

**Rochester City School District  
Quarterly Report  
November 2018 to January 2019**

**Jaime Aquino, PhD**

## **Quarterly Report November 2018 to January 2019**

The purpose of this Quarterly Report is to provide updates on the District's progress in addressing the problems that led to the appointment of a Distinguished Educator, and to report on the system's ongoing response to the Distinguished Educator's recommendations.

The Quarterly Report is a summary covering the same areas of concern identified in the Distinguished Educator's report on his findings of the Rochester City School District, issued on November 14, 2018. Each section begins with an "Implementation Status Update" to outline the District's progress in addressing the findings and recommendations of the Distinguished Educator's Report. During this quarter the District was focused on drafting an action plan to address the recommendations. That plan has been submitted to the New York State Education Department, and the District is expected to begin implementation in February. This quarterly report does not include the review of the District's plan, which was submitted in February.

### **Governance and District Leadership**

#### Implementation Status Update:

- Consistent with the recommendations of the Distinguished Educator's report, on December 20, 2018 the Board voted to temporarily suspend committee meetings and amend its meeting calendar to allow for two Business Meetings per month.<sup>1</sup> Two Business Meetings per month would give the Superintendent and Administrative Leadership team more opportunities to fully inform the Board and community, while presenting timely resolutions, and alleviating the need for special meetings. The overall length of these meetings would be shortened.
- The November 14, 2018 Distinguished Educator's Report found that the District is crippled by a culture of fear and intimidation, starting at the top with the Board and Superintendent, and spreading down through all layers of the organization. There has not been any significant progress made in addressing this culture of fear. Staff reports that it continues to this day. These behaviors encourage a culture that depresses staff morale, inhibits innovation, delays projects, and saps energy.
- Some staff members contend that commissioners continue to involve themselves in the District's day-to-day operations, taking their concerns to staff members, and bypassing the Superintendent.

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<sup>1</sup> See Appendix 1 for Board Resolution.

- The Board's divisions continue, and meetings tend to be difficult, with commissioners' tensions and conflicts frequently erupting in public. (<https://www.rcsdk12.org/Page/1105>). At the January 2, 2019 meeting, when Van White was reelected President, Commissioner Sheppard passionately stated, "*We had an opportunity to re-brand the reputation of this Board, but that opportunity was squandered. We're going to continue doing the same thing.*" Commissioner Hallmark penned an op-ed in which she contended that the Board is dysfunctional, and fails to deliver the results the community expects and deserves. (<https://www.wxxinews.org/post/rochester-school-board-member-says-board-dysfunctional-and-needs-intervention> and <https://www.democratandchronicle.com/story/local/communities/time-to-educate/conversation/2019/01/29/liz-hallmark-rochester-school-board-failing-district/2712239002/>)

#### Other Updates:

- On October 19, 2018 Barbara Deane Williams announced that she was retiring as superintendent effective February 1, 2019. By the first week of December, the Board had identified an Interim Superintendent, Daniel Lowengard. Mr. Lowengard has four decades of experience in urban education in New York, serving as Superintendent in Syracuse and Utica. The Board also named Linda Cimusz as Interim Chief of Staff. Mrs. Cimusz previously worked as Interim Superintendent in the Rochester City School District. She also served as Chief Academic Officer for the Buffalo Public Schools. The Board's swift action helped create a sense of stability within the District. To ensure a smooth transition, the Board requested that the Interim Superintendent spend the month of January working collaboratively with the outgoing Superintendent.
- Over the past three months the Board and Administration have been developing an action plan to address the Distinguished Educator's findings. The plan's development process included the Administration's presentation of its drafts to the Board, with a request for questions or comments from the commissioners. At special board meetings the Administration addressed the commissioners' concerns.<sup>2</sup>
- On December 5, 2018 the Board voted to use a search firm to help identify a new superintendent. The Board also voted to implement a well advertised and promoted search process, ensuring community input from all stakeholders through a series of community forums and other opportunities.<sup>3</sup> See attached resolution.
- On December 7, 2018 the Board selected B.W.P. and Associates to provide professional consulting and related services, including extensive candidate recruitment, credential

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<sup>2</sup> [https://www.youtube.com/watch?v=zZ\\_vXIMCZBk](https://www.youtube.com/watch?v=zZ_vXIMCZBk)

<sup>3</sup> See Appendix 2 for Board Resolution.

review, and onsite consultation, as they assist the Board of Education in finding a superintendent.

- To increase the effectiveness of meetings, in January the Board began administration of the *Board Meeting Effectiveness Survey* after each meeting. It asks the following questions:
  - Did you receive the materials in sufficient time for you to prepare for the meeting?
  - Were the materials sufficient to assist you in forming an opinion on decisions made by the board?
  - Were you satisfied with your opportunity to participate in the debate?
  - Were you satisfied with the manner in which other board members contributed to the debate?
  - Was the Chair effective in allowing all sides to be heard while bringing the matter to a decision?
  - Were you satisfied with what the board accomplished?
  - Were you satisfied with the board's overall performance?
  - Please make suggestions about ways in which we can make our meetings more productive.

It is not clear how the Board intends to use the data from the survey to improve the meetings.

## **Teaching and Learning**

### Implementation Status Update:

- Consistent with the recommendations of the Distinguished Educator's report, a small committee of the Chief of Accountability, the Executive Director of Assessment, the Executive Directors of Math, and English Language Arts (ELA) met and mapped out a plan to move the District toward internal scoring of our 3-8 state assessments. The plan is to score 5<sup>th</sup> grade ELA and Math this spring in order to create a protocol to move the process district-wide in 2020.
- Consistent with the recommendations of the Distinguished Educator's report, the oversight for the K-2 curriculum writers at the RTC has been moved from the Executive Director of Professional Learning to the Executive Director of ELA.
- Consistent with the recommendations of the Distinguished Educator's report, the District has begun the process of vetting and choosing a common ELA K-6 balanced literacy curriculum. A committee will choose which four vendors will present to the RCSD Curriculum Council to choose the district-wide curriculum. A rigorous waiver process is being developed that includes a horizontal alignment to the District's chosen curriculum.

The plan is to have the materials and professional learning launched in time for a Fall, 2019 implementation, with ongoing embedded PD.

#### Other Updates:

- In November 2018 the District reestablished the Curriculum Council. This Council advises the Deputy Superintendent of Teaching & Learning, ensures ongoing review of existing curricula, and provides a District forum for the introduction of new curricula and resources, as well as revision/discontinuation of curricula. It also reviews, then provides input on academic matters such as curricula and instructional materials. The Council is designed to serve the Rochester City School District stakeholders (teachers, administrators, Board members, parents, students, and community members), while guiding the processes of curriculum development and instructional resource selection. Members of the Curriculum Council are representatives from the Association of Supervisors and Administrators of Rochester and the Rochester Teachers Association. The team has met once.

### **Special Education**

#### Implementation Status Update:

- The Board unanimously approved the Settlement Agreement between the Empire Justice Center and the District on December 20, 2018.<sup>4</sup> The agreement will be filed in Federal Court soon.

#### Other Updates:

- During the 2018-2019 school year the District transitioned to “Anniversary Date” Individualized Education Plans (IEPs). This means Annual Reviews will be scheduled throughout the school year (October through April) instead of being grouped at the end of the school year.
- The District has drafted a two-year plan to become a more inclusive school district. The plan includes a revised continuum of programs aimed at servicing students in the least restrictive environment. The District sought input from various stakeholders on the plan.

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<sup>4</sup> See Appendix 3 for Settlement Agreement.

## **Human Capital**

### Implementation Status Update:

- None to report.

### Other Updates:

- The District has begun a plan to implement the development of a principal preparation program involving 15 teachers-aspiring-to-be-principals. These aspirants will receive 30 graduate credit hours of course work and a one-year internship. The District has partnered with Bank Street College of Education and the NYC Leadership Academy, and an aggressive timeline has been developed. It is not clear as whether all key stakeholders are vested in the program.

## **Operations**

### Implementation Status Updates:

- The District continues to make progress in tightening safety procedures. However, students continue to go missing from schools. During this quarter, at least five incidents have been reported. Incidents included students getting on the buses but not arriving at schools or homes, and walking out of schools.

## **Finances**

### Implementation Status Updates:

- On December 13, 2018, at the Finance Committee Meeting of the Whole, the Administration presented a report, *Investing in Student and School Success for Reinvesting Resources in the Rochester City School District*<sup>5</sup>. The document presents options for eliminating the structural deficit. The District's initial plan provides a framework to address the structural deficit. Part 1 of the report provides a clear description of the factors that have led to the deficit. The District must continue to provide more details about the options presented in the report, and their implications.

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<sup>5</sup> See Appendix 4 for Report.

## **Parent and Community Engagement**

### Implementation Status Updates:

- None to report.

### Other Updates:

- On November 15, 2018 the Board unanimously approved a resolution to ensure that any future amended bylaws of the Parent Advisory Council are consistent with Board of Education policies, and that no future changes to the PAC bylaws will be considered valid or binding until and unless they have been ratified by the Board of Education.

## **Distinguished Educator Support**

During this quarter the following support has been offered to the District:

- Technical assistance in the development of the District's response to the Distinguished Educator's report, which includes:
  - Meetings with commissioners, the Board Clerk, the Superintendent, deputy superintendents and Executive Cabinet members responsible for the development of the action plan.
  - Review and provision of written feedback for several draft versions of the action plan.
  - Individual support for the executive directors of Multilingual Programs and Special Education, the Chief of Human Capital, the Chief Financial Officer, the Chief Operating Officer, deputy superintendents, and Cabinet members.
- Mentoring to the Executive Director of Special Education
- Provided a sample of English Language Learner (ELL) Master Plan
- Provided technical assistance in the selection process for an ELL curriculum
- Presented findings and recommendations of the report to English as a Native Language and Bilingual Teachers
- Provided sample of Direct Report Protocol
- Shared vision for theory of action to support low-performing schools
- Shared process for development of a multi-year strategic plan and creation of a citizen-based alliance
- Served as a thought partner to the Board and Administration on District-related matters
- Participated in 26 Board business meetings, Board Committee meetings, Board Leadership meetings, or one-on-one meetings with commissioners

- Participated in five Principals' Meetings
- Participated in 24 meetings with Executive Cabinet members
- Ten school visits
- Participated in 14 community meetings

## **Conclusion**

On February 7, 2018, the Rochester City School District released an Action Plan to address the findings and recommendations of the Distinguished Educator's Report. Interim Superintendent Daniel Lowengard views the Distinguished Educator's Report as a roadmap to address the many challenges the District faces, and considers the District's Action Plan as one of his top priorities. With four Board seats up for election this year, and the hiring of a new superintendent, the District is in a period of transition. If proposed changes are to become sustained and meaningful, during the next six months it is imperative for the District to engage key stakeholders' support and commitment for implementation of the Action Plan. The District needs to ensure that it has the capacity to implement all the action items listed in their Action Plan. In addition, during the next quarter the District should focus on the implementation of the Action Plan, and make any necessary adjustments or improvements.

The Distinguished Educator and the New York State Education Department continue to be ready to assist the District in the process of the turning itself around to better serve its students and the community.

**Appendix 1**

**Board Resolution: Suspension of Committees**

**Resolution No. 2018-19: 550**

**By Member of the Board Commissioner Funchess**

Whereas, the District offers health insurance to qualifying retirees to supplement their coverage under Medicare; and

Whereas, the procurement of this supplemental insurance through MVP Health Care, Inc. is deemed to be the best value coverage; and

Whereas, due to exigent circumstances, the solicitation of alternative proposals is not in the best interest of the District; therefore be it

Resolved, that the Board hereby declares that the procurement of said supplemental insurance through MVP Health Care, Inc. is in the best interest of the District; and be it further

Resolved, that the Superintendent, or designee, be, and hereby is, authorized to enter into an Agreement with **MVP Health Care, Inc.**, 625 State Street, Schenectady, NY, to provide the Medicare Advantage Plan for participating retirees, for the period January 1, 2019, or as soon thereafter as the Agreement is fully executed, through December 31, 2020, for a not to exceed fee of Two Hundred Seventeen Dollars Eighteen Cents (\$217.18), per participant, for an estimated monthly sum not to exceed Three Hundred Sixty Nine Thousand Two Hundred Six Dollars (\$369,206.00), based on an estimated 1,700 participants, funded by the Employee Benefits Department, contingent upon budget appropriations and contingent upon the form and terms of the Agreement being approved by Counsel to the District; and be it further

Resolved, that the Superintendent, or his designee, be, and hereby is, authorized to amend the aforementioned Agreement, if necessary, to provide an additional sum that may result from a difference between the number of estimated participants and actual participants, contingent upon the form and terms of the amended Agreement having been approved by Counsel to the District.

Strategic Goal: 5; Objective: C

Justification: Design and implement standards of excellence for the recruitment, development and retention of a highly effective and diverse staff.

**Seconded by Member of the Board Commissioner Hallmark  
Adopted 6-0 with Commissioner LeBron absent**

**Resolution No. 2018-19: 551**

**By Member of the Board Commissioner Funchess**

Whereas, policy development and fiscal oversight are the primary responsibilities of the Board of Education of the Rochester City School District; and

Whereas, the Board has established several standing committees by amendment and adoption of the Board Bylaws, Policy No. 2300, along with ad hoc and special committees, to perform its primary responsibilities, consider strategic direction, review pending decisions, and provide general insight into matters of concern for the District; and

Whereas, the Board's standing committees, with the exception of the Audit Committee, meet monthly; and

Whereas, it is proposed that the Board suspend operations of its standing committees, with the exception of the Audit Committee, from January 2019 through June 2019 to increase productivity and proactive action of the Board and Superintendent's leadership team; therefore be it

Resolved that, the Board will suspend operations of the following standing committees of the Board: Policy Development and Review, Excellence in Student Achievement, Community and Intergovernmental Relations, Board Governance and Development, Finance and Resource Allocation, and Human Resources; and be it further

Resolved that, the Board will convene two monthly Regular Business Meetings as defined in the Board Bylaws, Policy No. 2300 for the purpose of accepting minutes of previous meetings, receiving oral and written reports of the District's superintendents highlighting the academic programming, achievement and challenges of the District's schools, considering resolutions, and addressing other matters of concern to the Board including those related to the advancement of student achievement and the recruitment and hiring practices of the District; and further be it

Resolved that, the Board will convene two monthly Board Special Meetings and/or Study Sessions as defined in the Board Bylaws, Policy No. 2300 for the purpose of reviewing and discussing policy proposals, legislative actions, governance and development matters, and other recommendations and proposals that may affect student achievement.

**Seconded by Member of the Board Commissioner Hallmark  
Adopted 6-0 with Commissioner LeBron absent**

**Resolution No. 2018-19: 552**

**By Member of the Board Commissioner Funchess**

Whereas, the Board has been notified that GMR Associates has donated Five Thousand Dollars (\$5,000) to fund field trips and cooking supplies for students of John James Audubon School No. 33, and

Whereas, the District is indeed grateful for the concern and support shown by individuals and organizations in the community, therefore be it

Resolved, that the Board hereby accepts this donation.

**Appendix 2**

**Board Resolution: Superintendent Search**

**Resolution No. 2018-19: 479**

**By Member of the Board Commissioner LeBron**

Resolved, that the Board of Education of the Rochester City School District will utilize a search firm to complete the executive search services for a successor superintendent of schools for the District.

**Seconded by Member of the Board Commissioner Elliott  
Adopted 5-1 with President White dissenting and Commissioner Funchess absent**

**Resolution No. 2018-19: 480**

**By Member of the Board Commissioner LeBron**

Whereas, the Board of Education of the Rochester City School District will facilitate a series of community forums to help identify the desired traits and qualities of the next superintendent of schools for the District; and

Whereas, the input gained through community forums and information attained through community input vehicles such as online surveys, focus groups and interviews with community members will assist the Board in establishing a candidate profile to be used to identify candidates for the superintendent of schools position; and

Whereas, the established candidate profile will be made public and available to all stakeholders; and

Whereas, candidates will be identified by the search firm based on the established candidate profile; and

Whereas, the applications of candidates will remain confidential until finalists are identified; and

Whereas, during the final rounds of the candidate screening process, public and open stakeholder/community interviews will be held with students and families, representatives of the District's workforce, and community stakeholders; and

Whereas, to allow for an open and transparent candidate screening process stakeholder interviews, facilitated by the Board or designee, shall be open to the public and televised and compiled feedback will be used to assess candidates; and

Whereas, all community forums should be located in a space that can accommodate large crowds, is in compliance with provisions of the Americans with Disabilities Act of 1990, offers free parking, and is easily accessible by bus; therefore be it

Resolved, that the Board will implement a superintendent search process that is well advertised and promoted and ensures a large amount of community input from all stakeholders through a series of community forums and opportunities for stakeholder input.

**Seconded by Member of the Board Commissioner Elliott  
Adopted 5-1 with President White dissenting and Commissioner Funchess absent**

**Appendix 3**  
**Special Education Settlement Agreement**

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered by and between EMPIRE JUSTICE CENTER (“Empire Justice”), in its capacity as counsel for a prospective class of plaintiffs as described below, THE ROCHESTER CITY SCHOOL DISTRICT and THE BOARD OF EDUCATION OF THE ROCHESTER CITY SCHOOL DISTRICT (the “Board” and, collectively, the “District”) (each of the foregoing are sometimes individually referred to herein as “Party” and collectively referred to herein as the “Parties”). The Effective Date of this Agreement shall be the last date on which any Party to this Agreement signs below.

### **RECITALS**

**WHEREAS**, the Parties have been engaged in discussions over an extensive period of time toward a collaborative approach to address concerns raised by the clients of Empire Justice, who are students with disabilities, those suspected of having disabilities, and the parents of those students, with respect to the education of students with disabilities and English Language Learners (“ELL”) regarding the District’s compliance with its legal obligations;

**WHEREAS**, the Parties acknowledge that every student who has been determined to have a disability following the Committee on Special Education (“CSE”) or the Section 504 process, and every student who is suspected of having a disability, and those students’ parent(s), have a right to compliance with all applicable laws and regulations covering their education;

**WHEREAS**, Empire Justice is prepared to act on behalf of its clients to pursue claims and relief in a class action to obtain the compliance of the District with its legal obligations to students with disabilities, those suspected of having disabilities, and the parents of those students (“Plaintiffs”);

**WHEREAS**, the District is fully committed to bringing the delivery of its special education services and programs into compliance with law, and the District agrees that engaging in a collaborative, coordinated effort with Plaintiffs, through their counsel, to remedy all areas of noncompliance is important and necessary;

**WHEREAS**, the Parties wish to avoid the expense, uncertainty, and disruption of protracted litigation on the issues that are anticipated to be raised in litigation by the Plaintiffs and the Parties are prepared to settle their differences without admitting any fault or liability;

**WHEREAS**, the District approached Empire Justice and proposed that the Board form a Committee to Review Special Education Programs and Services (the “Special Committee”) to serve as an advisory body to the Board and address the systemic problems with special education, including those that had been raised by Empire Justice, and Empire Justice agreed to this proposal;

**WHEREAS**, on January 25, 2018, the Board created the Special Committee and directed it to:

- a. Review the Board’s policies on special education programming and services;

- b. Review the District's practices and protocols relating to special education programs and services; and
- c. Propose solutions to the District's challenges in special education;

**WHEREAS**, the District acknowledges that the Special Committee concluded that there were wide-spread and very serious problems in virtually every aspect of the District's special education programs and services and identified 29 specific areas of concern around non-compliance with legal obligations. The areas of concern were as follows:

1. Students with disabilities had low levels of academic performance.
2. Students with disabilities were not included to fullest extent possible in activities and opportunities at all schools.
3. Students with disabilities were suspended at disproportional rates, and received harsher penalties than non-classified students.
4. Parents were treated as if they were not full participants in all decisions involving special education for their children.
5. Parents did not always receive written notices of CSE meetings within the legally required time; meetings were delayed or rescheduled resulting in delays in decisions and delays in providing programs and services.
6. Parents were not always provided with printed copies of fully completed Individualized Education Programs ("IEPs") and CSE minutes at the CSE meeting or within a few days thereafter.
7. The District did not provide quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required.
8. The District did not conduct Functional Behavior Assessments ("FBAs") or develop Behavior Improvement Plans ("BIPs") for all students for whom they are required. When prepared, they were not consistently completed by appropriate staff and were not monitored for their continued effectiveness.
9. The District's CSEs failed to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities.
10. Sometimes decisions made at CSE meetings were not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP were changed without informed parental consent because of lack of space or services, or transfer to a program like LyncX Academy.

11. CSEs conducting Annual Reviews often continued the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
12. Not enough trained staff were available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
13. Not enough trained and (where required) certified staff were available to deliver the programs and services on the IEPs of all students.
14. The District lacked sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students.
15. The District did not have appropriate programs and services to adequately meet the needs of many of its students with emotional disabilities.
16. The District lacked sufficient programs and services to timely meet the projected needs for placements and services, which resulted in students not receiving their program and services in the school that they would have attended if they did not have a disability; students being placed wherever there was an opening, rather than with students with similar needs; students being placed in settings with more students with disabilities than is permitted; students having IEPs altered to provide for programs and services that are available, instead of those that the CSE believed were needed.
17. The District's process for determining whether a potentially suspendable offense was a manifestation of a disability, relied on illegal criteria and failed to prevent suspension when the student was not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP.
18. Some District building administrators sometimes used illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than ten (10) days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.
19. The District sometimes restricted access to Extended School Year programming and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.
20. The District's special education management information system did not permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.

21. The District did not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English. This is even more true when the preferred non-English language is not Spanish.
22. The District did not translate all important documents concerning students with disabilities whose parents who would prefer the documents in their primary language at times resulting in the lack of informed parental consent and participation in shared decision making.
23. The District lacked the bilingual staff necessary to conduct evaluations and deliver all the programs and services which should be provided in the primary language of the student.
24. The District did not provide tutors who could communicate in the student's primary language, or alternative services in the student's primary language to ELL students with disabilities who are suspended.
25. The District did not always conduct student transition planning in the years for which it was required for students with IEPs, and did not update transition plans as student needs changed. Transition plans were not always thoroughly completed and did not meet the legal requirements.
26. The District lacked the staff and services needed to provide effective transition services to all students with disabilities.
27. The District's compliance with the Section 504 process was highly variable based on school settings. It was frequently not used in cases where providing services under Section 504 could have been appropriate to avoid the eventual need for classification.
28. The professional development needs, across the board, of the special education staff were not being met in order to provide the education to which all students were entitled.
29. There was a significant lack of accountability in Special Education in the District, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

**WHEREAS**, the District acknowledges that the Special Committee concluded that the problems identified by the Special Committee led to non-compliance with the District's legal obligations and to the failure of students with disabilities to succeed to the extent to which they were capable;

**WHEREAS**, the Special Committee recommended that the Board take certain actions to ensure that the District will become fully compliant with all of its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and that such

actions be incorporated into a legally enforceable consent decree, containing specified consequences should the District fail to substantially comply with its obligations;

**WHEREAS**, the Special Committee also recommended that, if the Board approved its report, the Board should authorize the Special Committee to form workgroups to address specific issues among the 29 areas identified by the Special Committee and to propose solutions, time lines and interim benchmarks to measure progress for the issues within each workgroup's area;

**WHEREAS**, on May 24, 2018, the Board unanimously approved a motion to accept the report, conclusions, and recommendations of the Special Committee, a copy of said report is annexed hereto as Exhibit "A";

**WHEREAS**, Dr. Jaime R. Aquino, Distinguished Educator appointed by the New York State Education Department to provide support in improving the District's systems, structures and operations, as well as to address significant gaps in student services and academic performance, issued a report, dated November 14, 2018. The report noted that the District is currently classified as a District in Need of Intervention under the Individuals with Disabilities Education Act ("IDEA") and is required to implement corrective action plans because of its failure to provide appropriate services to students with disabilities;

**WHEREAS**, the Distinguished Educator's report noted the negotiations between the District and Empire Justice that are described and reflected in this Agreement, and recommended that the District's Department of Special Education be supported, resourced, and held accountable for the District's implementation of the Special Education Strategic Action Plan and the prospective consent decree discussed herein;

**WHEREAS**, the Parties recognize and acknowledge that, although their own negotiations are not yet completed, and their ultimate agreement on matters relating to the 29 issues identified by the Special Committee will depend in part on the efforts of third parties such as the Special Committee and workgroups, as described herein, it is prudent and advisable to memorialize now those matters and items on which they have presently reached agreement, and the process that they have agreed that they will employ in the future to guide, assist and complete their continuing negotiations, to limit the risk of future uncertainty and misunderstanding, and to permit effective planning and budgeting for the actions that they have each agreed to undertake in the future;

**WHEREAS**, while the activities and negotiations described above continue, Empire Justice has agreed to forebear from commencing litigation on behalf of its clients, to afford sufficient time for the Special Committee to complete its tasks, and in the interests of avoiding potentially unnecessary litigation expense and conserving judicial resources;

**WHEREAS**, the Parties intend and agree that they will seek judicial approval of their comprehensive agreement in the form of a binding and enforceable Consent Decree (the "Consent Decree") to be issued by the Court providing for judicial supervision;

**NOW, THEREFORE**, in consideration of the mutual promises, conditions and covenants set forth below, which the Parties acknowledge are good and sufficient consideration for this Agreement, it is hereby agreed by and among counsel for the respective Parties hereto as follows:

### AGREEMENT

1. The District agrees to comply with its legal obligations with respect to the delivery of educational services and programs for students with disabilities, and those suspected of having disabilities. The District agrees that these obligations will be incorporated into a Consent Decree that will be issued by the Court, as described below in paragraph 18.

2. The District will solve the 29 areas of concern described above that were identified in the Special Committee Report, which was accepted by the Board.

3. The District agrees and acknowledges that it is pursuing and will undertake the following actions recommended by the Special Committee to remedy the areas of non-compliance:

- a. The District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
- b. The District will make a commitment to special education compliance in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
- c. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice the statutory attorney's fees that it has agreed not to ask the District to pay, if the District substantially complies with its obligations under the Consent Decree.

4. The Board agrees and acknowledges that it has accepted the recommendations of the Special Committee and authorized the Special Committee to form workgroups tasked with the responsibility to address specific issues and to propose solutions, timelines and interim benchmarks for the issues within each workgroup's area.

5. The District is committed to the work of the Special Committee. As such, the Board will not alter the individuals composing the Special Committee without consent of Empire Justice, which shall not be unreasonably withheld.

6. The District will solve the 29 problems set forth above by June 30, 2022, i.e., the end of the 2021-2022 school year by implementing those solutions which have been and will be recommended by the Special Committee and approved by the Board, as set forth herein, and, on written notice to counsel for the Plaintiffs, through such other means as may be required and/or agreed to solve the problems.

7. To demonstrate that it has sufficiently improved its compliance with its legal obligations to students with disabilities and their parents, the District will be required to achieve a set of Final Disengagement Goals (“Final Goals”). The Parties agree that the Final Goals will be developed and established as provided below.

8. To ensure that the Final Goals are met prior to or by June 30, 2022, the District agrees that it will achieve Measurable Interim Performance Benchmarks (“Interim Benchmarks”). The Interim Benchmarks are intended to be reasonable and realistic objective measures of continual progress by the District towards the achievement of the Final Goals. The Parties agree that the Interim Benchmarks will be developed and established as provided below.

#### **MISSION STATEMENT, VISION AND VALUES**

9. The mission statement, and the vision and values statements attached as Exhibit “B” are the mission, vision, and values statements of the District’s Department of Special Education and shall remain in effect for the period of time covered by the Consent Decree. The Parties may, from time to time during that period, meet, discuss, and reflect upon those statements and consider modifications upon mutual agreement of the Parties, which shall not be unreasonably withheld.

10. The District will provide the mission, vision and values statements to all schools, programs, administrators and teachers; review the statements at the beginning-of-the-year meeting of staff (regular education and general education) at each District elementary, middle, and high school building and program location in September of each year; review at least once subsequently during each year by the special education staff in each building and program location in either: (a) a staff meeting of special education teachers (and other providers); or (b) through an e-mail of the statements to the District’s administrators and staff; and post the statements in all rooms in which CSE meetings are conducted.

11. This Agreement will be implemented and interpreted consistent with the mission, vision, and values statements.

#### **PROCESS FOR ESTABLISHING INTERIM BENCHMARKS AND FINAL GOALS**

12. The work of the Special Committee and its workgroups to develop Interim Benchmarks and timelines for the Interim Benchmarks began following the Board’s acceptance of Exhibit “A” on May 24, 2018, and the Parties anticipate that the Special Committee will begin

to issue report(s) in which the Special Committee will make reasonable recommendations regarding Interim Benchmarks by December 15, 2018.

13. Within ten (10) days of the Special Committee issuing a report regarding one or more Final Goal(s) and Interim Benchmark(s), the Parties will meet and begin negotiating the terms of the Final Goal(s) and Interim Benchmark(s). The Parties agree that these negotiations will include monitoring and reporting provisions for each Final Goal and Interim Benchmark. The Parties' negotiations on each Final Goal and Interim Benchmark will be completed within sixty (60) days of the date of the Special Committee's report regarding the respective Final Goal and Interim Benchmarks.

14. The Final Goals and Interim Benchmarks, along with a proposed Stipulation of Settlement described more fully below in paragraph 18, will be submitted to the Board for approval at a meeting of the Board to be held no later than February 28, 2019, or such other date that the Parties agree upon.

15. In the event that the Board declines to approve any Final Goal or Interim Benchmark, the Board shall state specifically what is being refused/not approved, and specify the basis for its refusal or non-approval.

#### **PRE-ACTION DISPUTE RESOLUTION**

16. In the event that the Parties cannot agree on the terms of any Final Goal or Interim Benchmark, or otherwise reach an impasse in their negotiations, including relating to the Stipulation, or in the event of a dispute arising out of or relating to this Settlement Agreement, including the breach, termination or validity hereof, or if Plaintiffs' counsel disputes the reasonableness of the Board's refusal or disapproval of any Final Goal or Interim Benchmark or the Stipulation, the Parties agree that any such dispute shall be resolved as follows:

- a. Either Party may declare a dispute by providing written notice, specifically setting forth the dispute in reasonable detail, to the other Parties.
- b. The other Parties shall respond to the notice within two (2) business days. If the exchange does not resolve the dispute, the Parties agree to submit the dispute to Bruce A. Goldstein, who they agree would be a suitable Mediator and who has indicated he is willing to serve in this role (the "Mediator") and has made disclosures required by Rule M-5 of the Commercial Mediation Procedures of the American Arbitration Association ("AAA"), which have been reviewed and accepted by the Parties. The Party initiating the dispute shall have the obligation to notify the Mediator of the dispute. The Parties will thereafter meet with the Mediator as quickly as possible and in no event later than ten (10) business days from the transmission of notice to the Mediator to attempt to resolve the identified dispute. In the event that Mr. Goldstein is unavailable or otherwise unable to serve as Mediator, the Parties will promptly meet and select an alternate to serve as Mediator, and agree to give due consideration and preference to Judy Elliott to serve as Mediator, if she is available. The Parties agree that the mediation will be conducted consistent with Rules M-7 – M-11 of the Commercial Mediation

Procedures of the AAA, to the extent not inconsistent with this Agreement. In light of the indigence of the Plaintiffs, and the Plaintiffs' agreement not to pursue attorneys' fees other than as set forth in paragraphs 66-68 herein, any fees or expenses of the Mediator will be paid by the District.

- c. If the meeting with the Mediator is unsuccessful in resolving the noticed dispute, the Party initiating the dispute may agree to further meetings with the Mediator. In the alternative, the Parties agree that the Party initiating the dispute may submit the dispute to binding arbitration before Steven Modica (the "Arbitrator") who they agree will be a suitable Arbitrator and who has indicated he is willing to serve in this role and he has disclosed circumstances, if any, likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the Parties or their representatives, which the Parties have reviewed and determined do not constitute grounds for objection or disqualification.
- d. In the event that Mr. Modica is unavailable or otherwise unable to serve as Arbitrator, the Parties have agreed that William Bauer would be a suitable Arbitrator and Mr. Bauer has indicated he is willing to serve in this role. Mr. Bauer has also provided the same disclosures as Mr. Modica, which the Parties have reviewed and determined do not constitute grounds for objection or disqualification.
- e. The Parties agree the Arbitration will be conducted in accordance with the procedures set forth in Exhibit "C" hereto.

### **THE ACTION**

17. To implement the judicial settlement described in this Agreement, Empire Justice will commence a class action (the "Action") in the United States District Court for the Western District of New York (the "Court") seeking redress and compliance on behalf of its clients related to the systemic non-compliance of the District with its legal obligations to students with disabilities, those suspected of having disabilities, and the parents of those students within thirty (30) days of either: (i) approval of the Board referred to in paragraph 14 above or, (ii) in the event the dispute resolution process described in paragraph 16 and Exhibit "C" is invoked by a Party, the delivery of an award from the Arbitrator, whichever is later.

18. The Parties agree to incorporate the terms of this Agreement, together with the Final Goals and Interim Benchmarks to be agreed upon as provided herein, into a Stipulation of Settlement (the "Stipulation"), which they will submit to the Court in a joint motion for preliminary approval of the settlement and issuance of an order of final approval in the form of a Consent Decree.

19. As the Parties contemplate that the Action will seek only declaratory and injunctive relief, and that the Stipulation will require the District to comply with the law, and will not compromise the rights of any class member, the Parties agree to jointly request that the Court

waive individualized notice to the class members of the settlement and the date, time, and place of the fairness hearing, under Fed. R. Civ. P. 23(e).

### **IMPLEMENTATION OF THE CONSENT DECREE**

20. The Parties have negotiated and are presently agreeing that the following provisions of paragraphs 21-24 of the Agreement regarding implementation of the Consent Decree will be incorporated into the Stipulation. Nothing contained in these paragraphs shall preclude the Parties from negotiating and agreeing upon additional, different or other process or standards relating to implementation to be incorporated into the Stipulation and Consent Decree.

21. The Parties acknowledge that the District is such a large and complex organization that, even once it takes the necessary actions reasonably calculated to come into compliance and achieve the Final Goals, random, non-systemic lapses from compliance with the District's legal obligations to every student are inevitable. Because of this, the Parties agree that the Stipulation will provide that the District will not be in contempt of the Consent Decree issued following and subject to approval of the Court, unless:

- a. The District substantially fails to achieve multiple Interim Benchmarks or Final Goals, as approved by the Court in a Consent Decree, and fails to take the actions necessary to remedy the problems causing the deviation within a reasonable period of time; or
- b. The District fails to take reasonable actions to remedy known failures to comply with its other material obligations within the time frames set forth by the Court in a Consent Decree.

22. The Parties agree that the Stipulation will provide that if the District fails to achieve any Interim Benchmark by more than 5 percent within thirty (30) days of reporting the data, it will provide Plaintiffs' counsel with a Corrective Action Plan to remedy the noncompliance. The Corrective Action Plan will explain the District's understanding of the cause(s) of the failure to meet the Interim Benchmark, and the steps the District proposes to remedy the cause(s) of the failure. The Corrective Action Plan will specify whether the District believes that any prospective Interim Benchmark(s) should be modified due to the current state of noncompliance.

23. If Plaintiffs' counsel believes that the District is failing to meet any obligations under the Stipulation or Consent Decree, they will notify the District's Consent Decree Coordinator of the provision(s) involved, and the basis for their belief. If the District becomes aware of any circumstances that will impair its ability to meet any obligations under the Stipulation, or Consent Decree, the District will promptly notify Plaintiffs' counsel of the issue(s) causing the problem(s) and the steps the District proposes to take to resolve the problem(s). In either event, the Parties will meet within fourteen (14) days and attempt to resolve the issue(s).

24. Plaintiffs will not be able to file a motion for contempt unless the Parties are:
- a. Unable to reach agreement on an acceptable Corrective Action Plan to resolve any noncompliance; or
  - b. The District does not agree with an assertion of Plaintiffs' counsel that the District is not in compliance with one or more of its obligations under the Stipulation, or Consent Decree; or
  - c. The District has already implemented a Corrective Action Plan in the area of claimed noncompliance, and the existing Corrective Action Plan has not achieved the level of performance required under the Plan within the time limits agreed to by the Parties.

### **MONITORING**

25. The Parties have negotiated and are presently agreeing that the following provisions of paragraphs 26-31 of the Agreement regarding the processes and standards for monitoring will be incorporated into the Stipulation. Nothing contained in these paragraphs shall preclude the Parties from agreeing upon additional, different or other processes or standards for monitoring to be incorporated into the Stipulation and Consent Decree.

26. The District shall report to Plaintiffs' counsel on its progress towards meeting the Interim Benchmarks and Final Goals on a schedule appropriate to each benchmark or goal. For some items, reports may be monthly, some quarterly, and some annually. To the extent possible, the reports provided to Plaintiffs' counsel will use the same data as is being reported to District management. The schedule for each item will be based on the measures and reporting frequency recommended by the Special Committee and thereafter negotiated by the Parties and set forth in the Stipulation or Consent Decree.

27. Within thirty (30) days of either receipt or transmission, whichever is applicable, or on such other frequency that the Parties agree to and set forth in the Stipulation or Consent Decree, the District will provide to Plaintiffs' counsel copies of communications from or to the New York State Department of Education or the United States Department of Education or other government officials concerning any alleged non-compliance with the District's legal obligations to students with disabilities.

28. The District will maintain a complaint log to contain such information as the Parties will agree and incorporate in the Stipulation and/or Consent Decree, and provide the same to Plaintiffs' counsel on a monthly basis, or on such other frequency as agreed to by the Parties.

29. The District and/or the Coordinator will meet with Plaintiffs' counsel no less than quarterly to discuss the progress reports, the success of the actions the District is taking to meet the Interim Benchmarks and Final Goals, and any barriers the District is facing in meeting them.

30. The District will provide an Annual Report to the Court and Plaintiffs' counsel detailing its progress towards meeting the Interim Benchmarks and Final Goals. The Annual Report will be in a form to be agreed to by the Parties in the Stipulation and/or Consent Decree. The Annual Report will be published on the District's website, and the Annual Report(s) will remain publicly-available on the District's website until the Court issues an Order dismissing the Action.

31. Plaintiffs' counsel shall have the right to review a reasonably-sized sample of data and records, including but not limited to student records, school, departmental and District-wide records. The Parties will negotiate the sample size and methodology for data and record review based on the data being examined. Plaintiffs' counsel's request for data and records shall be in writing, but may be sent via email to the Coordinator.

32. Within thirty (30) days of receiving a report, Annual Report, or requested data or records, Plaintiffs' counsel shall indicate whether they have any issues or problems with any report, Annual Report, or any information or data. In the event that the District acknowledges that there is an issue or problem, the Parties will negotiate a solution and a time period for any such solution to the issue. If the Parties disagree on whether there is an issue or problem, or the solution or remedy for the issue, the disagreement will be resolved through the dispute resolution process described below in paragraphs 64-65.

### **PRIVACY OF STUDENT INFORMATION**

33. The Parties recognize the District's obligations under State and Federal Law, including pursuant to the Federal Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99 ("FERPA"). As used herein, confidential student information shall mean personally identifiable information, in any form, oral, written, or electronic, about a current or former student of the District, including, but not limited to education records and personally identifiable information, as these terms are defined in FERPA. Confidential information shall include, without limitation, any information, in any form, about individualized students, their test data, test scores, grades, student records, evaluations, related services, and special education information, District operations, activities, finances, databases, reports, processes, and practices that are not public information, personnel records, and agreements that are not public information, and any information protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The Parties agree to the definition of "disclosure" under FERPA contained in 34 CFR 99.3.

34. During the implementation of the Consent Decree, the District may furnish student records and confidential information to Plaintiffs' counsel under all applicable sections of FERPA, including 34 CFR 99.31. The Parties agree that, to the extent necessary to implement the Court's Consent Decree, disclosure of student personal identifying information may be provided without parental consent to Plaintiffs' counsel, as the disclosure falls within the exceptions in 34 CFR 99.31 regarding compliance with a judicial order and/or compliance with demands for a student's records made by the parent or student in the context of the parent or student's lawsuit, as a member of the plaintiffs class(es), against an educational institution, and/or any other applicable section.

35. Plaintiffs' counsel agrees to request to view and to access only those student records of class members that are material and necessary for monitoring compliance with the Consent Decree as set forth above. Plaintiffs' counsel will require FERPA training for all individuals who will have access to student records. The District will provide free FERPA training to Plaintiffs' counsel if requested.

36. Plaintiffs' counsel will take all reasonable measures to maintain the confidentiality of student records and protect the privacy of student information as required by State and Federal laws including but not limited to FERPA, HIPAA, IDEA, and the New York State Education Law.

37. The Parties will take all reasonable measures to safeguard the confidential information and records furnished under the Consent Decree. Plaintiffs' counsel agree not to disclose student information, at any time, to any individual or party not bound by the Consent Decree, or other Order of the Court regarding confidentiality, including unauthorized third parties. However, Plaintiffs' counsel may disclose student information to experts or consultants retained to provide services in connection with the Action and Plaintiffs' counsel will require any such person to agree in writing to maintain the confidentiality of such student information. Upon investigation by a Party, the other Party may be directed to return and/or securely destroy information and records, if legally allowed to do so. If allowed by applicable law, the Parties shall destroy all confidential information and records when the information and records are no longer needed for the purposes of monitoring compliance, but in any event, no later than three (3) years after the litigation is ended by the entry of a final Order dismissing the action.

38. A Party will promptly notify the other Party if it becomes aware of any actual or suspected security or breach of the information and records furnished under the Consent Decree. The Party that caused the breach shall take all reasonable steps to mitigate and rectify the consequences of a breach, including notification to suspected impacted parties, at its sole expense. The Parties are entitled as a matter of right to seek injunctive relief to prevent a continuing breach. Nothing contained herein will be deemed to limit or abridge any other remedy available to the Parties or an individual class member at law or in equity to address a suspected breach or for any liability to a student, parent, or other third party incurred by such a breach, including, but not limited to common law indemnification by the Party that caused the breach.

### **PUBLIC STATEMENTS**

39. The Parties agree to announce the settlement in a presentation at the next public business meeting of the Board following the Court's Order on the Parties' motion for preliminary approval of the settlement. At that time, the Parties shall also jointly issue a press release.

40. At the Board meeting, the District's General Counsel shall make a presentation regarding the history of litigation, this action, and the development of this Agreement. Empire Justice shall then make a presentation outlining the same, their views of the benefits of the notice to parents, Stipulation, and any other relevant commentary. The Parties agree that their statements will be positive in nature, emphasizing the collaborative problem-solving nature of

the resolution of the Action, and the District's commitment to making a good-faith effort to resolve issues concerning its students served by the District's Department of Special Education.

41. The Parties agree that they will not make any public statements regarding this Agreement prior to the entry of the Court's Order on the Parties' motion for preliminary approval of the Parties' settlement, without the consent of all Parties, and only then to the extent permitted by law.

42. In no event and at no time shall the Parties make any statement that the District has been found guilty of any violation of law or has admitted any guilt, nor shall they state or suggest that they are controlling the District's special education programs for the time covered by this stipulation, nor that any District employee reports to Empire Justice. The Parties shall not assign blame or accusation to or against any former or present District employee, and they shall emphasize the collaborative problem-solving nature of the stipulation. The commentary, announcement, and roll-out of the stipulation shall be discussed in a meeting between the Parties before the Board meeting.

43. Within thirty (30) days after the Court's Order on the motion for preliminary approval of the settlement, and annually thereafter while the District is subject to Court supervision, the District will provide a summary of the provisions of the Stipulation to the parents of students with disabilities. The summary will be drafted jointly by the Parties. The summary will be provided by reasonable means, and a time, to be determined by the District in consultation with the attorneys for the Plaintiffs. The District will also post the summary on its website, and keep it posted until the Court issues an Order dismissing the Action.

#### **DISENGAGEMENT STANDARDS AND RETENTION OF JURISDICTION**

44. The Parties have negotiated and are presently agreeing that the following provisions of paragraphs 45-54 of the Agreement regarding the processes and standards for disengagement, dismissal of the Action, and retention of jurisdiction will be incorporated into the Stipulation. However, nothing contained in these paragraphs shall preclude the Parties from agreeing upon additional, different or other processes or standards for disengagement, dismissal of the Action, and retention of jurisdiction, to be incorporated into the Stipulation.

45. The Parties agree that the Stipulation will provide that, subject to the approval of the Court and as incorporated into the Consent Decree, when the District has achieved one or more of its Final Goals, the Parties shall file a stipulation setting forth that the District has achieved and maintained such Final Goal(s) and the date when compliance with each such Final Goal was achieved.

46. When the District has achieved all of the Final Goals within the same school year, the District's performance has been verified through the provisions in paragraphs 30-32 of the Monitoring section above, and the District has maintained verified compliance with all Final Goals for a period of an additional twelve months, the Parties shall file a stipulation to that effect, whereupon the Court may enter an Order of Full Disengagement, and the Action may be voluntarily dismissed by the Parties or be otherwise dismissed by the Court.

47. In the event that the District achieves compliance with one or more, but not all, of the Final Goals, and the performance has been verified through the provisions in paragraphs 30-32 of the Monitoring section above, and the District has maintained its compliance for a period of an additional twelve months, the District will be entitled to an Order of Partial Disengagement with regard to the Final Goal(s) that have been achieved and maintained. The District will continue to report performance with regard to Final Goals on which it has been disengaged pursuant to the Monitoring provisions.

48. In the event that the District obtains one or more Orders of Partial Disengagement for all of the Final Goals, and the performance has been verified through the provisions in paragraphs 30-32 of the Monitoring section above, and the District has maintained compliance regarding such Final Goals for a period of an additional twelve months following the filing of the last Order of Partial Disengagement, the Parties shall file a stipulation to that effect, whereupon the Court may enter an Order of Full Disengagement, and the Action may be voluntarily dismissed by the Parties or be otherwise dismissed by the Court.

49. In the event that the District falls out of compliance with any of the Final Goals after the entry of an Order of Partial Disengagement, but prior to entry of the Order of Full Disengagement, the District must again achieve compliance with that Final Goal and maintain that compliance for a continuous period of twelve (12) months to obtain an Order of Full Disengagement.

50. Plaintiffs' counsel will not be eligible for attorneys' fees with regard to time spent monitoring any Final Goals upon which the District has obtained an Order of Partial Disengagement. However, if prior to the entry of the Order of Full Disengagement, the District falls out of compliance with any of the Final Goals on which it had previously obtained an Order of Partial Disengagement, Plaintiffs' counsel will again become eligible for attorney's fees with regard to monitoring that Final Goal.

51. If the Parties cannot agree upon whether the District has met one or more of the Final Goals or whether it has maintained or fallen out of compliance with any of the Final Goals prior to entry of an Order of Full Disengagement, the Parties agree to submit the dispute to the Magistrate Judge assigned to the Action for resolution, or to pursue an alternative dispute resolution process to be agreed upon by the Parties, as provided in paragraphs 64-65 herein.

52. If the District has not achieved all of the Final Goals by June 30, 2022, the Stipulation and Consent Decree will provide that the District will consent to an entry of an Order by the Court which will include the following, as stated above in paragraph 3(c):

- a. Appointment of a Special Master to externally oversee compliance activities;
- b. Appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and/or
- c. Awarding counsel for Plaintiffs their reasonable attorney's fees.

53. The Court will retain jurisdiction over this action for a period of fifteen (15) months following the Court's entry of an Order of Full Disengagement. If the District has not submitted the performance data for all of the Final Goals to the Court and Plaintiffs' counsel within thirteen (13) months after entry of the Order of Full Disengagement, the Court will retain jurisdiction for an additional sixty (60) days following the submission of the performance data to allow the Court to determine whether the District remained in compliance for at least one year following disengagement, and for the Parties to take appropriate action either by agreement or through a motion based on the data.

54. The Parties agree that nothing in this Agreement or in the prospective Stipulation shall impair the right of the Court to extend the period of jurisdiction in the event that the District either fails to substantially comply with any of its obligations under a Consent Decree, or if the data submitted for any disengagement the year following the disengagement does not support an Order of Full Disengagement.

### ACCOUNTABILITY

55. The Parties agree that the Superintendent shall be responsible for the overall implementation of the Consent Decree. The Consent Decree shall be binding on the Board, and all District administrators and staff.

56. The Superintendent will inform all District staff of the responsibilities that the District has accepted in the Stipulation and/or Consent Decree, within fourteen (14) days following the filing of the Court's Order on the motion for preliminary approval of the settlement.

57. The Executive Director of the Department of Special Education will then present to all Department staff a summary of the Stipulation, and the actions required by the Stipulation. Each District building principal, academy director, and program director, shall present to their staff a summary of the stipulation, the agreement, and the actions required by the stipulation, and support enthusiastically the District's commitment to addressing the special education needs of all students. Such meetings shall be presented, with updates on the District's progress, within ten (10) days after beginning of the next semester, and on or before the beginning of each subsequent school year until completion of the stipulation.

58. The District agrees that the Executive Director of the Department of Special Education shall have the authority to direct District staff as necessary to correct any non-compliance with special education laws and regulations or the Stipulation or Consent Decree prevent any such non-compliance.

59. The District agrees that the Executive Director of the Department of Special Education shall be the Consent Decree Coordinator (the "Coordinator"). The Coordinator will be responsible for supervising and coordinating all aspects of implementation of the stipulation; providing all monitoring information; and responding to issues raised by Plaintiffs, Plaintiffs' counsel, students' parents/guardians, and advocates, regarding implementation of the Stipulation and Consent Decree.

60. In the event that the position of the Executive Director of the Department of Special Education becomes vacant or is retitled or abolished in a restructuring of the Department, the District shall notify Plaintiffs' counsel promptly, and the Parties shall meet within fourteen (14) days to discuss the reassignment of the duties established herein to a District employee with similar administrative authority and responsibility.

### **DISPUTE RESOLUTION AND RESERVATION OF STUDENT AND PARENT RIGHTS**

61. Nothing in this Agreement is intended or shall be deemed or construed to limit or waive any substantive or enforcement rights of any member of the prospective classes or subclasses in the Action, or the ability of any such person to enforce or pursue such rights in any forum, including in the event that the Parties are unable to successfully conclude the negotiations described herein.

62. Nothing shall limit or prejudice the right or ability of any Party or third-party beneficiary to take action to enforce a right or any obligation provided under this Agreement and/or any additional right afforded at law or equity.

63. The Parties agree that the Stipulation and Consent Decree will provide that if the Plaintiffs' counsel, any Plaintiff, parents or advocates representing students or parents believe that the District is failing to comply with its obligations under this Stipulation or Consent Decree with regard to an individual student, in addition to the other remedies provided by law and regulation, they may contact the Coordinator to request that the Coordinator secure compliance. The Parties will set forth in their Stipulation additional procedures as they shall agree on for the investigation and response of the Coordinator to such a request.

64. The Parties agree that, after the Action is filed, if they cannot agree upon any of the items in the Stipulation, or in the Consent Decree where agreement of the Parties is required, or if they otherwise have a dispute relating to the implementation of the Consent Decree, other than whether the District is in contempt, they will submit the dispute to the Magistrate Judge assigned to the Action for mediation and/or determination.

65. As an alternative to submitting the matter to the Magistrate Judge for mediation and/or a determination, the Parties may agree to a process for submission of any dispute to a mediator and/or for binding arbitration, pursuant to an alternative dispute resolution process to be incorporated into the Stipulation and Consent Decree.

### **ATTORNEYS' FEES**

66. The District stipulates that Plaintiffs will be "prevailing parties" in the Action. As an inducement to the District to comply with its obligations under this Agreement and the prospective Stipulation and Consent Decree as soon as possible, Plaintiffs' counsel agrees that, should the District achieve the Final Goals by June 30, 2022, obtain an Order confirming its compliance, and remain in compliance for the 2022-2023 school year, Plaintiffs' counsel will waive all statutory attorneys' fees to which they would be entitled as prevailing parties in this action. Should the District fail to achieve the Final Goals by June 30, 2022, or should the District fall out of compliance with any Final Goal(s) in the 2022-2023 school year, Plaintiffs'

counsel will be entitled to collect reasonable attorney's fees and costs as calculated under applicable law.

67. The District acknowledges that any award of legal fees and expenses Plaintiffs may request may include fees and expenses for Empire Justice as well as Nixon Peabody LLP and its legal consultant, Bryan Hetherington, who are now and are expected to continue to provide services to or on behalf of Plaintiffs.

68. Should the District become liable for payment of attorneys' fees under paragraph 66, the Parties will make a good faith attempt to settle the amount of fees owed. Plaintiffs' counsel will provide the District with a copy of their contemporaneously maintained time records and information on any disbursements as well as information on the reasonable billing rates for all individuals who worked on the case, and information on any billing judgment that was exercised. The District's General Counsel shall respond with the District's position within thirty (30) days. If the Parties reach an impasse in negotiation, or no agreement is reached by sixty (60) days after the submission by Plaintiffs' counsel, either party may make a motion concerning the reasonable amount of the attorneys' fees and disbursements within thirty (30) days after the Parties acknowledge they are at an impasse or sixty (60) days after the submission by Plaintiffs' counsel. Nothing herein shall prohibit the Parties from extending the time limits in this paragraph upon mutual written consent.

#### **MISCELLANEOUS**

69. Enforceability. The Parties agree that the promises, covenants and obligations set forth in this Agreement are intended to be binding and enforceable presently, notwithstanding that the Parties intend and contemplate further writings, including the Stipulation, and further negotiations on certain matters that have not yet been agreed to, as described herein.

70. Third Party Beneficiaries. The Parties agree and acknowledge that the Plaintiffs, who are current or prospective clients of Empire Justice, students who are or were subject to the jurisdiction of the District with disabilities, students suspected of having disabilities, and the parents of all such students, are third-party beneficiaries of this Agreement and are entitled to take such actions as are appropriate to enforce any rights hereunder.

71. Specific Performance. The Parties agree that irreparable damage would occur if any Party failed to perform its obligations under this Agreement and in accordance with the terms hereof. Accordingly, the Parties agree that a court may enter an award of equitable relief in the form of an injunction or specific performance to enforce the promises and covenants made by the Parties herein and prevent breaches of this Agreement, in addition to any other remedy to which a party may be entitled at law or in equity.

72. Authority; Binding Effect of Agreement. Each of the Parties represents and warrants and covenants: (i) that such Party has the right, power and authority to enter into and carry out its obligations under this Agreement; and (ii) that this Agreement has been duly executed and delivered by an authorized agent of such Party, and constitutes its valid and legally binding agreement and obligation and is enforceable according to its terms. Each Party further warrants and represents that the execution, delivery and performance of this Agreement (i) have

been duly authorized by all necessary or proper corporate, statutory or other applicable actions; (ii) do not contravene any provision of such person's charter or other applicable governing documents; (iii) do not violate any order or decree of any court; (iv) do not conflict with or result in the breach or termination of, constitute a default under, or accelerate or permit the acceleration of any performance required by, any agreement or other instrument with such person as a Party or by which such person or any of its property is bound: and (v) do not require the consent or approval of any authority or person who is not a signatory to this Agreement.

73. Interpretation. The Parties acknowledge that this Agreement has been negotiated between unrelated, sophisticated and knowledgeable parties who have been represented by able counsel and who have acted in their own self-interest. Accordingly, any statute, law, ordinance, common law principal, treaty, protocol, legal decision or convention or other authority of any jurisdiction that would require interpretation of any ambiguities in this Agreement against the party who drafted the agreement is not applicable and is hereby waived. The provisions of this document shall be interpreted in a reasonable manner to affect their purpose, and it shall not be interpreted or construed against any person or entity because that person or entity, or their attorneys or representatives, drafted or participated in the drafting of the Agreement.

74. Titles and Captions. Paragraph titles used in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision thereof.

75. Notices. Any notice to be given by one Party to another hereunder shall be in writing and shall be deemed given when delivered, personally or by email, on the date sent if prior to 5:00 p.m. local time on a business day, or, if after 5:00 p.m. or not on a business day, on the next business day, and addressed as follows:

If to Empire Justice:

Maggie R. Robb, Esq.  
Empire Justice Center  
One West Main Street, 2<sup>nd</sup> Floor  
Rochester, NY 14614  
Email: mrobb@empirejustice.org  
Tel: (585) 295-5724

With a copy to (which shall not constitute notice for purposes hereunder):

Carolyn G. Nussbaum, Esq.  
Nixon Peabody LLP  
1300 Clinton Square  
Rochester, NY 14604-1792  
Email: cnussbaum@nixonpeabody.com  
Tel: (585) 263-1558

If to the Rochester City School District:

Department of Law  
Rochester City School District  
131 W. Broad Street  
Rochester, NY 14614  
Attn: Karl W. Kristoff, Esq.  
General Counsel  
Email: Karl.Kristoff@rcsdk12.org  
Judith.Rutalis@rcsdk12.org  
Tel: (585) 262-8267  
(585) 262-8410

76. Entire Agreement. The Parties hereto warrant that no promise, inducement or agreement not expressed herein has been made in connection with this Agreement, that this Agreement constitutes the entire agreement between the Parties presently and this Agreement cancels and supersedes all prior communications or understandings between the Parties with respect to the subject matter of this Agreement, although the Parties contemplate that they will continue their negotiations and enter into a Stipulation in the future setting forth these and additional agreements they may reach that will supersede this Agreement. This Agreement shall not be subject to attack on the ground that any or all of the legal theories or factual assumptions used for negotiating purposes are for any reason inaccurate or inappropriate.

77. No Oral Amendments. This Agreement may only be varied or modified by a written document executed by all Parties. The Parties hereby agree and acknowledge that none of them will claim at any time or place that (a) this Agreement has been orally altered or modified or otherwise changed by oral communications of any kind or character, or (b) it has taken any actions in detrimental reliance upon any oral promise or communication to effect modification of this Agreement.

78. Severability. If any provision of this Agreement or the application thereof, is found invalid or unenforceable by a court, governmental agency or administrative body of competent jurisdiction in a particular territory, then that provision shall be amended for purposes of that territory only as required to be valid and enforceable to the fullest extent possible in that territory while still achieving as nearly as possible the same economic, legal and contractual effect as the original provision in that territory and the remainder of this Agreement shall remain in full force and effect.

79. Interpretation. The Parties have negotiated this Agreement with opportunity to consult their respective attorneys. Accordingly, the language of this Agreement shall not be construed for or against any Party. This Agreement shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealings between the Parties not expressly made a part of this Agreement.

80. Governing Law. This Agreement shall be construed as a whole in accordance with its fair meaning and the laws of the State of New York. The Parties agree that the language of this Agreement shall not be construed for or against any particular party merely because that party or its attorneys prepared, drafted or proposed such language.

81. Signatures. This Agreement may be executed by exchange of facsimile or electronic signature pages and/or in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument. Facsimile and electronic signatures shall be considered original and binding on the Party that transmitted the same.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed, effective as of the Effective Date. Each individual signing below on behalf of a Party represents and warrants, by his or her signature, that he or she has sufficient power and authority to so execute this Agreement and to bind said Party hereto.

**IN WITNESS WHEREOF**, the Parties have hereunto signed their respective hands the day and year first above written.

EMPIRE JUSTICE CENTER

By: Maggie R. Robb Date: 12-20-18

Its: Senior Attorney

ROCHESTER CITY SCHOOL DISTRICT

By: ~~J. P. Proff~~ Date: 12/27/18

Its: General Counsel

THE BOARD OF EDUCATION OF THE  
ROCHESTER CITY SCHOOL DISTRICT

By: [Signature] Date: 1/2/19

Its: President

**EXHIBIT "A"**

Report and Recommendations  
of the Special Advisory Committee on Special Education  
dated April 30, 2018, attached hereto

## **Report and Recommendations of the Special Advisory Committee on Special Education**

April 30, 2018

On January 25, 2018, the Board of Education created a Special Committee to serve as an advisory body to the Board. Board Resolution No. 2017-18: 561. The Special Committee was asked to:

- review the Board's policies on special education programming and services;
- review the District's practices and protocols relating to special education programs and services; and
- propose solutions to the District's challenges in special education.

The Members of the Board of Education and Empire Justice Center, which had threatened suit over the legal non-compliance throughout the District's special education system, were asked to suggest possible members of the Special Committee. The President of the Board appointed a diverse group of individuals to the Special Committee. The Special Committee was chaired by Commissioner Funchess.

The members of the Special Committee included parents of students with disabilities, advocates for students with disabilities, individuals with knowledge of the particular issues involving students and parents whose primary language is not English, individuals with deep knowledge of what works to successfully assess, educate, and provide services to students with disabilities, District staff, including a related service provider, the Interim Executive Director of Special Education and an attorney from the Counsel's Office for the District. The names of the members are attached.

The Special Committee met weekly from February 26, through April 23, 2018. Discussions were animated, but there was a remarkable degree of consensus about both the widespread scope of the problems, and the belief that they could be solved with appropriate actions by the District. The members reviewed:

- The Report from the Council of Great Cities Schools on special education prepared in 2008-09;
- The Report by Judy Elliott, Ph.D., prepared in April 2017, and presented to the Board of Education last summer;
- Information about the two reports of Patrick Tydings, Esq. on issues in the Committee on Education process prepared for Superintendent Vargas.

- Data about current District performance on a number of special education requirements that are subject to empirical measurement;
- Experiences of parents, advocates, administrators, school staff, and outside experts regarding the District's performance in evaluating and providing education and services to students with disabilities;
- Information from the District about current staffing levels and vacancies in special education;
- Information about findings of non-compliance from the State Education Department;
- Information on accountability structures or the lack thereof for key tasks in special education; and
- Information about the limits of the current data reporting system to provide front line staff and managers with the key information they need to ensure compliance with the law and quality programs and services

Based on the review, the Special Committee concluded that there are wide-spread and very serious problems in virtually every aspect of the District's special education programs and services. These problems both lead to non-compliance with the District's legal obligations and perhaps, more importantly, to the predictable failure of students with disabilities to succeed to the extent to which they are capable.

Problems identified in the reports and by the members of the Special Committee included:

- Parents are not treated as if they are full participants in all decisions involving special education for their children, as is required by law.
- Parents do not always receive written notices of CSE meetings within the legally required time, and meetings must be rescheduled with delays in decision and then in providing programs and services.
- Parents are not always provided with printed copies of fully completed IEPs and CSE minutes at the CSE meeting or within a few days thereafter.
- The low levels of academic performance of students with disabilities.
- Sometimes decisions made at CSE meetings are not reflected in the minutes or in the printed version of the IEP, and at other times, items on the IEP are changed without informed parental consent because of lack of space or services, or transfer to a program like Lynx.
- CSE meetings are rescheduled because not all the required evaluations have been completed on time. This delays the start of services or placement beyond the legally required time.

- Not enough trained staff are available to timely conduct all CSE meetings (including annual reviews and reevaluation reviews).
- Not enough trained and (where required) certified staff are available to deliver the programs and services on the IEPs of all students. This results in students illegally awaiting placements, and failing to receive services on IEPs.
- The District's lack of sufficient programs and services to meet the projected needs for placements and services has also resulted in: students not receiving their program and services in the school that they would have attended if they did not have a disability; being placed wherever there is an opening, rather than with students with similar needs; being placed in settings with more students with disabilities than is permitted; and having IEPs altered to provide for programs and services that are available, instead of those that the CSE believes are really needed.
- Students with disabilities are suspended at disproportional rates, and receive harsher penalties than non-classified students.
- The District's process for determining whether a potentially suspendable offense is a manifestation of a disability, relies on illegal criteria and fails to prevent suspension when the student is not receiving all the services on their IEP (in their primary language) or the staff has failed to comply with their BIP. Suspending children whose IEPs have not been implemented is illegal.
- Some building administrators use illegal strategies to avoid manifestation determinations including: repeat short term suspensions totaling more than 10 days; telling parents to keep children at home or sending children home without formally suspending them; and not determining whether students were receiving the program and all services on their IEPs before making truancy referrals.
- The District's CSEs fail to follow the state requirements for determining the appropriate classification of students with regard to certain disabilities, leading to inappropriate decisions about classification, and sometimes racial inequities in classification.
- The District's Special Education management information system does not currently permit senior managers to easily track and measure compliance (and the locations of non-compliance) with key quantifiable compliance metrics.
- The District does not conduct Functional Behavior Assessments (FBA's) or develop Behavior Improvement Plans (BIP's) for all students for whom they are required.
- When prepared, they are not consistently completed by appropriate staff and are not monitored for their continued effectiveness.

- RCSD does not have appropriate programs and services to adequately meet the needs of many of its students with emotional, psychological, or psychiatric disabilities.
- RCSD does not always provide qualified translators at all CSE meetings where the primary and preferred language of the parent and/or a child is other than English. This is even more true when the preferred non English language is not Spanish.
- RCSD does not translate all important documents concerning students with disabilities whose parents who would prefer the documents in their primary language. This prevents RCSD from obtaining informed consent and the required parental participation in shared decision making.
- RCSD does not have the bilingual staff needed to conduct all the evaluations and deliver all the programs and services which should be provided in the primary language of the student.
- RCSD fails to provide tutors who can communicate in the student's primary language, or alternative services in the student's primary language to ELL students with disabilities who are suspended.
- RCSD fails to provide the quarterly IEP Progress Reports to the parents of all students with IEPs on the same schedule as report cards as is required
- RCSD fails to conduct the required transition planning in the years for which it is required for students with IEPs, and fails to update transition plans as student needs change. Transition plans are not thoroughly completed and do not meet the legal requirements, resulting in a denial of a "free appropriate public education' to students.. This results in a lack of meaningful planning to prepare the student for either integrated, competitive employment or higher education.
- RCSD does not have the staff and services needed to provide effective transition services to all students with disabilities.
- RCSD CSEs conducting Annual Reviews often continue the same placement and services in cases where the student has made little or no progress toward achieving their expected level of performance during the past year.
- RCSD is unable to provide the full continuum of services needed by its students with disabilities. This results in CSEs recommending both inappropriate placements as the next best option and unnecessary out-of-district placements.
- RCSD restricts access to Extended School Year programing and services to students classified with intellectual disabilities and autism, rather than conducting an individualized analysis of regression for students classified in other categories.

- Students with disabilities are not included to fullest extent possible in both instructional and extracurricular activities and opportunities at all schools.
- Understanding of and compliance with RCSD's section 504 process is highly variable based on school settings, which results in frequent violations of section 504. The section 504 process is frequently not used in cases where providing services under section 504 might be appropriate to avoid an eventual need for classification.
- There are not sufficient trained behavior specialists and analysts to meet the significant behavioral needs of special education students in the district.
- The professional development needs, across the board, of the special education staff are not being met in order to provide the education to which all children are entitled.
- There is a significant lack of accountability in Special Education in the district, in part caused by lack of specificity of roles and responsibilities, and in part because of the lack of continuity of supervisors.

In addition to the issues listed above, the Special Committee identified many areas in which current systems could be improved to help children with disabilities succeed.

The consequences of these problems have a profound effect on children. Most children with disabilities, with appropriate programs and services can be expected to graduate and to go on to either market rate employment or higher education. But despite modest improvements over the past several years, fewer than one third of Rochester's students with disabilities graduate.

The Committee further noted that over the past several years the number of people leading and supervising special education in the District has been significantly reduced, and many of the written guidelines, procedures, and documented processes covering special education were suppressed or removed, creating confusion and non-compliance. The current leadership of the Department is beginning to address this issue. In addition, the revolving leadership of the Department, coupled with lack of processes to ensure continuity of initiatives to improve performance, has led to initiatives to fix problems which were begun by one leader, and then simply stopped when that leader left the District.

An example of the lack of continuity can be seen in the failed efforts to ensure that the District conduct the planning needed to allow it to have sufficient staff and space available to meet the needs to place children whose needs for program and services are identified by the Committees on Special Education throughout the year. In recent years the Department's budget has been developed, and space and staff secured, for the number of children with disabilities expected to be in place in September. But each year as the year goes on, hundreds

of students are newly classified and predictably they need programs and services. With space at a premium because of Facilities Modernization, and certified special educators and service providers not being available for hire midyear, the lack of planning for expected growth has led to significant problems.

After a series of years in which the District could not place children in programs and provide appropriate services to them because it did not have the space and staff, in early 2016 Dr. Otuwa, convened a workgroup to solve the problem by the beginning of the 2017-18 school year. When she left the District no one was tasked with completing the work. As a result, again this year, the District is unable to provide appropriate programs and services with certified staff to all children whom the Committee on Special Education has determined to need them.

The scope of the District's problems was so broad and deep that the Special Committee believed that it was impossible to recommend specific solutions to all of them within the two months allotted for the first phase of our work. Instead, we agreed upon a series of overarching core recommendations, and developed a process to develop a series of specific recommendations for the Board of Education in the following areas over the next six months.

**Core Recommendations:**

1. The Board of Education commit that the District will become fully compliant with all its legal obligations to students with disabilities and to those suspected of having disabilities within three years, and will meet a series of milestones for compliance in specific areas over that period of time.
2. The Board authorizes Counsel to make this commitment in a legally enforceable Consent Decree, containing specified consequences should the District fail to substantially comply with its obligations, in order to make it likely that the resources needed to fix the problems are made available to those charged with fixing them, even if District senior leadership changes over the three years.
3. These consequences for failure to substantially bring its programs into compliance with its legal obligations under the Consent Decree would include appointment of a Special Master to externally oversee compliance activities; appointment of an outside monitor to guarantee accurate reporting of the District's performance on its obligations; and awarding Empire Justice Center the statutory attorney's fees that it has agreed not to ask the District to pay, if the District substantially complies with its obligations under the Consent Decree.

The Special Committee believes that it will take complete support, discipline, and focus from the most senior levels in the District in order for these initiatives to succeed. While many of them can be carried out by the Special Education Department, others will require action by

other Departments and individuals who do not report through Special Education. The enumerated consequences are intended to make sure that Senior Leadership of the District take all the actions needed for the District to comply with its legal obligations.

The consequences proposed, are precisely those that would be likely to be Ordered if the District, instead of resolving these problems consensually through this process, lost a class action lawsuit and then failed to substantially comply with a Court Order to bring the District into compliance with the law within a fixed period of time set by the Court (which might well be less than three years). One significant benefit to the District is that, if it does substantially comply with its obligations to end the current widespread noncompliance with three years, it will incur no legal costs for counsel for the students. Under law, reasonable attorney's fees for lawyers for students who prevail in special education cases must be paid by school Districts. This provision would be likely to save the District well in excess of \$1 Million.

In addition, the Special Committee has discussed and has reached consensus that the Special Education Department currently is not sufficiently staffed to complete all the activities that it must complete under law. In order to bring RCSD back into compliance, the Special Committee is recommending a number of new initiatives (some of which were previously recommended by Judy Elliott and others who have looked at the District) that will require additional staff time above that which would be required to run the department.

4. We also recommend that the District put aside sufficient funding in the 2018-19 budget to retain an outside consultant who can look objectively at the work that needs to be accomplished over the next three years, and make recommendations to RCSD about the number, positions, skills, and levels of staffing needed to successfully carry out the reformation of services and instruction for children with disabilities in accord with our recommendations.

Should the Board of Education approve the recommendations above, the Special Committee will take up the topics below in smaller work groups, again consisting of parents, advocates, experts and District staff and leaders and it will complete its work within six months.

#### **The Process to Develop and Recommend Concrete Solutions**

We believe that the process of engaging, parents, advocates, District staff and outside experts has worked well. We recommend that the District commit to a process in which smaller work groups, established by the Special Committee, study particular issues and bring their recommendations back to the full Special Committee. After review by the Special Committee, the recommendations of the workgroups would go to the Board for their consideration of them.

In conducting their review of their specific areas each of the work groups will be asked to look at how the work in their respective areas can promote high expectations, and be responsive to the cultural, linguistic and economic makeup of the children in the District. They will also be asked to make recommendations in their area that promote true belonging and the affirming of all students

After the work groups conclude their work, the full Special Committee would also make recommendations to the Board on:

- Accountability Systems;
- Needed information system improvements;
- A Professional Development strategy; and
- Supervision Structure, and Needed staffing for both administration and program delivery.

The seven work groups that the Special Committee proposes to create will look at:

### **Issues that Occur Before the Meetings of the Committee on Special Education**

A common theme in our review of previous reports and current experiences is that a significant number of children are classified as in need of special education programs and services because the District does not have effective tools short of classification to keep children from falling so far behind their peers that they need to be classified. At the same time, the reports reviewed and the experiences of the Special Committee demonstrated significant issues with whether the decisions by Committees on Special Education conformed to the criteria for various classifications set out in law and regulation. A work group will examine all the issues that occur before the actual meeting of the Committee on Special Education including:

- actions the District could take to avoid unnecessary classification of students by intervening earlier;
- the factors that cause the District to fail to identify students in need of help before they are very far behind their peers;
- referral processes for children suspected of having disabilities,; and
- how to provide high quality, timely, and culturally appropriate assessments of students suspected of having disabilities.

### **Issues Involving Committee on Special Education Meetings and Placement**

This work group will examine and make recommendations on all the issues involving the Committee on Special Education process. These will include:

- how to fix the widespread failure to convene CSE meetings, make decisions and provide Individualized Education Plans within the timelines required by law;
- how to eliminate the racial and other disparities in classification of students with disabilities;
- special issues involving the Preschool Committee on Special Education;
- issues involving the CSE meeting process and the quality of decisions and Individualized Education Plans;
- Issues that cause illegal and inappropriate placement of children (including the inability to timely place them or provide services; and
- Transportation Issues

### **Issues Involving Appropriate Program and Services**

This work group will study and make recommendations about:

- Appropriate Range of Programs and how to end delays in placement because of lack of staff and space
- Ensuring students with disabilities have access to High Quality, Rigorous Academic Curriculum/Instruction (including Academic Pathways)
- Ensuring that all services and programs are timely delivered by appropriate staff
- Multi-Tiered System of Support

Four special area work groups will be convened to make recommendations about:

### **Evaluations and Services for Children on the Autism Spectrum**

### **Transition Planning and Services**

### **Behavior- suspensions, crisis intervention, and behavior specialists, including:**

- Behavioral and Emotional Issues (including FBAs and BIPs)
- Disparities in Discipline
- Suspensions, Removals, and Manifestations

and

### **Special Issues involving Bilingual Students and Parents**

*Report and recommendations within accepted by the Rochester Board of Education on May 24, 2018.*

## **EXHIBIT “B”**

### **Rochester City School District Department of Special Education Mission, Vision and Values Statements**

#### **MISSION**

The Mission of the Department of Special Education in the Rochester City School District is to provide high quality education programs whereby all students are empowered to reach their individual potential. We will continually strive for excellence and ensure that we are *intentional* in our practices, *innovative* in our strategies, and *inclusive* of every student, family, and community member.

#### **VISION**

We believe in the potential of all students, including those with disabilities. We are intentional with our planning and resources to effectively support full inclusion. We are deliberate in implementing accurate, objective and bias-free processes for supporting students with disabilities and for identifying students with a potential disability. We catch students before they fall and provide them with every resource to be successful. We know every student by face and name.

#### **VALUES**

##### **BELIEVE IN ME**

District leaders express their belief that all students can achieve at high levels and act on that by making sure everyone shares responsibility for the success of students with disabilities

On the building level all staff take responsibility for all students. Teacher teams regularly review and discuss data and progress of students with disabilities during common planning time.

##### **INCLUDE ME**

District leaders share a district-wide vision for inclusion of special education students as an explicit core value. This is clearly expressed in mission, vision and strategic planning.

District leaders expect and support general education teachers to build their expertise in special education, and special education teachers to develop greater content expertise. This could include professional development for the entire staff that is focused on special education topics, knowledge, and skills. It could also be integrating special education topics into general trainings.

The school has regular common planning time for general and special education teachers to plan instruction together. Both special education teachers and general education teachers collaborate, co-plan, co-teach, and work with small and large groups of students based on student need. Both deliver content and provide specific supports to struggling students.

## **FIND ME**

The school and district takes steps to ensure the process for identifying students with a potential disability is accurate, objective and bias-free.

School teams collect data from a wide variety of sources including academic assessments, behavioral checklists, and early childhood development inventories for all students, including those in early grades. Teams use this data to conduct universal screenings and identify students who need additional support.

## **CATCH ME WHEN (OR BEFORE) I FALL**

The district holds each school accountable for monitoring data to detect trends in student performance at the individual, classroom, and school level and adjusts instruction accordingly. Principals are evaluated based on their ability to do this, and their Chiefs intervene and support if they struggle

Teachers consistently use a shared school-wide system to monitor student data and provide support to both students with and without disabilities. A multidisciplinary team of teachers and staff is responsible for looking at school-wide data and designing interventions to address academic, behavioral, and social-emotional needs of all students.

The school's professional development calendar includes specific sessions on supporting students with disabilities into general education professional learning.

## **MEET ME WHERE I AM AND CHALLENGE ME**

The district leaders train principals how to analyze data to make decisions about differentiating instruction and can explain how principals train teachers in that same process

The school team meets before any major transition in the student's education (e.g. moving from elementary to middle school and graduating high school) to align with the student and family on goals, anticipate challenges, and develop a support plan.

## **KNOW ME**

The district leaders set policies that encourage school staff to frequently communicate with parents about student progress and provides technology that makes it easy to do so.

Teachers know and can articulate each student's strengths, interests and goals, beyond what's written in the IEP, and students know their data and can talk about where they are succeeding and where they need help.

## **EXHIBIT "C"**

### **ARBITRATION PROVISIONS**

#### **Scope of Arbitration**

In the event that the Parties cannot agree on the terms of any Final Goal or Interim Benchmark, or otherwise reach an impasse in their negotiations, including relating to the Stipulation, or in the event of a dispute arising out of or relating to the Settlement Agreement, including the breach, termination or validity thereof, or if Plaintiffs' counsel disputes the reasonableness of the Board's refusal to approve or disapproval of any Final Goal or Interim Benchmark, and the matter has not been resolved by mediation, as provided in paragraph 16(b) of the Settlement Agreement, the Party initiating the dispute may determine to resolve the dispute pursuant to the arbitration procedures set forth below.

The arbitration shall be conducted by a sole Arbitrator, to be selected pursuant to the provisions of paragraph 16 of the Settlement Agreement. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the Arbitrator may be entered by any court having jurisdiction thereof. The Arbitrator will apply the law of the State of New York, and Federal Law, when applicable. The place of the arbitration shall be Rochester, New York.

The arbitration procedures described in this section shall govern the arbitration except that where any of this section is in conflict with a mandatory provision of applicable arbitration law, that provision of law shall prevail.

#### **Applicable Laws and Remedies**

As stated above, the Arbitrator shall apply the substantive law(s) and rules of law of the State of New York, and Federal Law, if applicable. The Arbitrator shall decide the dispute in accordance with the terms of the Settlement Agreement.

The Arbitrator may grant any remedy or relief, including but not limited to specific performance, that is within the scope of the Settlement Agreement and permissible under the law(s) or rules of law applicable to the dispute.

#### **Confidentiality**

Unless the Parties agree otherwise, the Parties and the Arbitrator shall treat the proceedings, any related discovery and the decisions, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a Party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Arbitrator.

## **Commencement of Arbitration**

The Party commencing arbitration (the "Claimant") shall address to the other Party (the "Respondent") a notice of arbitration and provide notice as set forth in paragraph 74 of the Settlement Agreement. The arbitration shall be deemed commenced as to any Respondent on the date on which the notice of arbitration is received by the Respondent. The Claimant shall also provide a copy of the notice of arbitration to the Arbitrator.

The notice of arbitration shall include in the text or in attachments thereto:

- a. A demand that the dispute be referred to arbitration pursuant to the Settlement Agreement;
- b. A statement of the Claimant's claim, in reasonable detail; and
- c. The relief or remedy sought.

Within ten (10) business days after receipt of the notice of arbitration, the Respondent shall deliver to the Claimant a notice of defense. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the demand shall be deemed denied.

Any notice of defense shall include:

- a. Any comment on the notice of arbitration that the Respondent may deem appropriate;
- b. A statement of the Respondent's defense, in reasonable detail;
- c. Any counterclaim within the scope of the arbitration clause in the Settlement Agreement.

If a counterclaim is asserted, within five (5) business days after receipt of the notice of defense, the Claimant shall deliver to the Respondent a reply to counterclaim which shall have the same elements as the notice of defense. Failure to deliver a reply to counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.

Claims or counterclaims within the scope of the arbitration clause of the Settlement Agreement may be added, amended or withdrawn only with the consent of the Arbitrator. Any notice of defense or replies to amended claims or counterclaims shall be delivered within five (5) days after the Arbitrator approves the addition or amendment of the claim or counterclaim.

## **Arbitration Proceedings**

The Arbitrator may conduct the arbitration in such manner as he shall deem appropriate. The Arbitrator shall be responsible for the organization of conferences and hearings and any other necessary arrangements.

The proceedings shall be conducted in an expeditious manner. The Arbitrator is empowered to impose time limits he considers reasonable on each phase of the proceeding, including without limitation the manner of presentation of each Party's claims and defenses, time allotted to each Party for presentation of their case and rebuttal, if the Arbitrator determines that an in-person presentation is required. In setting time limits, the Arbitrator should bear in mind his obligation to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible.

The Arbitrator may hold an initial pre-hearing conference for the planning and scheduling of the proceedings. Such conference shall be held promptly after Respondent's notice of defense is served, unless the Arbitrator is of the view that further submissions from the Parties are appropriate prior to such conference. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct.

Matters the Arbitrator may consider in the initial pre-hearing conference include, *inter alia*, the following:

- a. Procedural matters (such as setting specific time limits for, and manner of, any request by the Arbitrator to the Parties for information);
- b. Bifurcation or other separation of the issues in the arbitration or consolidating the arbitration with any other proceeding;
- c. The scheduling of any and all conferences and hearings;
- d. The scheduling of pre-hearing submissions;
- e. The need for and type of record of conferences and hearings, including the need for transcripts;
- f. Whether to decide the dispute on written submissions;
- g. The mode, manner and order for presenting proof;
- h. The amount of time allotted to each Party for presentation of their case and for rebuttal, if an in-person presentation is deemed necessary;
- i. Whether expert witnesses are anticipated, and how expert testimony should be presented;
- j. The early identification and narrowing of the issues in the arbitration, including the possibility of early disposition of any issues;
- k. Any stipulations of fact or admissions the Arbitrator or the Parties believe will assist with the expeditious resolution of the dispute, solely for purposes of the arbitration, as well as simplification of document authentication; and
- l. Settlement negotiations, with or without the assistance of the Arbitrator;

The Arbitrator may make pre-hearing orders and instruct the Parties to file more detailed statements of claim and of defense, and pre-hearing submissions.

### **Provision of Information to the Arbitration**

The Arbitrator may require the Parties to provide information that would assist in the expeditious resolution of the dispute. The Parties will not have any rights to conduct discovery, other than as the Arbitrator may order, after taking into account the needs of the Parties and the

desirability of achieving an expeditious and cost-effective resolution of the dispute. The Arbitrator may issue orders to protect the confidentiality of student information, confidential information, proprietary information, and other sensitive information disclosed during the proceedings.

### **Evidence and Hearings**

The Arbitrator shall determine the manner in which the Parties shall present their cases, and the elements of pre-hearing submissions, including whether to require the Parties to provide:

- a. A statement of facts;
- b. A statement of each claim and defense being asserted;
- c. A statement of the applicable law and authorities upon which the Party relies;
- d. A statement of the relief requested; and
- e. All evidence to be presented, including documents relied upon and the name, capacity and subject of testimony of any witnesses to be called, if the Arbitrator determines to conduct a hearing.

The Arbitrator may determine to resolve the dispute on written submissions. Upon the request of a Party, the Arbitrator may determine whether an oral hearing shall be held, including for the presentation of argument and/or evidence. Testimony may be presented in written and/or oral form as the Arbitrator may determine is appropriate. The Arbitrator is not required to apply the rules of evidence used in judicial proceedings, provided, however, that Arbitrator shall apply the attorney-client privilege and the work product immunity. The Arbitrator shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

The Arbitrator, in his discretion, may require the Parties to produce evidence in addition to that initially offered.

The Arbitrator shall determine the manner and sequence in which any witnesses are to be examined. The Arbitrator shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

### **Interim Measures**

At the request of a Party, the Arbitrator may take such interim measures as he deems necessary including injunctive relief. A request for interim measures by a Party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

### **Arbitration Award**

The Arbitrator may make final, interim, interlocutory and partial awards. With respect to any interim, interlocutory or partial award, the Arbitrator may state in the award whether or not the award is final for purposes of any judicial proceedings in connection therewith. The

Arbitrator shall render the final award within fourteen (14) days of the written submission by the Parties, if no hearing is held, or the closing of the hearing.

All awards shall be in writing and shall state the reasoning on which the award rests unless the Parties agree otherwise. The award shall be deemed to be made at the seat of arbitration and shall contain the date on which the award was made. Executed copies of awards shall be delivered by the Arbitrator to the Parties.

The award shall be final and binding on the Parties, and the Parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a Party, or a correction or additional award is made by the Arbitrator on his own initiative, the award shall be final and binding on the Parties when such clarification, correction or additional award is made by the Arbitrator or upon the expiration of the time periods provided at law for such clarification, correction or additional award to be made, whichever is earlier.

### **Settlement**

Either Party may propose settlement negotiations to the other Party at any time. The Arbitrator may suggest that the Parties explore settlement at such times as the Arbitrator may deem appropriate.

The Arbitrator will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the Parties, unless both Parties consent.

If the Parties settle the dispute before an award is made, the Arbitrator shall terminate the arbitration and, if requested by all Parties and accepted by the Arbitrator, may record the settlement in the form of an award made by consent of the Parties. The Arbitrator is not obliged to give reasons for such an award.

### **Arbitrator Compensation**

In light of the public interest in the matters at issue, the Parties will ask the Arbitrator to serve on a pro bono basis. In the event that the Arbitrator declines to serve pro bono, the Arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an Arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation will be fully disclosed to all Parties by the Arbitrator. Due to the indigence of Plaintiffs, and their agreement not to pursue reimbursement of their attorney's fees other than as set forth in the Settlement Agreement, the District will be solely responsible for the fees, costs and expenses of the Arbitrator.

### **Failure of a Party to Comply with Arbitration Provisions**

Whenever a Party fails to comply with these provisions, or any order of the Arbitrator rendered prior to the award, the Arbitrator, if appropriate, shall fix a reasonable period of time for compliance and, if the Party does not comply within said period, the Arbitrator may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the

Arbitrator shall require the non-defaulting Party to produce evidence and legal argument in support of their contentions as the Arbitrator may deem appropriate. The Arbitrator may receive such evidence and argument without the defaulting Party's presence or participation.

**Waiver**

A Party, knowing of another Party's failure to comply with any provision of this section, or any direction of the Arbitrator, and neglecting to state their objections promptly, waives any objection thereto.

**Appendix 4**  
**Investing in Student Success**



Rochester City School District  
131 West Broad Street  
Rochester, New York 14614  
Phone: 585-262-8517  
[www.rcsdk12.org](http://www.rcsdk12.org)

## Memo

**To:** Barbara Deane-Williams, Superintendent  
**From:** Elizabeth Mascitti-Miller *Deputy Superintendent of Administration*  
Everton Sewell *Chief Financial Officer*  
**Date:** November 30, 2018  
**Re:** Investing in Student and School Success

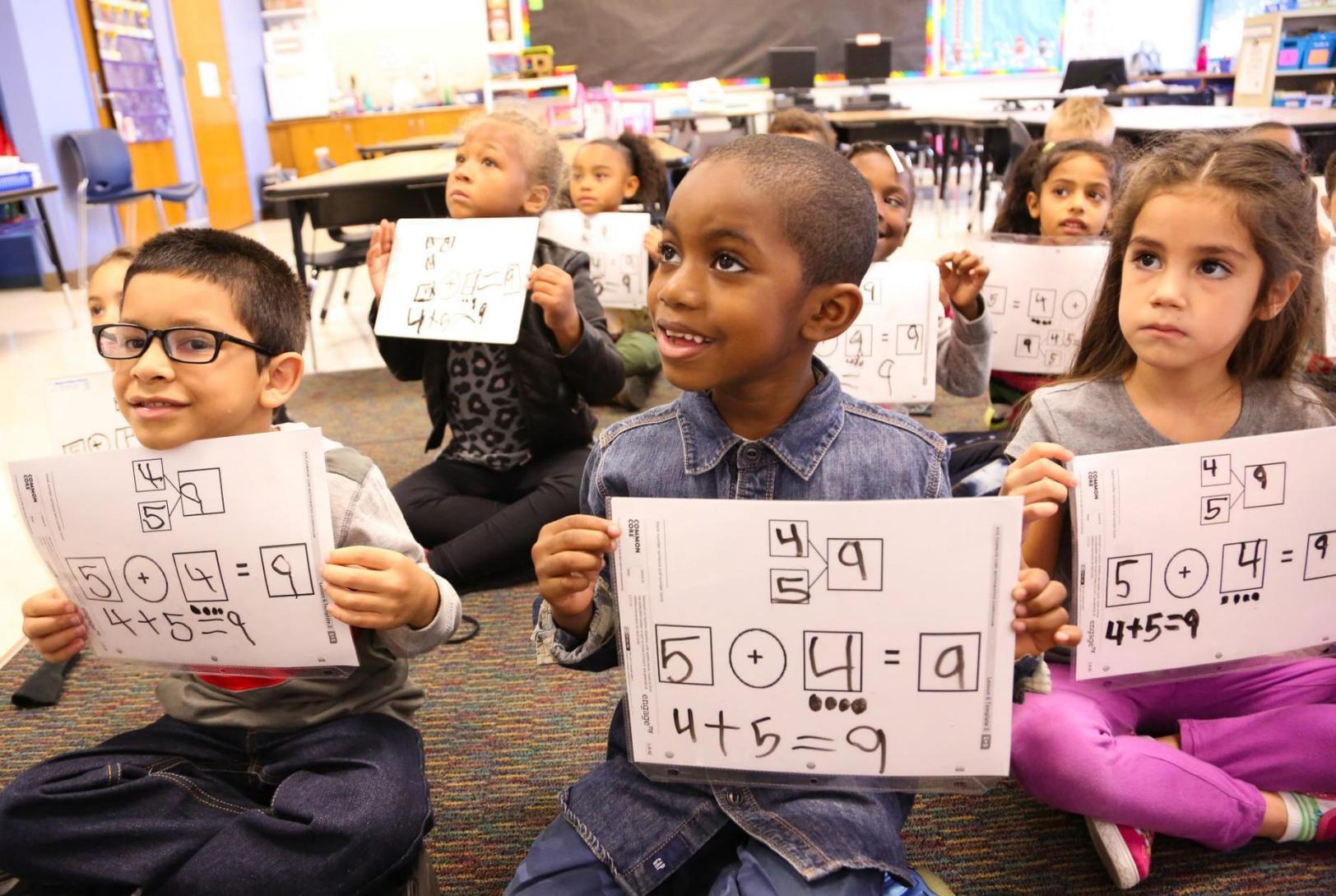
As charged, this document, "Investing in Student and School Success: Innovative Ideas for Reinvesting Resources in the Rochester City School District", presents options for eliminating the structural deficit. As Evidence of our structural deficit can be seen in a historic pattern of closing annual budget gaps with up to \$20 Million from our unrestricted reserves. Inflationary cost drivers in a fixed revenue environment suggests the structural deficit is better described with \$40 - \$45 Million range.

The table on page 22 summarizes the potential ideas that might close the structural deficit over a five year period. If all the ideas were approved and the annual of yield of 20% were achieved we could potentially reduce dependence on unrestricted reserves to \$19 Million in a zero inflation environment, using the maximum impact estimate.

In an inflationary environment all ideas would need to yield more than the minimum projections. The maximum potential savings will be roughly around \$50 Million, which has the potential to resolve the worst case deficit projections.

Should any part of the recommended action strategies listed on the table on page 22 be rejected, it will be necessary to substitute other potential ideas located on pages 16-17, to close the structural deficit.

Thank you for your consideration. Further details can be provided as needed through the budget season.



# Investing in Student and School Success: Innovative Ideas for Reinvesting Resources in the Rochester City School District

**DRAFT**

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## Introduction:

Rochester City School District's (RCSD) Strategic Plan commits us to knowing every student by face and name, in every classroom and every school, to and through graduation. This commitment has become the vision that guides all facets of our work.

This vision has shaped our Path Forward—a dynamic process that re-imagined how Rochester students

learn. By transforming our classrooms and our community learning spaces, programs, and partnerships, we help ensure our Strategic Framework is fully integrated with our Facilities Master Plan, creating the conditions necessary for our students for rich, robust 21st century learning.

While we acknowledge the improvements that have been made in recent years to graduation rates and test scores, we realize that there is still significant room for growth. A long-term financial plan, anchored in our core values of equity, relational capacity, innovation, coherence and accountability, is critical for enabling rich opportunities for students that serve to close both achievement and opportunity gaps.

The RCSD, like many other urban districts, is experiencing a structural deficit, which, if unaddressed, will significantly impede our ability to serve students. In District, we strive for the success of all youth, and we value equity, cohesiveness and positive school climates. Fiscal stewardship, transparency and stability are vital to our students' success. Our financial future depends on identifying equitable and sustainable programs as we operate in a climate of flat revenue streams, increasing student needs, rigorous accountability measures with the new ESSA regulations, declining district school enrollment and growing enrollment in charter schools.

The following report, which presents reasons for the deficit and respective factors and opportunities to close the structural deficit report, is based on national research studies, expert reports, the RCSD 100 Day Plan, and input collected via discussions, focus groups, surveys and interviews with parent and community groups, administrators, teachers, District Cabinet members, District staff, and the Board of Education.

The report is presented in four parts. The first part is an overview of the instructional priorities of the District, as aligned to the Action Plan. The second part of this report serves to develop understanding of the causes of the deficit and a understanding of how the budget has evolved to this point. It also including the major factors that impact the budget, which is critical to determining the best path forward. The third part focuses on what happens if we don't address the structural gap, and the final part presents options for consideration – changes to be considered that could potentially allow for reinvestment of resources to better provide our students the opportunities that they deserve.



# Rochester City School District Profile

## Overview



Serving 29,921 students in Grades PreK-12\*



65 schools and programs



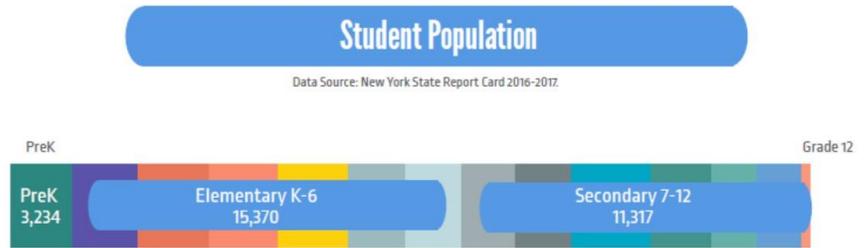
Highest child poverty rate and lowest performance among the Big Five in NYS\*

\*Data Source: Enrollment Data from New York State Report Card 2016-17 School Year; Grades 3-8 Test Performance Data from New York State Report Card 2017-18 School Year

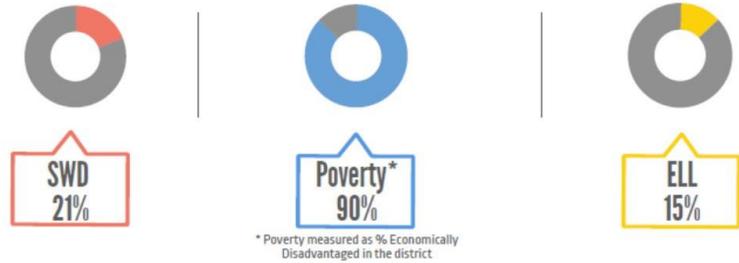
## Part I: Guiding Priorities

The RCSD currently serves approximately 29,000 students from many cultures, neighborhoods and backgrounds that make our schools unique and rich with diversity.

The RCSD action plan lays the foundation for the District's future in a vision that has shared goals, strategies, core beliefs and shared values. Our plan is structured into four pillars and associated action items to meet the District key performance indicators. The structural deficit plan is a necessary component of the District's future and the RCSD overarching action plan.



The following subgroup breakdowns are based on K-12 enrollment only.



Promote the well-being of the whole child, whole school, whole community



Ensure powerful learning for every student



Build capacity to ensure comprehensive school improvement



Cultivate understanding, collaboration, partnerships and advocacy for equity, justice and achievement for all

## Part II: How did we get here?

Our goal is to provide equity in services and adequate resources in schools to improve student achievement, while maintaining fiscal responsibility. As a result, we must be even more strategic with our budgeting.

The structural deficit in the District exists because expenditure increases are outpacing revenue increases. Currently 60% of our budget expenditure is for salaries and benefits, and the collective bargaining agreements dictate those salary increases. Of the \$50 million increase in the 2017-2018 expenditures, \$32 million is for salary and benefit increases under collective bargaining agreements, \$10 million in charter school tuition increases and \$8 million in other contractual and operating increases. Compounded with loss in State Aid revenue and use of the fund balance, the preliminary gap projection for 2018-2019 was \$57 million. Due to more restrained budget practices the projected gap for the 2019-2020 year is ~\$40 million, still far from where we need to be.

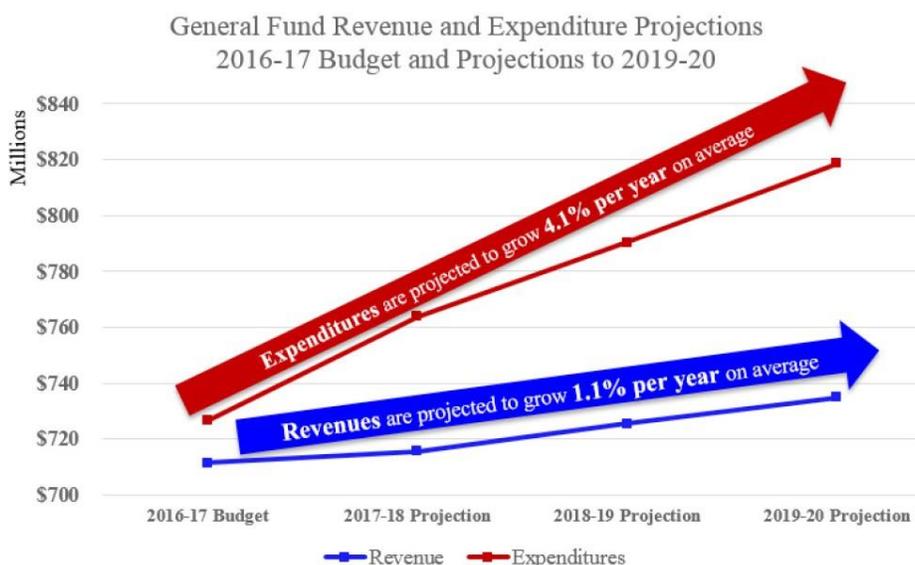
Multiple factors contribute to a budget gap and structural deficit within a school district. It is critical to understand the composition of the deficit in order to effectively address it. Five factors have been identified as major drivers to the RCSD's current fiscal state. They are:

- Revenue/ Expenditures/Legislation
- District Footprint
- Salaries and Benefits
- Transportation
- Student Need

After many years of cost reductions, the 2014-2015 budget reflected additional funding, totaling \$31 million. In 2015-2016 additional funding totaled \$30 million. However, expenditures climbed, driven by increased transportation costs due to unanticipated contract changes, an addition of required school-based programs and services, growth in teacher and employee retirement costs, health insurance increases, and charter school tuition growth. All of this created a budget gap of \$40.5 million. While the budget reflected \$40.5 million in proposed reductions, only \$20.5 million was realized, resulting in a \$20 million funding deficit in 2015-2016.

During the 2016-2017 school year, the District budget gap was compounded by the need to maintain existing positions and programs, add negotiated labor contracts that provided for unbudgeted retroactive salaries and benefits, add expenses for purchases such as buses, technology and maintenance purchased with cash capital, continued increase in charter school tuition, and added fiscal support for the District priority to provide social and emotional services, restorative approaches, and the newly adopted code of conduct.

Over the 2017-2018 school year, despite the efforts of the District to align resources, student achievement data suggested an increased need for targeted instructional services, including special education services, services related to English learners, delivery of reading instruction and supports for schools in accountability status, all of which warranting additional funding.



## Factor: Revenues/Expenditure/Legislation

The District receives funding from multiple sources: State, Federal, City, Local Funds (all of which comprising the District's General Fund); additional funding sources include Special Aid (Grants) and School Food Service.

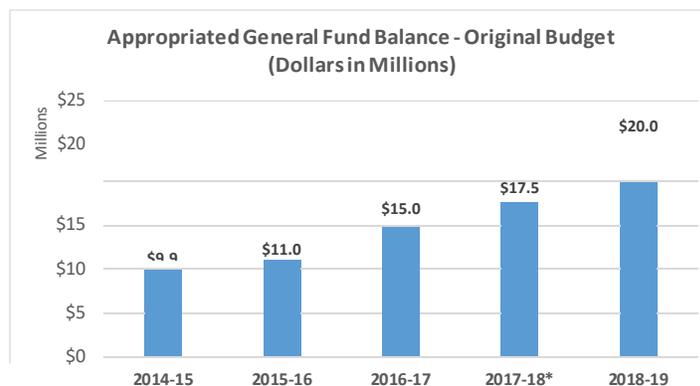
The most significant portion of the State Aid Revenue is Foundation Aid, which is about 70% of the State funding allocation and about 48% of the District's total budget. Overall, the District receives approximately two-thirds (2/3) of its revenue from the State through several forms of aids, some based on formulas and others on reimbursements.

In the last 10 years, New York State (NYS) Foundation Aid has fallen short of the formula-driven allocation. The NYS funding formula developed in 2007 was intended to drive more money into high-need districts by giving greater support to districts with high numbers of students designated as English learners (EL), students in poverty, and students with disabilities (SWD). As such, Rochester, Syracuse and Buffalo, three of the largest urban districts in New York State, had the largest shortfalls per student in the State. Rochester, which has the highest rates of child poverty in the state, has realized a shortfall of approximately \$100 million annually over the years, contributing to the revenue gap we are experiencing.

Further impacting the RCSD budget is the reliance on grants for nearly 13% of the budgeted revenue. A portion of this revenue stream is derived from sources that are neither predictable, stable, nor timely. For example, while partially offset by a \$20 million increase in State funding, over the past few years the District lost \$31 million in American Recovery and Reinvestment Act (ARRA) funding.

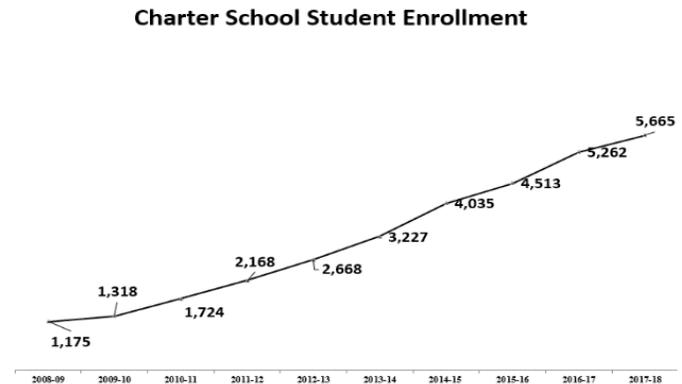
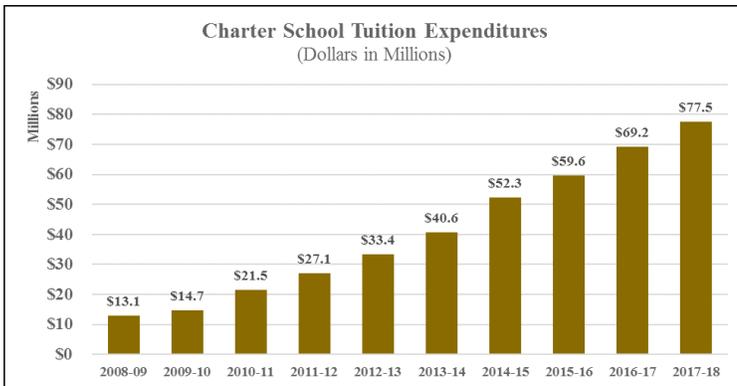
The Rochester City School District is a dependent district, meaning that it depends on the City of Rochester for levying and collecting taxes on behalf of the District. The City, in turn, makes an allocation to the District for the taxes levied and collected for the District. Through legislation, the City allocates a fixed amount of \$119.1 million each year to the RCSD; this amount has remained the same since the 2004-05 fiscal year. Currently, the City's allocation accounts for about 13% of the District's revenue, in contrast to 17.5% ten years ago.

As the District continues to invest more money and resources into needed programs, the current expenditure pattern is anticipated to increase by about 6%, while revenues are projected to increase by about 2%; substantially contributing to the District's budget deficit. As noted in the September 2018 report, "An Analysis: Budget Development and Administration," authored by Dr. Rick Timbs and Mr. Michael Crumb, it was noted that for several years, the District has used Fund Balance close the budget gap. That amount has grown from \$9.9 million in 2014-15 to \$20 million in 2018-19. The District has projected \$8 million Appropriated Fund Balance usage in 2019-20.



**The 2017-18 Adopted Budget originally included \$20 million in appropriated fund balance, this amount was amended to \$17.5 million during the year.**

There are other challenges the District faces that contribute to the structural budget gap, one of which is charter schools. Charter school enrollment has risen significantly over the past ten years from 1,175 in 2008-09 to 6,058 in 2018-19, and is anticipated to be 6,563 in 2019-20. For the 2019-20 school year, the District is expected to pay out \$13,840 in tuition for each RCSD student attending charter school, plus an additional premium for a students with disabilities (SWD), in the range of \$7,000 to \$18,000, depending on student classification. The District also required to pay a supplemental tuition aid of \$1,250 for each student; this amount is reimbursed to the District the following year. Overall, RCSD projected charter school tuition expenditure for 2019-20 is about \$97.1 million. We project to receive \$9.1 million in Supplemental basic tuition reimbursement aid due to rising tuition rates.



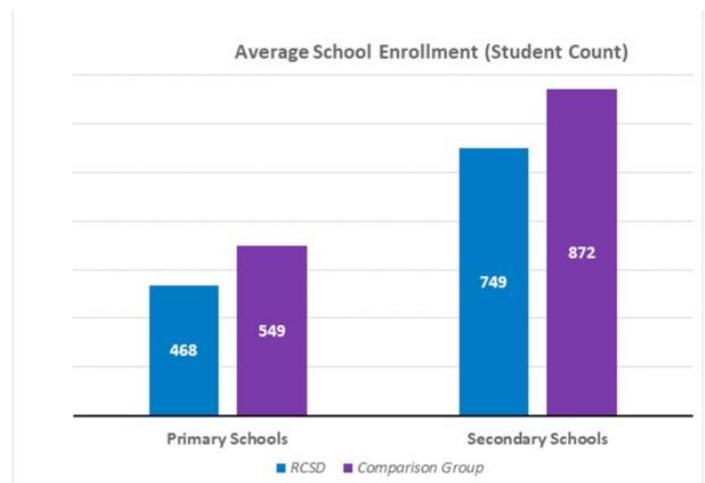
## Factor: District Footprint

The ways in which the RCSD organizes its students to deliver instruction can be thought of as the district’s footprint. Below is a statistical analysis of predicted enrollment trends that align with our Facilities Modernization Plan and budget portfolio. The analysis of enrollment projections and calculations were done in collaboration with the Offices of Accountability, Facilities and Finance. Calculations were completed using a statistically-based formula, Average Grade Progression Ratio (AGPR). This formula is a common methodology across the NYS for this type of analysis. Using specialized software and BEDS data, the projection was calculated by averaging whole number student retention counts from year to year in each grade level and NYS Department of Health data, including Live Birthrates for calculating Kindergarten and 1st grade projected registrant counts.

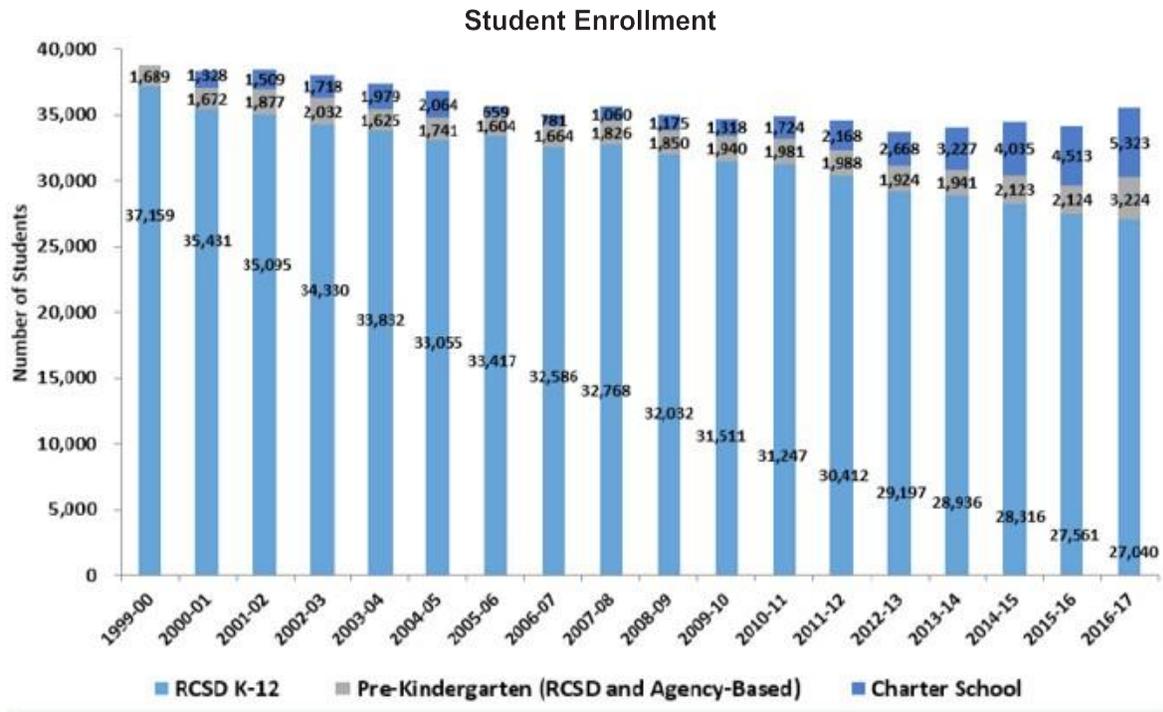
Several factors exist based on the enrollment trends that have driven costs and are impacting the budget. They are:

### Capacity and Grade-Level Configurations -

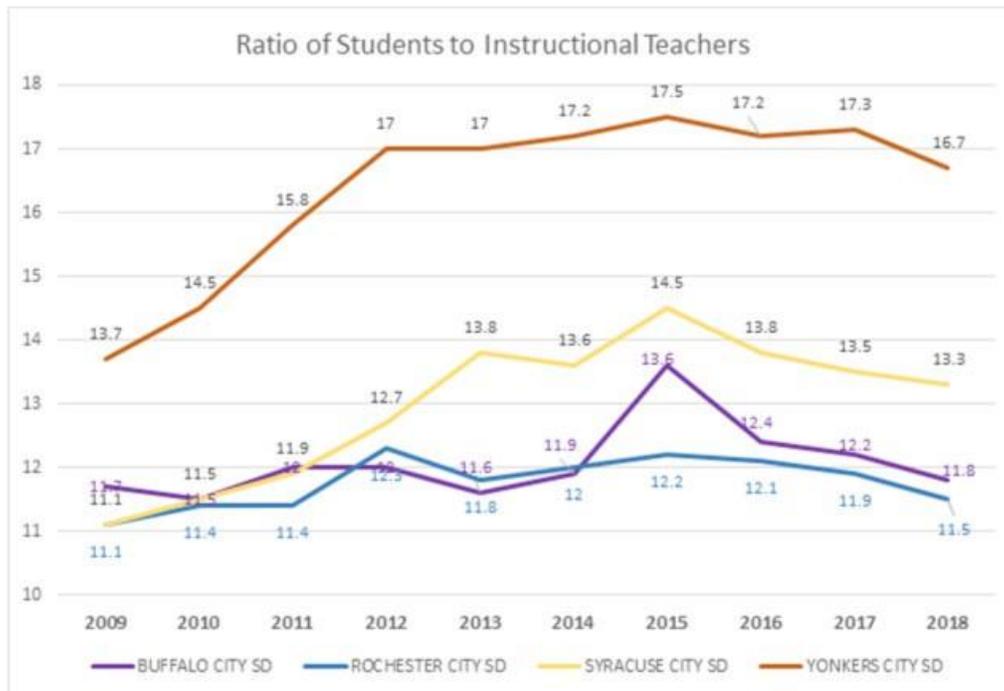
The RCSD operates 66 different programs and schools, and eight unique grade level configurations. Student enrollment continues to decline, while charter school enrollment increases. This contributes to an increased number of small schools and under-filled classrooms within existing schools, leading to increased classroom costs (i.e. teachers/paraprofessionals) and increased fixed costs (administrators/facilities). For example, every school, regardless of size, receives a foundation



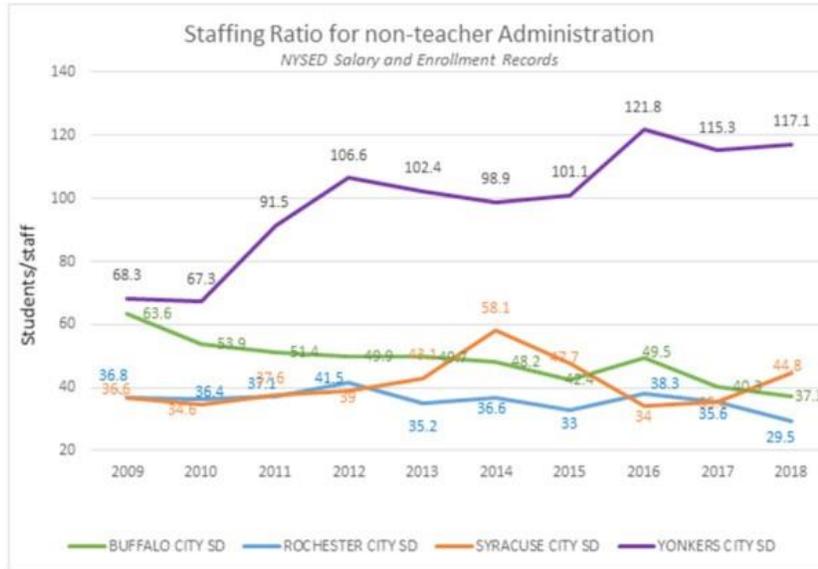
budget to fund a school leader, clerical and custodial staff, which increases administrative and operating costs per pupil comparable to other like-size districts.



**Enrollment** - Student enrollment within the RCSD has declined steadily over the past ten years, while the number of teaching staff has risen. While the RCSD has strategically committed to small class sizes to provide personalized instruction, and has contractually committed to this, the practice has impacted overall resources across the District.



The RCSD also has the lowest administrator-student ratio as compared to large urban districts in New York.



**Alternative Programs** - In order to meet the unique needs of subgroups of students, the RCSD operates nine alternative programs. The total expenditure for operating all of these programs for 2017 - 2018 was approximately \$23.6 million, and operating costs per pupil range from approximately \$8,400 per pupil, to over \$80,000 per pupil.

	2017-18 Program Cost	2017-18 Enrollment	2017-18 Cost per Pupil
All City High School	\$4,120,455	300	\$13,735
Big Picture	\$585,099	27	\$21,670
Bilingual Language & Literacy Academy*	\$706,221	84	\$8,407
Home Hospital Tutoring	\$3,184,843	95	\$33,525
LyncX Academy	\$1,668,028	77	\$21,663
North Star	\$1,530,219	19	\$80,538
P-Tech	\$3,446,958	328	\$10,509
Rochester International Academy	\$6,121,335	391	\$15,656
Young Mothers & Interim Health	\$2,214,558	66	\$33,554
*Bilingual Academy only existed for part of 2017-18.			

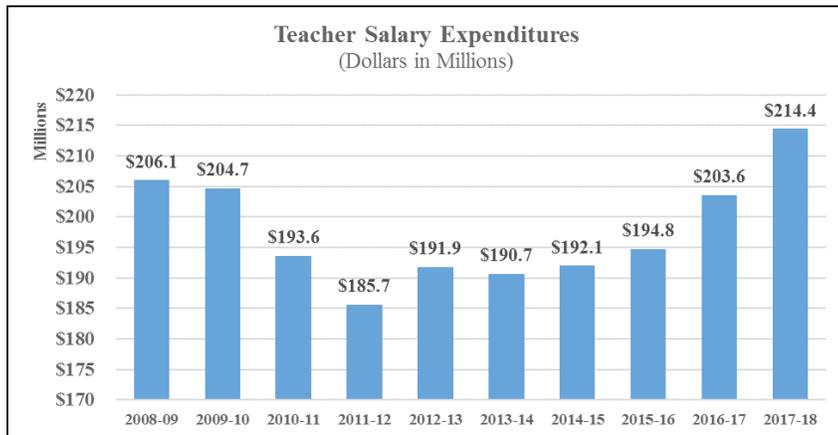
**Facilities Modernization Program** -Lastly, the District has made it a priority, in collaboration with our community and the City of Rochester, to participate in Rochester’s Joint Schools Construction Board to actively engage in the Facilities Modernization Program (FMP). The FMP has the opportunity to modernize our schools and create 21st Century learning spaces for our students PreK through 12th grade. Over the course of the next several months the District will be engaging Phase 3 of the FMP which is aligned to the instructional priorities of the District and the enrollment trends over the next 10 years.

Overall, the District footprint, like other large urban districts has declining enrollment and as a result the distribution of resources is not optimally cost effective. Declining enrollment, operation of multiple grade-level configurations, numerous small schools and class sizes, and offering unique alternative programs have been contributing factors to the District’s current structural deficit.

**Factor: Salaries and benefits**

Salaries and benefits comprise approximately 59.3% of the RCSD’s overall budget, the majority of which being teachers and other staff providing direct services to students. In alignment with the District’s philosophy that the teacher is the greatest unit of change, the RCSD invests in competitive teacher salaries, and additional compensation for extended learning opportunities and professional development for teachers.

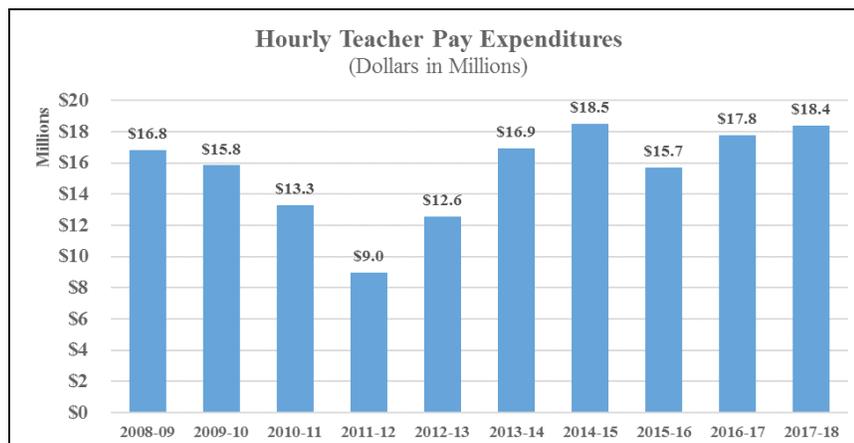
**Teacher Compensation** -The average hiring salary of an RCSD is low compared to “Big Five” districts and districts across Monroe County, however, the annual contractual increase is higher than those districts. While a priority is to have District salary structures to be competitive, teacher salary is the single largest expenditure category of the overall budget.



Row Labels	Average of Salary
BUFFALO CITY SD	\$45,817
ROCHESTER CITY SD	\$51,821
SYRACUSE CITY SD	\$55,667
YONKERS CITY SD	\$89,487

Average Salaries in first year for Teachers

**Additional Compensation**-The District is committed to expanded learning opportunities for all students and has made this a priority. In addition to salaries, however, the RCSD pays extra compensation to staff for extended learning opportunities, including extended learning time during the school day and over the summer. The District is operating an expanded day in 17 of its schools, compensating these staff members for an additional 177 hours per school year.

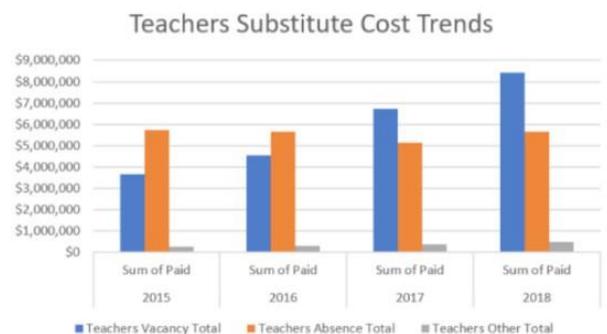
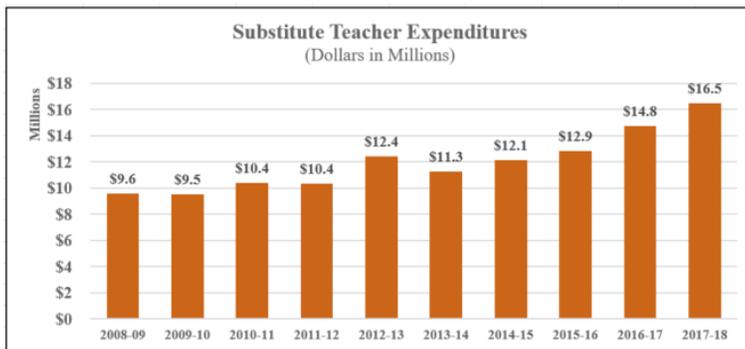


In addition, the District has made a commitment to summer school opportunities for all students, including enrichment opportunities, instructional supports to minimize the well-researched “summer learning slide” for younger students, and robust credit recovery programs for secondary students to provide supports for on-time graduation.

**Professional Development** - The RCSD has one of the highest teacher retention rates of urban districts within the nation, strongly related to its implementation of a nationally-renowned mentor program - Careers in Teaching. Additionally, the RTA teachers’ contract compensates teachers annually for completion either 24 or 36 hours of professional development per year. These two initiatives combined cost the District a total of approximately \$3.5 million per year.

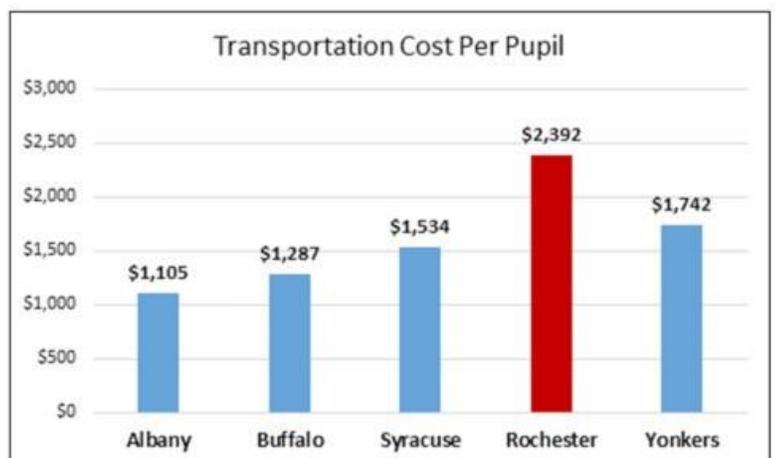
Additional pay for expanded learning opportunities and for professional development combined has increased a total of 46% since the 2012-2013 school year, rising from \$12.6 million in 2012-2013 to \$18.4 million in 2017-2018.

**Substitute Costs** - For the past five years, the entire nation has been experiencing a teacher shortage. The annual nationwide listing of areas with teacher shortages, compiled by the U.S. Department of Education, includes areas such as math, the traditional sciences, foreign language, and English language arts. Of particular challenge within the RCSD is hiring of appropriately credentialed staff in the areas of special education and English language learning, leading to the use of substitute teachers at times. The substitute costs incurred by the RCSD has increased \$4.1 million since the 2012-2013 school year.



## Factor: Transportation

Today, the RCSD has a resident public and non-public school enrollment of approximately 34,000 students, and transports all students living more than 1.5 miles from school, and transports all students who are mandated transportation per Individual Education Plan (IEP). In addition, the RCSD provides transportation to charter school, parochial, and private school students residing in the City of Rochester. Based on the report by the Pupil Transportation Safety Institute (PTSI), the RCSD has made significant efforts to find efficiencies in its transportation operations, however, we currently spend more per pupil than comparable districts by approximately \$975 per pupil.



Approximately over 85% of the students in RCSD receive transportation through the District’s school choice policy. Approximately 85% of the \$73 million in transportation that the District spends is reimbursable. The cost has continued to increase over time, regardless of the decline in enrollment. These two data can be attributed to many factors, including enrollment and assignment policies, operations, increased highly-specialized transportation, contracts, and coordinated bell tiers across the schools and programs, and the fact that the RCSD is required to transport students to and from various locations.

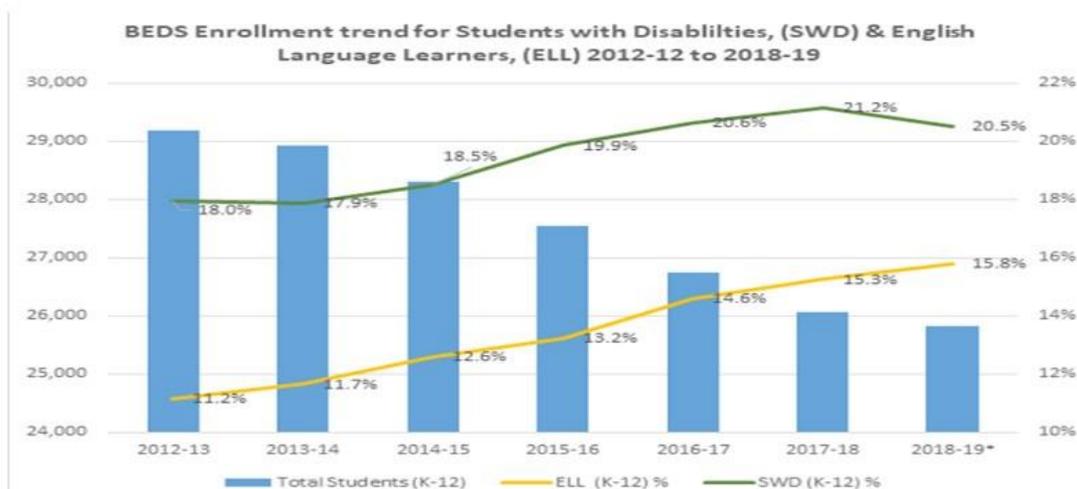
The District owns and operates school buses and contracts with service providers to meet the required transportation needs of its students. The District owned transportation services are calculated by purchases, maintenance, staff expenses, and material costs. The contract costs are based on a competitive process, and the public transportation services are negotiated by the RCSD and the Regional Transit Service Inc. which, is more than the public adult fare. Contract costs for transportation have increased from \$53.7 million in 2012 - 2013 to \$70.3 million in 2017 - 2018.

In addition to policies that determine how many students are transported by distance, another contributing factor that drives costs is the level of efficiency of the system, including routing, bus capacity, bell times, time-limits and consistent participation on the bus. Based on the PTSI study, the RCSD was recognized for its efficiencies and cost effective management of the District’s pupil transportation program, which was found to be the most cost effective.

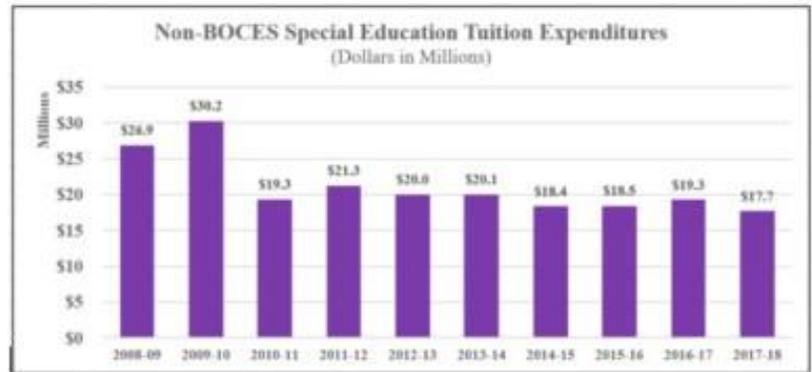
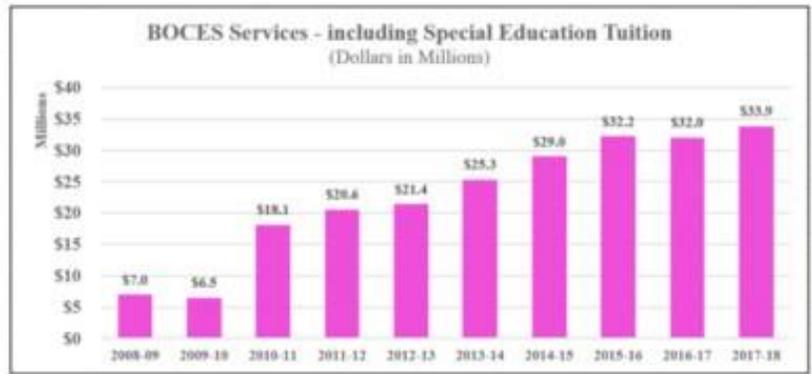
The PTSI report found that while the largest driver of the per pupil costs in the RCSD is the challenge to fill buses to near capacity, transportation costs are also impacted by the contracts the RCSD has and the increased need for special transportation services for students with IEPs.

### Factor: Student need

With the RCSD’s decline in enrollment over the past ten years, there has been an increase in its ratio of students with disabilities (SWD) and English learners (EL). The RCSD’s ratio of students with disabilities has hovered at approximately 20% over the past five (5) years. However, the RCSD’s ELL population has steadily increased, this year surpassing 15%. Both groups of students require special- ized supports that have cost implications, contributing to the District’s structural deficit.



**Special Education** –Providing high quality services and meeting all compliance regulations for students with a disability is a priority for the District. Funding is provided for students with disabilities through a federal entitlement grant associated with the Individuals with Disabilities Education Act (IDEA). However, IDEA funding doesn't fully offset the additional and growing cost. In 2012- 2013, expenditures for special education services totaled \$101 million. In 2017-2018, these expenditures increased to \$120.8 million.



Special education costs include tuition for city students who require a non-RCSD placement. The District has experienced an increase in the number of students who are identified to receive services that the RCSD doesn't offer, and who therefore require an alternative placement. Non-BOCES placement costs for special education have remained consistent for the past five years, but expenditures for BOCES services have steadily increased.

Additionally, with the high number of students receiving special education services, the RCSD has the highest average cost per student, as compared to the Big Five.

The RCSD employs a high number of special education administrators, contributing to the overall costs associated with special education. The RCSD currently staffs 60 administrators dedicated to special education.

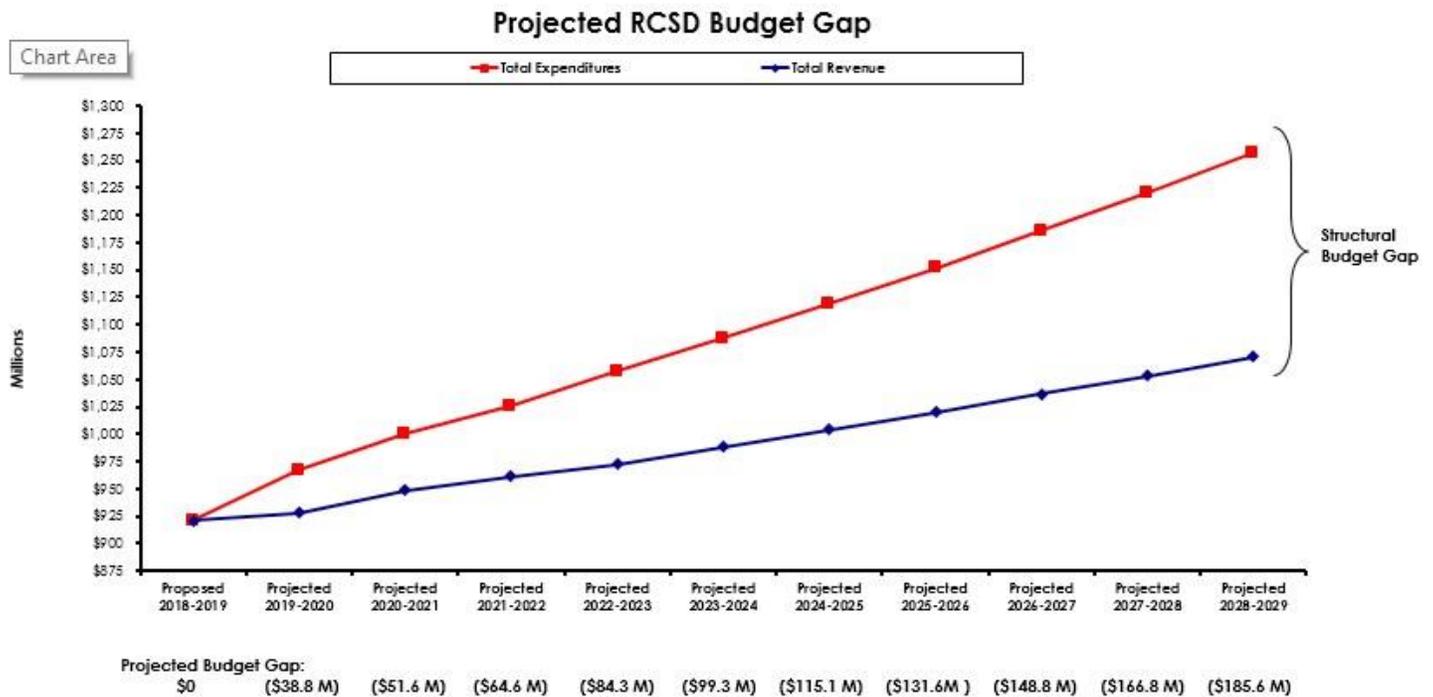
**English learners** - Approximately 15% of our students within the RCSD are English language learner, and the District serves students and families from more than 80 language backgrounds. Of particular note is the increase of Students with Interrupted Formal Education (SIFE) in recent years and the influx of students from hurricane-impacted areas in 2018. The RCSD has enhanced its provision of services to these two groups of students by establishing two programs to meet their unique linguistic and academic needs. Lower class sizes and higher staffing ratios in these programs contributes to the District's expenses.

In 2015 the RCSD shifted its model of provision of service to ELs to become more inclusive, aligning with current research and New York State mandate. However, this service model increased staffing and resource costs. Transitioning to more inclusive settings may potentially reduced costs over time, however short term costs grow considering the increased ratio of EL students within the overall student population. The District currently employs 203 English as a New Language teachers, almost double the staff that it had in 2013-2014.

## Part III: What happens if nothing changes?

The multi-year projection presented below represents a forecast of the District’s revenue and expenditures for the next ten fiscal years. The projections shown allow the District to begin the planning process to solve the structural deficit.

New York State educational funding, which accounts for 68% of revenue, is the primary factor determining revenue growth. As such, future revenue budget projections will be greatly influenced by the levels of NYS Aid. Another important factor is grant funding. This analysis assumes a stable level of grant funding and anticipates the loss of competitive grants in the future. Closing future year gaps will require a commensurate reduction in expenditures funded by those grants, or new grant revenue to sustain the activities and services. The District continuously pursues new grant opportunities to fund academic priorities.



### Closing the Deficit:

Based on the multi-year projection assumptions, the District anticipates a deficit situation in future years due to rising expenses that outpace projected revenue increases. New York State law mandates that the District maintain a balanced budget. As such, the projected deficits for each year will be closed through actions taken in the budget process, and the projected budget gap for subsequent years will be reevaluated and revised each year.

## Part IV: What is our Path Forward?

Moving forward, in collaboration with all stakeholders including administrators, teachers, staff members, families, students and community stakeholders, the District has and will continue to examine multiple ways in which to address the deficit. Below is a table that outlines the preliminary exploration of ideas to support addressing the structural deficit gap, in order to unlock and reinvest resources to provide students with the opportunities they need and deserve.

**CONSIDERATIONS FOR BUDGET PLANNING:  
POTENTIAL ACTION ITEMS**

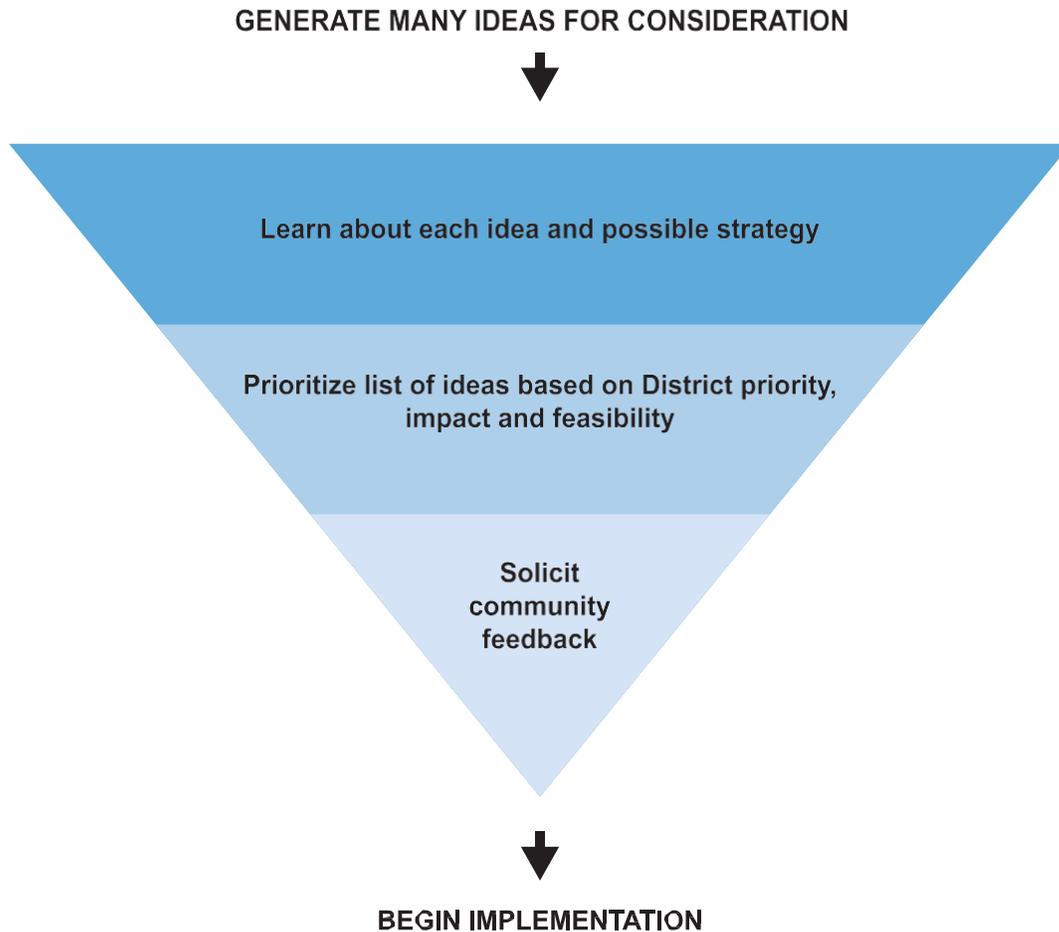
<b>Factor</b>	<b>Sub-Area</b>	<b>Strategy</b>	<b>Short Term Option (Within 2019-2020)</b>	<b>Long Term Option (Within 3-5 Years)</b>
Revenues/ Expenditure/ Legislation	Finance	Fund Balance Policy  Adjustment of Restricted Funds	X	
Revenues/ Expenditure/ Legislation	Finance	Work with City of Rochester on investment of funds	X	X
Revenues/ Expenditure/ Legislation	Local	Revisit City of Rochester allocation	X	X
Revenues/ Expenditure/ Legislation	Local	Coordinate and assess services with City of Rochester		X
Revenues/ Expenditure/ Legislation	Local	Pursue a more proactive and purposeful private revenue strategy	X	X
District Footprint	Operations	Assess enrollment by class-room/school	School Closure (Long-term)	
District Footprint	Operations	School consolidation and closure	X	X
District Footprint	Facilities/ Legal	Assess lease Space	X	
Salaries and Benefits	Administration and Teaching and Learning	Assess and audit district administration at building and central office	X	X
Salaries and Benefits		Explore interest-based opportunities with bargaining units	X	X
Salaries and Benefits	Administration	Limit all non-required travel	X	
Salaries and Benefits	HCI	Audit positions and vacancies	X	
Salaries and Benefits	Finance	Close CO 2 weeks  Furloughs	X	
Salaries and Benefits	HCI/ Finance	Assess efficiencies in office operations		X
Salaries and Benefits	Administration Teaching and Learning	Maximize staffing at Co-locations	X	X
Salaries and Benefits	HCI/Benefits	Benefits, Payroll Opportunities for efficiencies		X
Transportation	Operations	Shift school time to better align bell tiers, including Charter Schools	X	X
Transportation	Operations	Universal enrollment that maximizes bus usage		X

Factor	Sub-Area	Strategy	Short Term Option (Within 2019-2020)	Long Term Option (Winthin 3-5 Years)
Transportation	Operations	Renegotiate contract with RTS, 2020  Pursue 10 year bus purchasing plan		X
Transportation	Operations	Assess transporting all students at corner/common stops		X
Transportation	Operation	Assess efficacy of Extended Learning Transportation	X	
Transportation	All	Review all contracts related to transportation for SWD	X	X
Student Need	Extended Day	Realign Extended Day programs	X	X
Student Need	Teaching and Learning Summer Program	Elementary and Secondary program redesign	X	X
Student Need	Special Education	Ongoing assessment of needs	X	X
Student Need	Special Education	Review of need in/out-of- district placement	X	X
Student Need	Teaching and Learning	Assess/ Review all programs	X	X
Student Need	Teaching and Learning	Health and Athletics - Monitor bussing and review for efficiency	X	X

This comprehensive list of possibilities was generated in order to spur productive conversation as to how the District could continue to support students while simultaneously addressing the structural deficit. Discussion centered on an evaluation of the opportunities, challenges and financial impact of each strategy.

## Ideas for Consideration

Through this discussion, the group was able to drill down to categories of innovative ideas for serving students more efficiently. The changes proposed below are not intended to be prescriptive, but rather to be the start of a community conversation about choices that, if enacted, would allow the District to serve students efficiently while closing the structural deficit.



### Idea #1:

#### **Maximize District Revenue**

#### **Strategy A: Advocate for Additional Government Funding**

**Potential Revenue Increase: \$10M - \$30M**

**Timeline: 1 – 5 years**

The Rochester City School District is a fiscally dependent school district and therefore cannot levy taxes. The District can impact revenue in the by lobbying state government officials to fully fund proposed Foundation Aid increases, lobbying state officials to increase other supports for education, lobbying local government officials to continue their support of the District's needs, and continuing to search for and secure additional grant funding.

## **Idea #2:**

### **Reconfiguration of the District Footprint**

#### **Strategy A: School and Program Consolidation**

**Potential Savings: \$13M - \$22M**

**Timeline: 1 – 5 years**

While the District has experienced a steady decline in enrollment, it operates some small schools across a variety of grade level configurations, leading to the operation of underutilized schools and under filled classrooms. Additionally, multiple alternative programs offer similar instructional and social-emotional experiences for students that require further investigation of their academic return on investment.

The RCSD has an opportunity to have fewer sites by making adjustments to the District's footprint, potentially including reducing the number of schools and programs in the system and/or the number of classrooms across schools. Additional savings could be found by transferring programs and services from leased space to RCSD-owned buildings.

While rightsizing the footprint ultimately is an important strategy for addressing structural issues, short-term financial impact depends on staff needed, the number of buildings and programs that are affected and where efficiencies can be found.

## **Idea #3:**

### **Examination of Salaries and Benefits**

#### **Strategy A: Staffing "True-Up" Based on Enrollment and Contract**

**Potential Savings: \$25M - \$60M**

**Timeline: 1 – 5 years**

As noted in Part II of the report, District enrollment is declining but it retains the lowest staff-student ratio among comparable urban districts, including teacher-student and administrator-student, often staffing buildings and programs well over and above what is required by Federal, State, and Local mandates.

Potential changes could include phasing out of instructional positions that don't provide direct services to students, redeploying these staff to positions that have an increased focus on providing direct instruction to students, saving approximately \$1.5 million per year over five years. Another change could be an adjustment of the baseline number of teachers per building to match enrollment trends and contractual requirements for provision of core instruction, potentially saving approximately \$15 million in year one, and \$5.4 million years in years two through five. Additionally, a gradual "true-up" of building-level administrators could be explored, saving \$2 million per year for the next five years. Addressing wage growth is one of the ways to significantly slow the rate of annual expenditures. However, there are several factors to consider when exploring this option, including the partnerships that are required with affected bargaining units, and the fact that in maintaining a low staff-student ratio, the District is equipped to develop close relationships with students and their families in order to provide the powerful, personalized learning that the RCSD is committed to offering its students.

## **Strategy B: Maximizing Efficiencies at Central Office**

**Potential Savings: \$5M**

**Timeline: 1 – 3 years**

The RCSD continuously looks to protect school budgets as much as possible. Historically, in times of budget crisis, the District has focused on reductions to Central Office as much as possible, and continues to do so. With a gradual phase-out of eight to ten Central Office administrator positions per year, over the next three years, the District could be poised to have a cost avoidance of at least \$5M. The RCSD needs to examine closely its Central Office systems and structures, assessing each function to determine the degree to which the function is directly supporting schools, and whether it can be performed more efficiently.

### **Idea #4:**

## **Maximize Transportation Efficiencies**

### **Strategy A: Renegotiate Service Contracts**

**Potential Savings: \$5M - \$33M**

**Timeline: 1 – 5 years**

Contracted transportation costs have increased nearly \$20 million since 2012. The current five-year transportation contract between RCSD and Regional Transit Service (RTS) compensates the RTS for the transportation of students to and from school based on the District's projected enrollment of eligible student riders. In the 2016-2017 school year, 7,744 students used RTS buses, for a cost of \$10.8M, or \$7.66 per school day. This rate is significantly higher than the RTS rate for an adult, all-day unlimited Freedom pass, which is \$3.00. As outlined in the PTSI Efficiency Study Interim Report from 2017, a renegotiation of the RTS contract, adjusted for declining enrollment and with a rate reduction that is closer to the average RTS cost for an adult fare, could save the District at least \$1M per year over the next five years.

All transportation contracts, should continue to be reviewed for efficiencies that best meet the needs of families and provide equitable access to high-quality opportunities for all students.

## **Strategy B: Exploration of Enrollment and Assignment Policies**

**Potential Savings: \$6.5M**

**Timeline: 1 – 5 years**

Under the RCSD's current "managed choice" policies, students and families are afforded the option to attend a school closest to their home or within their zone. The District has a high rate of transience within its student population (25%), and when a student moves, he or she has the option to remain in their current school and continue to receive transportation service, even if the school is outside of student's new zone. Additionally, when parents choose childcare providers outside of their zone, the District's current practice is to provide transportation to and from the child's school and the childcare location. (PTSI Efficiency Study Interim Report, 2017).

One of the options presented for consideration within the Path Forward is a "fixed" managed choice option in which children, who move from zone to zone, would be placed into a school within their new zone. Estimated annual savings in shifting to this model of school choice could be as much as \$1.3 million per year, for a five year total of \$6.5 million, as noted in the PTSI Efficiency Study Interim Report, 2017.

## Idea #5:

### **Review of Programming as Aligned to Student Need**

#### **Strategy A: Review Expanded Learning Opportunities (Expanded Day and Summer Programs)**

**Potential Savings: \$5M – \$25M**

**Timeline: 1 – 5 years**

Per New York State mandate, schools in Priority accountability status must offer minimally 200 hours of expanded learning time to at least 50% of their students. This requirement can be met through expanding the school day or through offering students additional programming during summer months. The RCSD currently operates expanded day programming in 17 schools, three of which are schools in Good Standing, not requiring expanded time. Additionally, at least 80% students within the 17 schools in which expanded school day is offered attend summer programming. While the District acknowledges the positive impact that additional instructional time has on student achievement, there is potential to redesign these programs to be more efficient and impactful. Redesign of expanded learning programs and summer programming have a potential to unlock approximately \$25 million over five years. Reinvesting this resource into improvement of effective first teaching could indirectly reduce expanded learning costs in the future.

#### **Strategy B: Assessment of Contracted Services Costs**

**Potential Savings: \$5M**

**Timeline: 1 – 5 years**

The District currently relies significantly on contracts with community partners to support certain District priorities. There is an opportunity to assess the District's contracts to determine whether the District's reliance on contracts for services can be reduced and reinvested in District personnel to support student achievement. A \$1 million reduction in contracted services per year could potentially yield the District an approximate 10% savings over five years.

Additionally, in the 2015 – 2016 school year, East High School entered into an educational partnership with the University of Rochester to support school turnaround efforts as a Receivership school. In forecasting the school's budget and aligned to actual expenditures, the District has the potential to have a cost savings of approximately \$2 million for the 2019-2020 school year.

## Fiscal Summary of Potential Ideas

Factor	Action Strategy	Fiscial Impact of Potential Ideas of 5 Years (Dollars in Millions)	
		Projected Minimum	Projected Maximum
Idea 1: Maximize District Revenue	Advocate for Additional Governmental Funding	\$10.0	\$30.0
Idea 2: Reconfigure of the DIstrict Footprint	School and Program Consolidation	\$13.0	\$22.0
Idea 3: Examination of Salaries and Benefits	A. Staffing "True Up" Based on Enrollment and Contract	\$25.0	\$60.0
	B. Maximize Efficiencies at Central Office	\$5.0	\$5.0
Idea 4: Maximize Transportation Efficiencies	A. Renegotiate Service Contracts	\$5.0	\$33.0
	B. Exploration of Enrollment and Assignment Policies	\$6.5	\$6.5
Idea 5: Review of Programming as Aligned to Student Need	A. Review Expanded Learning Opportunities (Expanded Day and Summer Programs)	\$5.0	\$25.0
	B. Assessment of Contracted Service Costs	\$5.0	\$5.0
<b>TOTAL</b>		<b>\$74.5</b>	<b>\$186.5</b>

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