportunities Act of 1974 and/or Section 504 of the Rehabilitation Act of 1973.

The educational funding structure implemented by New York State by and through Respondents has resulted in *de facto* discrimination that has compromised the Schenectady City School District’s ability to provide for the educational needs of minority based and non-English-speaking students and students with disabilities. This discrimination is particularly acute when compared to the education funding provided to school districts with a majority of Caucasian and mostly English-speaking students.

In addition to different treatment of students based on race, the Respondents violated Federal law by implementing policies or practices that were not adopted in order to discriminate, but which nonetheless have the unjustified effect of discriminating against students. This discriminatory effect is also a “disparate impact”.

The Schenectady City School District is a public, city school district established under the laws of New York State which is governed by an elected Board of Education which in turn

appoints and employs a superintendent of schools. The district offices are located at 108 Education Drive, Schenectady New York 12303 and the district includes school buildings located throughout the City of Schenectady.

This complaint is filed by and through the Schenectady City School District's duly elected Board of Education and duly appointed Superintendent of Schools, Laurence T. Spring. The complaint is filed on behalf of students who attend the District's schools and who have suffered educationally due to Respondents' sustained, inequitable funding practices. The complaint also names parents of students attending the District's schools. Collectively, these parties are referred to herein as "Complainants".

Approximately six years ago, New York State enacted legislation to reform the State's method of allocating resources to school districts. The reallocation of resources was mandated as a result of the New York State Court of Appeals' order in Campaign for Fiscal Equity v. State of New York, 100 N.Y.2d 893, 801 N.E.2d 326, 769 N.Y.S.2d 106 (2003) (hereafter the "CFE Case"). Initially, the mandate of providing a sound basic education (herein, "SBE") to all students in the State resulted in the creation of new funding formulas, *to wit*, Foundation Aid. However, repeated budget freezes, combined with the Respondents' inequitable allocation of resources in connection with a 2008-2009 Deficit Reduction Assessment ("DRA") and additional cuts in state aid in consecutive years (known as the Gap Elimination Adjustment ("GEA")), has resulted not only in the failure of Respondents to implement the CFE Case but, and more relevant to this complaint, an inequitable distribution of State aid which had and continues to have a disparate and discriminatory impact on New York's African American, Hispanic, and other non-white students, as well as on non-English-speaking students and those with disabilities.

This discriminatory impact is particularly acute in the Schenectady City School District. Respondents' *de facto* discriminatory practices of implementing the education funding formula results in the District's students receiving significantly less aid than their white counterparts in other school districts and insufficient funding levels to ensure that non-English-speaking students and students with disabilities overcome language barriers. This has directly and regularly impacted student achievement. Under the Respondents' current education funding scheme, the more "white" a school district's population, the more likely the district receives all, or close to all, of the aid it was promised under the constitutionally mandated state aid formula.

This funding practice also encompasses indirect discrimination through the implementation of seemingly neutral policies or practices that lead to disparate impact in terms of access and results for students of color, ELLs, and other students as compared to students in more affluent and less minority based school districts.

Respondents' method of funding education generally, and the Schenectady City School District specifically, violates the Civil Rights Act of 1964 (34 C.F.R. § 100.3(b)(2)), and the Equal Educational Opportunities Act (EEOA) of 1974 (20 U.S.C. § 1703(f)). Respondents' allocation of aid has created a dual system of education that impedes the academic progress of New York's minority and non-English-speaking children. Schenectady City School District has been designated a focus district by Respondents due to its persistently low student performance. This designation is based on the accountability system created by Respondents. Thus, Respondents have identified the District as being persistently low performing; yet maintain a persistently discriminatory funding system that ensures those results.

Complainants hereby request the Department of Education, Office for Civil Rights to:

- FULLY investigate this complaint;
- DECLARE that the Respondents' current formula(s) for distributing educational aid as having a *de facto* discriminatory impact on New York's minority and non-English-speaking students and in particular the students in the District's schools, in violation of Title VI of the Civil Rights Act of 1964, the EEOA and Section 504 of the Rehabilitation Act of 1973;
- ORDER Respondents to distribute educational aid in a non-discriminatory manner and one which does not result in disparate impact;
- ORDER Respondents to provide the District sufficient resources to provide adequate and appropriate ELL services including but not limited to:
 - training ELL teachers and services for parents and guardians;
 - recruitment and hiring of qualified staff for ELLs;
 - providing translation services for parents and guardians;
 - ensuring ELL students are appropriately evaluated for special education and receive dual services when eligible;
 - providing adequate and appropriate materials for ELL classes;
 - monitoring of current and exited ELLs and evaluation of all ELL programs for adequacy;
- ORDER Respondents to provide the District sufficient resources to provide adequate and appropriate remedial and special education services including but not limited to:
 - training teachers and services for parents and guardians;

- recruitment and hiring of qualified staff;
- ensuring all students are appropriately evaluated for mental health and learning concerns and receive services when eligible;
- providing adequate and appropriate materials for all classes;
- monitoring of current and exited Students with Disabilities and evaluation of all special education programs for adequacy; and,
- ANY other relief it deems just and proper.

II. **PARTIES**

Complainants

Complainants are the Schenectady City School District by and through its elected Board of Education and Laurence T. Spring the District’s Superintendent of the Schools as well as parents of students who attend the District’s schools. Complainants file on behalf of students who attend the District’s schools. These students are the victims of the Respondents’ *de facto* discriminatory practices and disparate impact due to the distribution of education aid by Respondents which is in violation of the Civil Rights Act of 1964 (34 C.F.R. § 100.3(b)(2)), and/or the Equal Educational Opportunities Act (EEOA) of 1974 (20 U.S.C. § 1703(f)) and/or the Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (Section 504)).

The Schenectady City School District served 9606 students during the 2011-2012 school year,¹ 67 percent of whom were non-white, 4 percent of whom were ELLs, and 74 percent of whom qualified for free or reduced price lunch.² Schenectady City School District’s

¹ References are to New York State Report Card data compiled by the New York State Education Department. The 2011-12 report card is the most up-to-date data available at the time this report is filed.

² New York State Report Card, Schenectady City School District, March 25, 2013, available at: <https://reportcards.nysed.gov/files/2011-12/RC-2012-530600010000.pdf> (hereinafter “Schenectady Report Card”), at 3. At the time of filing, this is the most up-to-date, available report card available from NYSED at <https://reportcards.nysed.gov/>

Instructional Expenditure per pupil is nearly \$1,500 below similar districts.³ Schenectady annually faces huge budget shortfalls that result in staff reductions, program cuts and, the closing of a school in each of the last two years.

Due to Respondents' systematic failure to provide adequate levels of state aid:

- Schenectady's budget gap for the 2013-2014 school year is approximately \$12 million;
- The 2013-14 budget required the District to use \$2,144,000 from its reserve fund balance to make up for aid which was not provided by Respondents;
- The District was forced to dramatically change its method of delivery of special education resources, including bringing at least 16 students back from out-of-district placements; and,
- The District eliminated ninety-six instructional support staff positions; two guidance counselors; reduced "zero hour" offerings at the high school; eliminated some school-based pre-k from within the schools.⁴

The District serves between 350 and 400 ELL students annually for whom it provides special programming. ELLs must remain in the District's program until they test proficient on the New York State English as a Second Language Achievement Test ("NYSESLAT").

Complainants have standing on the grounds that the Respondents' discriminatory educational funding structure has substantially impaired Complainants' ability to afford its students equal educational opportunities. The District has been designated "High Need/Resource" by NYSED, and the District serves communities that generate insufficient local

³ New York State School Report Card, Fiscal Accountability Supplement, available at: <https://reportcards.nysed.gov/files/2011-12/FIS-2012-530600010000.pdf> The Appendix to this complaint provides additional data and analysis of these impacts.

⁴ <http://www.schenectady.k12.ny.us/2013-2014Budget/Package/newsletter.pdf>

revenue resources to provide the District's pupils with an adequate education.⁵ Respondents have also identified the District as persistently low performing academically. These results are due in large measure from Respondents' discriminatory aid practices.

The funding disparity that is the subject of this complaint has created larger class sizes and higher student-to-teacher ratios; reduced curricula; cuts in and elimination of programs and electives and advanced placement courses; shortages of textbooks and resources; shortages of technology; insufficient physical education and extracurricular activities; insufficient library resources; and insufficient facilities. Additionally, the funding disparity has frustrated the District's ability to provide needed remedial services for ELLs, students with disabilities and a high proportion of Black and Hispanic students to overcome language barriers and to make meaningful academic progress. Clearly, the Respondents' policies have resulted in a disparate impact placed upon these students and the District.

Respondents

Respondents are the State of New York through those entities chiefly responsible for the allocation and distribution of moneys to the State's school districts including the Schenectady City School District. The entities include the New York State Legislature, the Governor of the State of New York, the New York State Education Department (herein "NYSED"), New York State Board of Regents and New York State Commissioner of Education (herein "Respondents").

⁵ NYSED's need/resource capacity indices measure a district's ability to meet the needs of its students with local resources. See New York State Education Department, Need/Resource Capacity Categories, available at: <http://www.p12.nysed.gov/irs/accountability/2011-12/NeedResourceCapacityIndex.pdf>.

The Board of Regents is responsible for the general supervision of all educational activities within the State. The Board comprises 17 members elected by the State Legislature for 5-year terms: 1 from each of the State's 13 judicial districts and 4 members who serve at large.⁶

The Commissioner of Education (currently, Dr. John B. King, Jr.) oversees more than 7,000 public and independent elementary and secondary schools (serving 3.1 million students), and hundreds of other educational institutions across New York State including higher education, libraries, and museums. The Commissioner holds himself out as a strong voice for education reform and a driving force in New York's successful Federal Race to the Top application.⁷

Through this structure the Commissioner is, in effect, New York State's superintendent of schools and reports to the Board of Regents -- effectively the State's Board of Education. NYSED is New York State's education agency. The NYSED holds itself out to be one of the most complete, interconnected systems of educational services in the United States.⁸ Its mission is to raise the knowledge, skill, and opportunity of all the people in New York.⁹ NYSED, the Board of Regents and Commissioner direct where educational funds are distributed in accordance with education aid formulas established and approved by the New York State Legislature and Governor.

At all times relevant to this complaint, New York State has been a substantial recipient of federal financial assistance. Federal assistance has been received by the State in a wide range of forms including American Recovery and Reinvestment Act (ARRA) funds Under Title I, Parts A & D - Improving Academic Achievement for the Disadvantaged, Title I School Improvement grants, Title I STEM grants, McKinney Vento Grants, Carl D Perkins IV Career and Technical

⁶ <http://www.regents.nysed.gov/>

⁷ http://usny.nysed.gov/about/commissioner_king.html

⁸ <http://usny.nysed.gov/about/>

⁹ Id.

Education grant funding and a host of others.¹⁰ To quantify this amount, in the 2012 and 2013 fiscal years, NYSED received federal grants totaling \$5.67 billion.¹¹ New York State and NYSED received additional federal grants totaling approximately \$49.94 million.¹²

III. NEW YORK'S DISCRIMINATORY STATE FUNDING AND THE IMPACT ON SCHENECTADY CITY SCHOOL DISTRICT

School funding in New York State is complicated, however, Respondents directly control the allocation of state *and* federal funds to New York State schools. That control has directly and negatively impacted Schenectady's students.

A. Source of State Funds

New York State public education is funded from three sources: (1) approximately five percent (5%) federal; (2) 40% State formula aids and grants; and (3) 55% revenues raised locally.¹³ While local property taxes constitute approximately 89% of local revenues, the State (through programs instituted by Respondents) assumes a portion of the local tax burden through implementation of the School Tax Relief (STAR) program. STAR provides rebates to homeowners for a portion of their local property tax obligation. For the 2011-12 fiscal year, STAR is estimated to account for about 14% of State revenues.

The effect of this tripartite breakdown of school funding is that poorer school districts, such as Schenectady City School District which has a much larger proportion of minority and ELL students, feels a greater impact on a decrease in state aid than do other less wealthy school districts.¹⁴ Respondents readily admit to "*tremendous disparities between New York State school*

¹⁰ <http://www.p12.nysed.gov/accountability/T1/ARRA> & <http://www.p12.nysed.gov/funding/currentapps.html>

¹¹ U.S Dept. of Education, Grant Award Pick-List (search report), accessed October 2013.

¹² Id.

¹³ Estimated 2011-12.

¹⁴ More than 90% of the variability of local revenue in New York school districts is attributable to property taxes. See, Baker, B., Corcoran, S., "The Stealth Inequities of School Funding: How State and Local School Finance Systems Perpetuate Inequitable Student Spending," AmericanProgress.com, Sept. 2012.

districts in the fiscal resources available to support education.”¹⁵ Respondents further admit differences in spending “are closely associated with disparities in property wealth. Higher expenditures per pupil are associated with higher actual property value per pupil.”¹⁶

In its official explanation of the State’s school finance system, Respondents state “Communities that desire a high level of educational services, but do not have a large tax base, must bear a disproportionately heavy tax burden in order to provide those services.”¹⁷ In other words, Schenectady City School District must raise their taxes more than other school districts. The District serves a vastly minority population (sixty-seven percent (67%) of Schenectady’s student population is non-white and four percent (4%) are ELLs compared with much lower percentages statewide). The net effect of Respondents’ method of aiding schools is to impose a heavier fiscal burden on minority populations. Respondents readily admit this.

B. Respondents’ Failure to Fully Fund Schenectady

The Laws of 2007 consolidated approximately 30 aid programs into a Foundation Aid formula that was designed to distribute funds to school districts based on the cost of providing an adequate education, adjusted to reflect regional costs and concentration of needy pupils.¹⁸ Pursuant to the Foundation Aid formula, needy districts like Schenectady were deemed to require a minimum amount of state funding to provide a “sound basic education” to their students.

The 2007-2008 Enacted Budget included a four-year phase-in of Foundation Aid. The 2009-2010 Enacted Budget extended the phase-in to 2013-2014 and froze 2009-2010 and 2010-2011 payable Foundation Aid to 2008-2009 Foundation Aid levels. The 2011-2012 Enacted Budget extended the phase-in to 2016-2017 and froze 2011-2012 payable Foundation Aid to

¹⁵ State Aid to Schools, A Primer, Pursuant to Laws of 2013, July 2013. <https://stateaid.nysed.gov/generalinfo/>.

¹⁶ Id. at 4.

¹⁷ Id.

¹⁸ Id.

2008-2009 Foundation Aid amount. The 2012-2013 Enacted Budget provided no phase-in of 2013-2014 aid except for the New York City School District at 5.23 percent.¹⁹

In other words, Respondents are constitutionally mandated to fund schools in accordance with the formula, but they do not. Respondents acknowledge their funding has had a disparate negative impact on minority school districts. In Schenectady, freezing aid has had a chilling effect on the District's ability to provide education to students of color and ELL students and those with disabilities. Aid freezes were compounded by budget cuts in 2009 when school districts were assessed a Deficit Reduction Assessment ("DRA") of \$2.097 billion to close New York's fiscal deficit.²⁰ Schenectady was assessed a \$12,305,529 DRA. The chart in Appendix A of this complaint shows exactly how much aid Schenectady City School District has lost over the years due to Respondents' actions.²¹

Also in 2009, New York State received a \$2.5 billion State Fiscal Stabilization Fund ("SFSF") Education Fund grant pursuant to the American Recovery and Reinvestment Act ("ARRA").²² NYSED was responsible for distributing these funds to school districts in New York to close the gap created by the DRA.²³ However, rather than distributing the SFSF funds according to the Foundation Aid formula, the funds were distributed to return foundation aid to the "freeze" level and to fund other school expense-driven aids at higher levels.

¹⁹ Id.

²⁰ Pursuant to Section 24 of Part A of Chapter 57 of the Laws of 2009. New York State Education Department, Deficit Reduction Assessment Restoration by District, available at https://stateaid.nysed.gov/budget/html_docs/dra_restoration.htm

²¹ Statewide School Finance Consortium analysis of NYSED school aid data.

²² In fiscal years 2010, 2011, 2012, NYSED received more than \$17.2 billion in federal aid for education. New York State also received ARRA funds due directly and substantially to the work of Respondents. NYSED is responsible for distributing these federal funds to school districts in New York. https://stateaid.nysed.gov/st3/arra_summary.htm See also, <http://usny.nysed.gov/rttt/>

²³ New York State Monitoring Plan and Protocols For the State Fiscal Stabilization Education and Other Government Services Fund, available at http://usny.nysed.gov/arra/monitoring-auditing/documents/NewYorkState_SFSE_MonitoringPlan.pdf.

C. Discriminatory Impact on Schenectady

Respondents' school funding structure unlawfully disadvantages students based on race. School districts with higher concentrations of minority students are being systematically underfunded resulting in a clear pattern of discriminatory practices. The median school district in the State is funded at 82% of the Foundation Aid required by law. These are predominantly districts with a majority of white students. Being funded below 70% of the Foundation levels is a significant impairment. This fate befalls only 155 of over 693 New York State school districts. This funding practice encompasses indirect discrimination through the implementation of seemingly neutral policies or practices that lead to disparate impact in terms of access and results for students of color, ELLs, and other students as compared to students in more affluent and less minority based school districts.

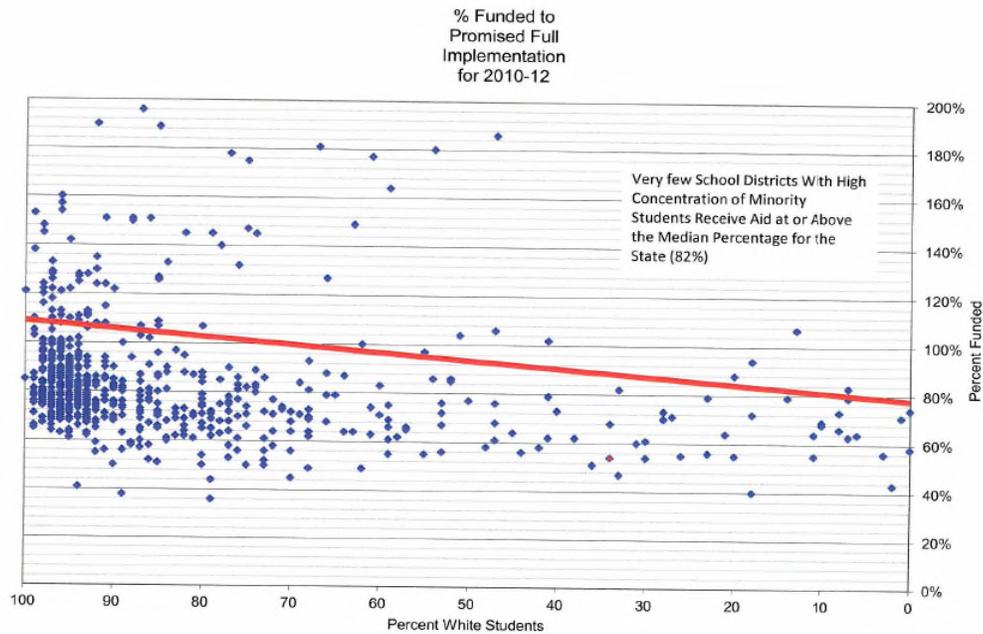
While school districts that have a white majority population have only a 20% chance of being funded at such a low rate, districts with a minority as majority population have a 55% chance of receiving less than 70% of their prescribed funds. Further, white districts have only a 5% chance of being funded at a level below 60% while minority districts are five times as likely to be so underfunded (27%). The Schenectady City School District student body is approximately 66% non-white and receives just 54% of the Foundation Aid to which it is entitled.

The percentage of students eligible for free and reduced-price lunch ("FRPL") is often used as a proxy to measure student family income. The higher the percentage of students eligible for FRPL, the higher the level of poverty.²⁴ In New York State, the overall percentage of students who are FRPL eligible is 45.1%. In Schenectady, the FRPL eligibility rate is

²⁴ http://nces.ed.gov/programs/digest/d10/tables/dt10_044.asp

approximately 74%.²⁵ Therefore, the measure of poverty in Schenectady is well above the State average and the poverty level is directly related to the percentage of District students who are members of a minority population.²⁶ This means Respondents' funding of a high poverty school district like Schenectady with a combined wealth ratio ("CWR") of .384 and a FRPL eligibility rate of 74% is a discriminatory practice since Schenectady's lower share of state aid is based on its higher level of poverty and higher level of minority students.

The below scatter plot shows the "whiter" a school district's population; the more likely the district receives full or close to full funding.



The following chart vividly shows Schenectady City School District is the poorest in its region but also among the poorest in the State. It receives the least amount of Federal and State aid in proportion to its combined wealth ratio and percentage of minority students.

²⁵ http://nces.ed.gov/pubs2007/minoritytrends/ind_2_7.asp

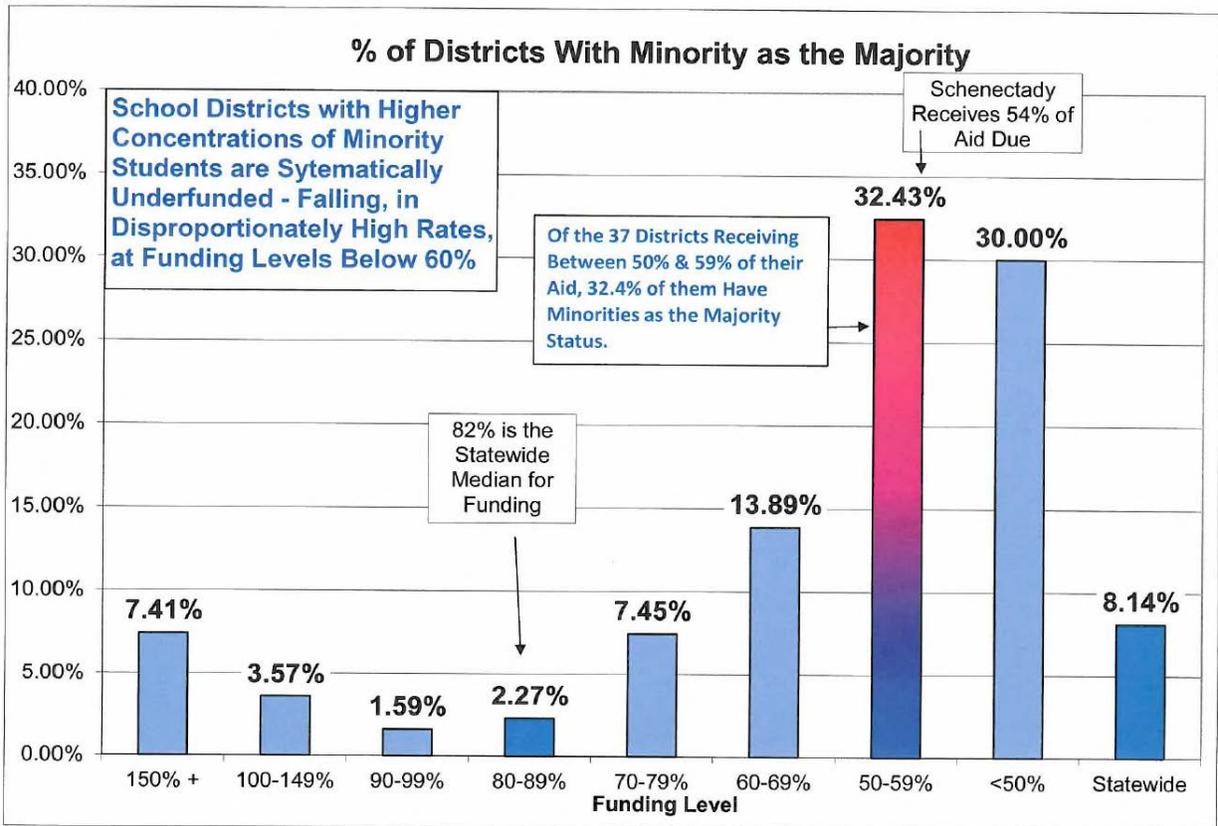
²⁶ The percentage of African-American and Hispanic 4th graders who are eligible for FRPL is three times the percentage of eligible white 4th graders

State Aid Picture

Inequities in State Aid

Rank	% of Full Aid Received	Local School Districts	County	Amount that District Should Be Receiving	Amount of Aid Actually Received in 2011-2012	Difference Between Amount Should be Receiving & Amount Received	Percentage of Full Funding That District Currently Receives	Combined Wealth Ratio (CWR) 1.0 = Avg.
2		EDINBURG	Saratoga	39386	552780	-513394	1403%	2.708
72		GILBOA CONESVI	Schoharie	1783536	2285010	-501474	128%	1.191
106		SCHOHARIE	Schoharie	6142196	6744404	-602208	110%	0.697
119		SARATOGA SPRIN	Saratoga	19597745	20806927	-1209182	106%	1.264
140		MIDDLEBURGH	Schoharie	6877651	6805597	72054	99%	0.694
152		BERNE KNOX	Albany	6113814	5876382	237432	96%	0.903
158		SCHALMONT	Schenectady	7389402	7027762	361640	95%	1.049
167		CORINTH	Saratoga	9101907	8524013	577894	94%	0.654
163		GALWAY	Saratoga	6396242	6017028	379214	94%	0.858
190		RAVENA COEYMAN	Albany	11609770	10482238	1127532	90%	0.830
203		BURNT HILLS	Saratoga	14302432	12660073	1642359	89%	0.830
205		SCHUYLERVILLE	Saratoga	11836965	10509581	1327384	89%	0.607
242		STILLWATER	Saratoga	7307409	6290713	1016696	86%	0.738
235		VOORHEESVILLE	Albany	3920001	3357333	562668	86%	1.121
256		S. GLENS FALLS	Saratoga	19419307	16522887	2896420	85%	0.634
255		SCOTIA GLENVIL	Schenectady	14776838	12585746	2191092	85%	0.772
261		SHARON SPRINGS	Schoharie	3776010	3223466	552544	85%	0.488
270		GREEN ISLAND	Albany	2465132	2063513	401619	84%	0.711
271		JEFFERSON	Schoharie	2490543	2101512	389031	84%	0.678
289		COBLESKIL-RICHM	Schoharie	15891678	13196430	2695248	83%	0.583
298		BALLSTON SPA	Saratoga	21600726	17767780	3832946	82%	0.810
338		DUANESBURG	Schenectady	5602165	4405504	1196661	79%	0.748
374		MECHANICVILLE	Saratoga	8320594	6436061	1884533	77%	0.713
413		WATERFORD	Saratoga	5473470	4123790	1349680	75%	0.705
432		MOHONASEN	Schenectady	16981128	12561189	4419939	74%	0.704
454		GUILDERLAND	Albany	19118726	13965172	5153554	73%	1.048
449		MENANDS	Albany	496097	364402	131695	73%	1.774
516		WATERVLIET	Albany	15749191	10978969	4770222	70%	0.528
530		COHOES	Albany	21032591	14578624	6453967	69%	0.547
525		SHENENDEHOWA	Saratoga	37929933	26336843	11593090	69%	0.967
524		SOUTH COLONIE	Albany	22063985	15207643	6856342	69%	0.995
568		NISKAYUNA	Schenectady	14795277	9793417	5001860	66%	1.036
597		ALBANY	Albany	90087476	57255001	32832475	64%	0.727
605		BETHLEHEM	Albany	18758638	11875262	6883376	63%	0.970
614		NORTH COLONIE	Albany	17623159	10954307	6668852	62%	1.184
657		SCHENECTADY	Schenectady	135323105	72990701	62332404	54%	0.386

The minority-majority disparity *vis a vis* Respondents' funding mechanism is demonstrated clearly in the following chart. Concisely, Respondents systematically underfund school districts with higher percentages of minority students.



As previously noted, this inequitable funding mechanism has a particularly disparate impact and negative effect on Schenectady and its students. Respondents determined Schenectady City School District is persistently low performing – based on Respondents’ own measures. Despite Respondents’ identification that the District needs to improve student achievement, Respondents’ funding perpetuates a system that curtails the District’s ability to do so.

IV. APPLICABLE LAW

A. Title VI of the Civil Rights Act of 1964, 34 C.F.R. § 100.3

Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. [Title VI, § 601; 42 U.S.C. § 2000d]

The United States Supreme Court has held Section 601 only prohibits intentional discrimination.²⁷ However, another provision of Title VI, Section 602, “authorize[s] and direct[s]” federal financial assistance to particular programs or activities “to effectuate the provisions of Section 601 . . . by issuing rules, regulations, or orders of general applicability.” 42 U.S.C. § 2000d. At least 40 federal agencies have adopted regulations that prohibit disparate-impact discrimination pursuant to this authority.²⁸ Department of Justice regulations state:

(2) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin. [28 C.F.R. § 42.104(b)]

Pursuant to such regulations, all entities that receive federal funding, including Respondents, enter into standard agreements or provide assurances that require certification that the recipients will comply with implementing regulations under Title VI.²⁹ The Supreme Court has held that these regulations may validly prohibit practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory.³⁰

²⁷ See Guardians Ass’n v. Civil Serv. Comm’n, 463 U.S. 582 (1983)

²⁸ See Guardians, 463 U.S. at 619 (Marshall, J. dissenting)

²⁹ Guardians, 463 U.S. 582, 642 n. 13

³⁰ Id.; Alexander v. Choate, *supra*; see also Villanueva v. Carere, 85 F.3d 481 (10th Cir. 1996); New York Urban League v. New York, 71 F.3d 1031, 1036 (2d Cir. 1995); Chicago v. Lindley, 66 F.3d 819 (7th Cir. 1995); David K. v. Lane, 839 F.2d 1265 (7th Cir. 1988); Gomez v. Illinois State Bd. Of Educ., 811 F.2d 1030 (7th Cir. 1987); Georgia State Conf. v. Georgia, 775 F.2d 1403 (11th Cir. 1985); Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).

A recipient's practice has a racially discriminatory impact if the recipient's practices have a disproportionate impact on a group protected by Title VI.³¹ Disparate impact violations occur where recipients utilize policies or practices that result in the provision of fewer services or benefits, or inferior services or benefits, to members of a protected group.³² This is precisely the case in Schenectady City School District.

B. Equal Educational Opportunities Act (EEOA) of 1974 (20 U.S.C. § 1703(f))

In relevant part, the EEOA provides:

No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.[20 U.S.C. § 1703.]

Courts have held “[t]his provision of the EEOA was intended to remedy the linguistic discrimination.” In Lau v. Nichols,³³ the Supreme Court held that failing to provide for the needs of non-English-speaking students is to “make a mockery of public education, rendering classroom experiences for these children wholly incomprehensible and in no way meaningful.”³⁴ Determining whether a state has violated the EEOA is a three-step inquiry.³⁵ That inquiry includes courts being satisfied the school system is pursuing a program informed by an educational theory recognized as sound by some experts in the field or, at least, deemed a legitimate experimental strategy;³⁶ the programs and practices actually used by a school system [must be] reasonably calculated to implement effectively the educational theory adopted by the

³¹ Lau v. Nichols, 414 U.S. 563 at 568 (1974).

³² See Meek v. Martinez, 724 F. Supp. 888 (S.D.Fla. 1987); See also Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307, 655 N.E.2d 1178 (N.Y. Ct. App. Jun 15, 1995) (*prima facie* case established where allocation of educational aid had a racially disparate impact)

³³ 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974).

³⁴ Flores v. State of Arizona, 516 F.3d 1140, 1146 (9th Cir. 2008).

³⁵ Castaneda v. Pickard, 648 F.2d 989, 1009-10 (5th Cir. 1981); see also Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030, 1041-42 (7th Cir. 1987) (applying the Castaneda analysis); Flores, 516 F.3d at 1146.

³⁶ Castaneda, 648 F.2d at 1009.

school;³⁷ and, even if theory is sound and resources are adequate, the program must be borne out by practical results.

Additionally, Section 504 of the Rehabilitation Act of 1973 (29 USC § 794) prevents discrimination against individuals with disabilities in programs which receive federal funding. It provides in part:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance 29 USC § 794(a)

Respondents' funding actions also result in *de facto* discrimination against students with disabilities in violation of Section 504. The result is a discriminatory impact on one of the District's neediest student populations.

V. BASIS FOR INVESTIGATION

A. Respondents' Distribution Of Aid Impermissibly and Disparately Impacts New York Students On The Basis Of Race.

Respondents are "recipients" of federal funding for purposes of federal civil rights laws. New York has promised its school districts a minimum amount of state aid in order to ensure that each district is able to provide basic instruction to its students. Currently, however, a school district's likelihood of receiving the full measure of state educational aid that it has been promised, and consequently, the likelihood that the district is adequately funded, is directly correlated to whether the district serves predominantly white students. The disparity between the percentage of required aid received by predominantly white districts and the percentage received by "minority-as-majority" districts is too significant to be coincidental, and too inequitable to be supported by a "legitimate justification." The State's maintenance of this funding structure,

³⁷ Id. at 1010

which has the effect of discriminating against students on the basis of race, violates Title VI of the Civil Rights Act of 1964.

This inequitable distribution of aid has had a negative impact on minority students in the Schenectady City School District. The educational opportunities of Schenectady City School District students have been seriously impaired by the State's failure to adequately fund these districts. The funding disparity has created, *inter alia*, larger class sizes and higher student-to-teacher ratios; cuts in and elimination of programs and electives and advanced placement courses; shortages of textbooks and resources; shortages of technology; insufficient physical education and extracurricular activities; insufficient library resources; and insufficient facilities.³⁸

The practical and actual effect of the State's distribution of funding has been to create a public education system where the whiter a school district's population, the more likely the district is receiving full or close to the full funding required by law. The State's failure to meet its Foundation Aid goals disproportionately and unlawfully impacts minority students.

A report recently issued by the Alliance for Excellent Education, relying on data provided by the U.S. Department of Education's Office for Civil Rights ("OCR"), confirms that school districts which struggle most with providing a positive school climate disproportionately serve students of color and low income.³⁹ It also found students of color and students from lower income families are less likely to have access to rigorous course work and experienced teachers, and are more likely to be suspended than their white and wealthier peers.⁴⁰ Therefore, Districts with a higher level of minority-based students require greater educational resources to address

³⁸ The District's student performance data for the District (2011-12) reveals student scores on State English Language Arts (ELA) and Math exams in Grades 3-8 are lower than the State average by 10% or more across ALL grades. These differences are even more dramatic for ELL students where the student achievement is in some cases 30% lower than the State average on ELA and Math (Source: NYSED).

³⁹ <http://all4ed.org/reports-factsheets/climatechange1/>

⁴⁰ *Id.*

these inequities and to provide the needed services to students of color and ELLs to ensure they receive an education equal in quality to Caucasian students.

This is exactly the case in Schenectady. Respondents have a responsibility to ensure its methods of distributing aid do not adversely and disparately impact minorities. They have failed to do so and as a result, failed to adhere to their legal obligations.

B. The State's Distribution of Aid Impermissibly Denies Equal Educational Opportunity to Schenectady's Students Based on National Origin.

Respondents are recipients of Federal Education Funding and thus EEOA applies. Equally clear, Respondents' method of funding Schenectady City School District violates the EEOA. Respondents' repeated actions to freeze Foundation Aid and distribute other funds to school districts results in substantially less resources being provided to the students of the Schenectady City School District. Complainants have been forced to reduce programs that affect the District's ELL population and, in so doing, have failed to meet the needs of non-English-speaking students. This resulting failure caused by Respondents' discriminatory practices places the District at risk of exactly what the EEOA seeks to avoid – making “a mockery of public education, rendering classroom experiences for these children wholly incomprehensible and in no way meaningful.”⁴¹

As set forth, Complainants have been forced to reduce ELL programs, not satisfactorily provide for the parents and guardians of ELL students and in so doing, cannot provide the educational experience these students deserve. Schenectady has been unable to meet the needs of ELL students by not being able to provide bilingual special education classes; understaffing resulting in higher pupil-teacher ratios in bilingual classes; insufficient Academic Intervention Services; and, lack of adequate materials for ELL students.

⁴¹ Flores v. State of Arizona, 516 F.3d 1140, 1146 (9th Cir. 2008).

Respondents' failure to provide proper financial assistance to Schenectady City School District through its inequitable Foundation Aid ensures ELL students in low wealth districts such as Schenectady become victims of *de facto* discriminatory practices in contravention of law. In addition to different treatment of students based on race, the Respondents violated Federal law upon their implementation of policies or practices that were not adopted in order to discriminate, but their implementation nonetheless has a discriminatory disparate impact against students on the basis of race, English language proficiency, and disability.

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VI. CONCLUSION

For the above-stated reasons, Complainants, hereby request the Department of Education, Office for Civil Rights:

- FULLY investigate this complaint;
- DECLARE that the Respondents' current formula(s) for distributing educational aid as having a *de facto* discriminatory impact on New York's minority and non-English-speaking students and in particular the students in the District's schools, in violation of Titles VI of the Civil Rights Act of 1964, the EEOA and the Section 504 of the Rehabilitation Act of 1973;
- ORDER Respondents to distribute educational aid in a non-discriminatory manner;
- ORDER Respondents to provide the District sufficient resources to provide adequate and appropriate ELL services including but not limited to:
 - training ELL teachers and services for parents and guardians;
 - recruitment and hiring of qualified staff for ELLs;
 - providing translation services for parents and guardians;
 - ensuring ELL students are appropriately evaluated for special education and receive dual services when eligible;
 - provide adequate and appropriate materials for ELL classes;
 - monitoring of current and exited ELLs and evaluation of ELL programs for adequacy;

- ORDER Respondents to provide the District sufficient resources to eliminate disparate impact and to provide adequate and appropriate remedial and special education services including but not limited to:
 - training teachers and services for parents and guardians;
 - recruitment and hiring of qualified staff;
 - ensuring all students are appropriately evaluated for mental health and learning concerns and receive services when eligible;
 - providing adequate and appropriate materials for all classes;
 - monitoring of current and exited Students with Disabilities and evaluation of all special education programs for adequacy; and,
- ANY other relief it deems just and proper.

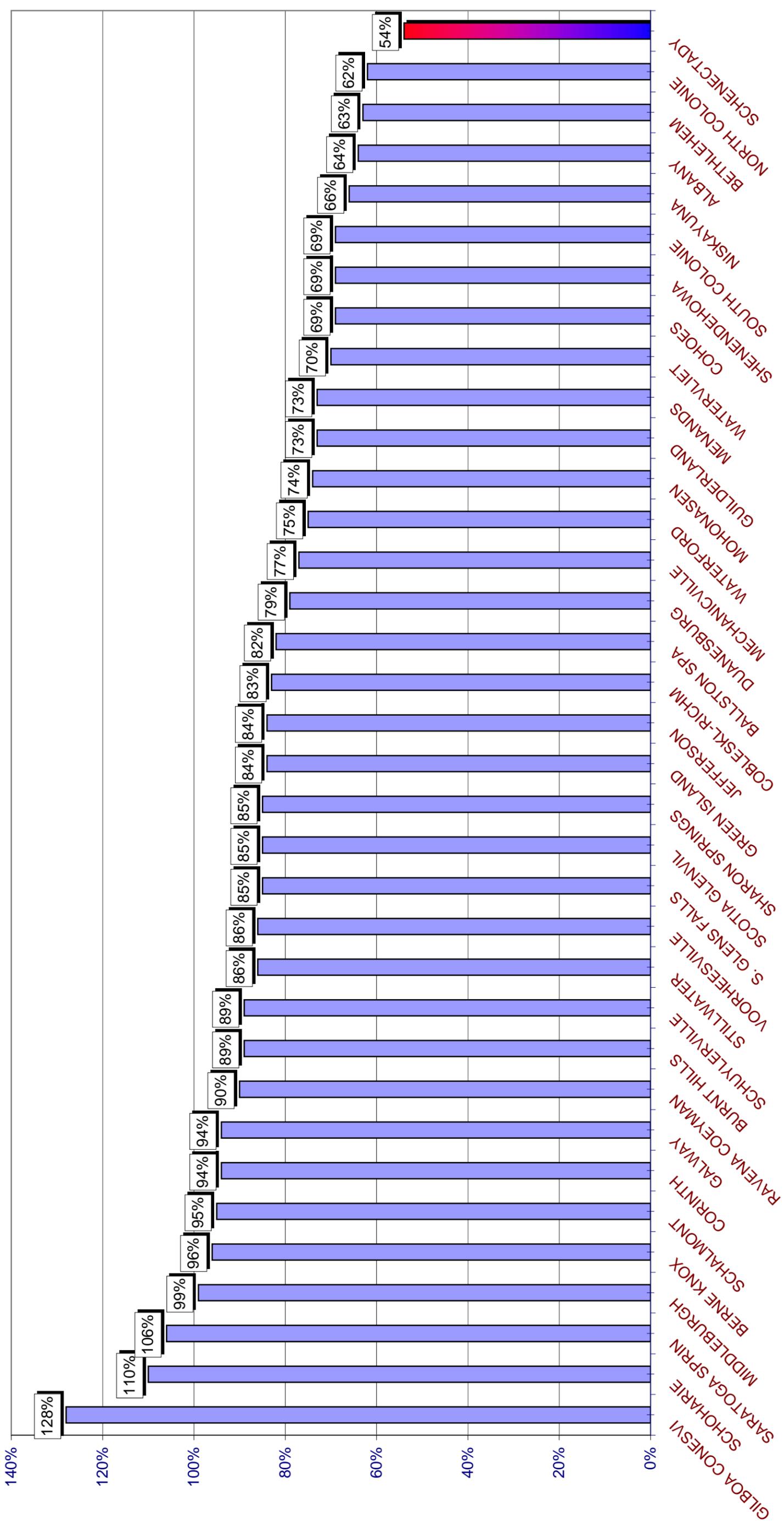
DATED: December ____, 2013

LAURENCE T. SPRING
Superintendent of Schools
Schenectady City School District

Appendix A – GEA Reduction for Schenectady City School District

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SCHENECTADY CITY SCHOOL DISTRICT					
District Name	2010-11 GAP ELIMINATION ADJUSTMENT	2011-12 GAP ELIMINATION ADJUSTMENT	2012-13 GAP ELIMINATION ADJUSTMENT	2013-14 GAP ELIMINATION ADJUSTMENT	Total Cumulative GEA Loss (2010-11 through 2013-14)
SCHENECTADY	-\$7,117,537	-\$9,338,635	-\$7,003,977	-\$3,992,267	-\$27,452,416
County	Average Per Student Loss (Based on Est 2012-13 Enrollment (SED)) for Period 2010-11 through 2013-14	STATE Average Per Student Loss (Based on Est 2012-13 Enrollment (SED)) for Period 2010-11 through 2013-14	GAP ELIMINATION ADJUSTMENT for 2013-14 Per Student	STATE AVERAGE GAP ELIMINATION ADJUSTMENT for 2013-14 Per Student	At 2013-14 Restoration Rate Years until GEA Ends
Schenectady	-\$2,765	-\$3,163	-\$402	-\$610	2
COMBINED WEALTH RATIO (CWR) FOR 13-14 AID	FRP LUNCH %, K-6, 3-YEAR AVG.	CWR Decile 1=Lowest 10=Highest	FRPL Decile 1=Highest 10=Lowest	2013-14 GEA as % of 2012-13 Budget (If absorbed= Budget Decrease)	2013-14 GEA as % of 2012-13 Levy (If absorbed= Levy Increase)
0.384	0.719	1	1	-3%	7.6%
SOURCE: Compiled by the SSFC from NYSED School Aid data	STATE TOTAL 2010-11 GAP ELIMINATION ADJUSTMENT	STATE TOTAL 2011-12 GAP ELIMINATION ADJUSTMENT	STATE TOTAL 2012-13 GAP ELIMINATION ADJUSTMENT	STATE TOTAL 2013-14 GAP ELIMINATION ADJUSTMENT	STATE TOTAL GEA Loss (2010-11 through 2013-14)
	-\$2,136,173,643	-\$2,553,877,142	-\$2,154,332,267	-\$1,637,607,588	-\$8,481,990,640

Percent of Full State Aid Districts Receive

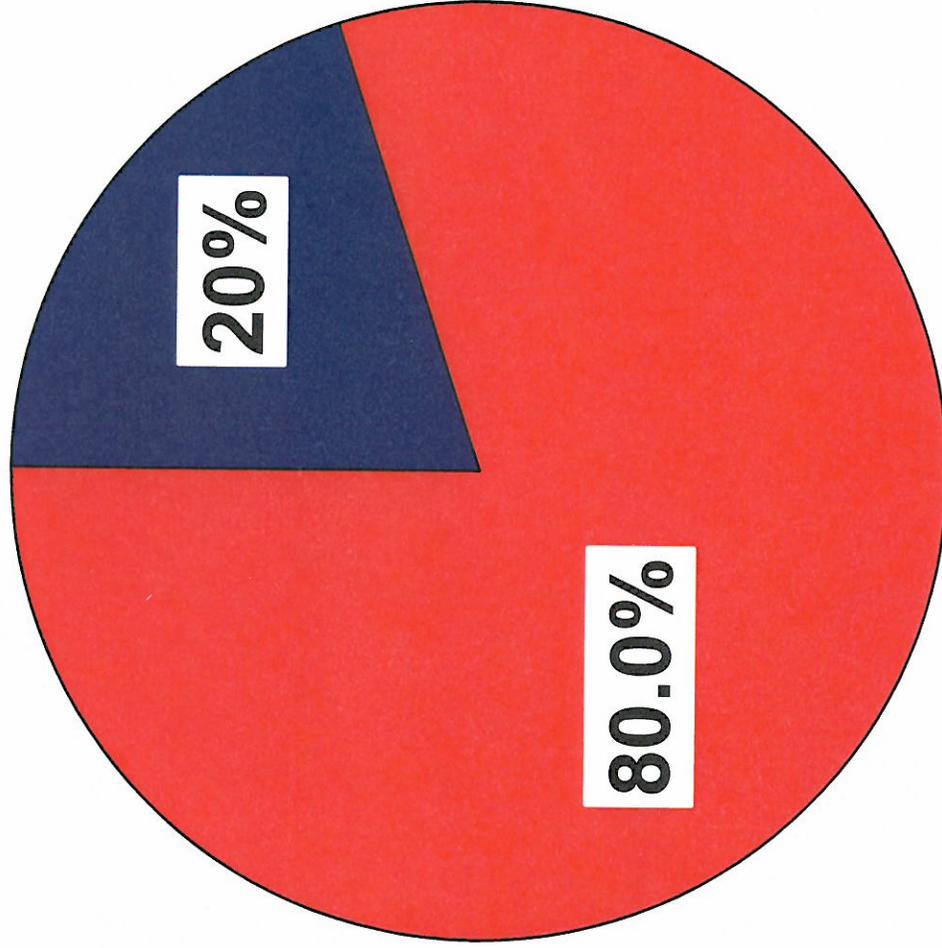


Area School Districts

District	County	Combined Wealth Ratio	Free/Reduced Lunch % K-6, 3 Yr.	2011-12 Aid	2012-13 Aid	Aid Should Be Receiving before phase in 12-13	Amount Needed to Promised Full Amount	% of Full Amt	Yrs to Full
Schoharie	Schoharie	0.697	0.3972	\$ 6,704,179	\$ 6,744,404	\$ 6,142,196	-\$ 602,208	110%	0
Middleburgh	Schoharie	0.694	0.4113	\$ 6,765,007	\$ 6,805,597	\$ 6,877,651	\$ 72,054	99%	2
Berne Knox	Albany	0.903	0.3762	\$ 5,841,334	\$ 5,876,382	\$ 6,113,814	\$ 237,432	96%	7
Schalmont	Schenectady	1.049	0.1529	\$ 6,985,847	\$ 7,027,762	\$ 7,389,402	\$ 361,640	95%	9
Ravena C	Albany	0.830	0.3365	\$10,419,720	\$10,482,238	\$11,609,770	\$ 1,127,532	90%	19
Burnt Hills	Saratoga	0.830	0.0953	\$12,58,566	\$12,660,073	\$14,302,432	\$ 1,642,359	89%	22
Voorheesville	Albany	1.121	0.0606	\$ 3,337,310	\$ 3,357,333	\$ 3,920,001	\$ 562,668	86%	29
Sharon Spgs	Schoharie	0.488	0.5417	\$ 3,204,241	\$ 3,233,466	\$ 3,776,010	\$ 552,544	85%	30
Scotia Glenvil	Schenectady	0.772	0.1944	\$12,510,682	\$12,585,746	\$14,776,838	\$ 2,191,092	85%	33
Green Island	Albany	0.771	0.4981	\$ 2,051,206	\$ 2,062,513	\$ 2,465,132	\$ 401,619	84%	35
Cobleskl-Rich	Schoharie	0.583	0.3736	\$13,117,724	\$13,196,430	\$15,891,678	\$ 2,695,248	83%	46
Duanesburg	Schenectady	0.748	0.2437	\$ 4,379,229	\$ 4,405,504	\$ 5,602,165	\$ 1,196,661	79%	58
Mohonasen	Schenectady	0.704	0.2313	\$12,484,751	\$12,561,189	\$16,981,128	\$ 4,419,939	74%	58
Menands	Albany	1.774	0.2654	\$ 362,125	\$ 364,402	\$ 496,097	\$ 131,695	73%	58
Guilderland	Albany	1.048	0.0924	\$13,876,047	\$13,965,172	\$19,118,726	\$ 5,153,554	73%	58
Watervliet	Albany	0.528	0.6526	\$10,896,473	\$10,978,969	\$15,749,191	\$ 4,770,222	70%	58
Shenendehowa	Saratoga	0.967	0.1104	\$26,136,353	\$26,336,843	\$37,929,933	\$11,593,090	69%	58
Cohoes	Albany	0.547	0.62	\$14,467,010	\$14,578,624	\$22,032,591	\$ 6,453,967	69%	58
So. Colonie	Albany	0.995	0.2292	\$15,089,070	\$15,207,643	\$22,063,985	\$ 6,856,342	69%	58
Niskayuna	Schenectady	1.036	0.088	\$ 9,706,915	\$ 9,793,417	\$14,795,277	\$ 5,001,860	66%	58
Albany	Albany	0.727	0.6762	\$56,687,197	\$57,255,001	\$90,087,476	\$32,832,475	64%	58
Bethlehem	Albany	0.97	0.0525	\$11,756,221	\$11,875,262	\$18,758,638	\$ 6,883,376	63%	58
No. Colonie	Albany	1.1840	0.1099	\$10,836,976	\$10,954,307	\$17,623,159	\$ 6,668,852	62%	58
Schenectady	Schenectady	0.386	0.6781	\$71,912,725	\$72,990,701	\$135,323,105	\$62,332,404	54%	58
Lowest Combined Wealth Ratio							Lowest Percentage of Promised Full Aid		

Source: Statewide School Finance Consortium

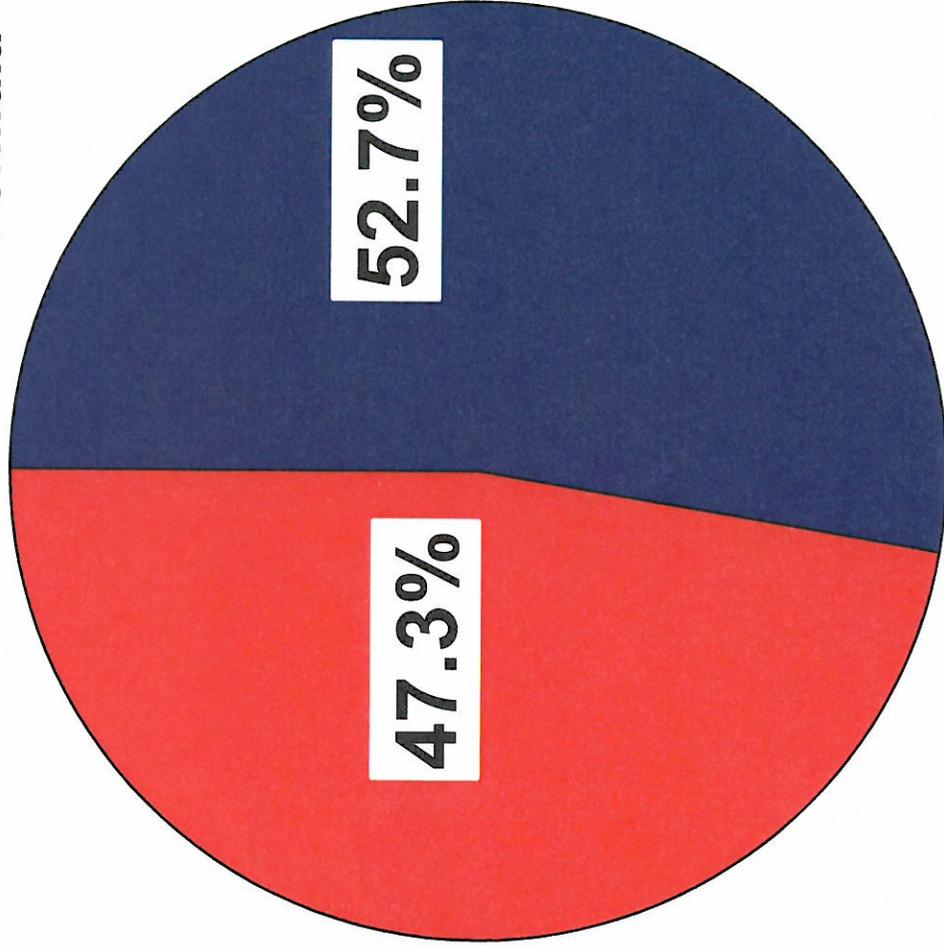
How "Minority As The Majority" Districts Fare In The Funding Formula



■ % of Minority as Majority Districts Receiving More Than 79% (Median Funding)

■ % of Minority as Majority Districts Receiving Less Than 79% (Median Funding)

How Predominantly White Districts Fare in the Funding Formula



- % of White Districts Receiving More than 79% (Median Funding)
- % of White Districts Receiving Less Than 79% (Median Funding)