

**NEW BEDFORD EDUCATORS ASSOCIATION'S APPEAL
OF THE COMMISSIONER'S LEVEL 5 TURNAROUND PLAN
FOR THE JOHN AVERY PARKER SCHOOL,
NEW BEDFORD MASSACHUSETTS**

**Submitted
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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. THE BOARD’S ROLE AND OBLIGATIONS.....2

III. RELEVANT BACKGROUND

PARKER’S HISTORY SHOWS THAT ITS TEACHERS WERE KEY TO ITS STUDENTS
SHOWING PROGRESS IN ACADEMIC ACHIEVEMENT DESPITE CHALLENGING
CIRCUMSTANCES4

IV. GROUNDS FOR APPEAL.....9

A. THE COMMISSIONER FAILED TO MEET THE REQUIREMENTS OF G.L. c. 69,
§ 1J(p) BY FAILING TO ENSURE THAT THE LSG HAD THE OPPORTUNITY TO
REVIEW, FULLY DELIBERATE, AND OFFER MODIFICATIONS ON ALL NECESSARY
PROVISIONS OF THE PLAN12

B. THE PLAN FAILS TO INCLUDE THE STATUTORILY REQUIRED FINANCIAL PLAN 16

C. KEY PARTS OF THE PLAN CONCERNING EDUCATIONAL PRACTICE ARE
INSUFFICIENT TO REALIZE THE OVERARCHING GOAL OF MAXIMIZING
THE RAPID ACADEMIC ACHIEVEMENT OF STUDENTS AT PARKER17

1. The Board must make the following modifications necessary for the Final Plan
to comport with the requirements of the statute and move sufficiently towards
the statutory goal of maximizing the rapid academic achievement of students.....17

2. The Board should make the following modifications to the Final Plan as these
steps will further promote maximizing the rapid academic achievement of
students 25

D. THE FINAL PLAN IS STATUTORILY DEFICIENT BECAUSE THE EFFECT OF THE PLAN
ON TEACHING CONDITIONS WILL NEGATIVELY IMPACT THE RAPID ACADEMIC
ACHIEVEMENT OF STUDENTS AT PARKER IT DIRECTLY CONFLICTS WITH THE
STATUTE’S PROHIBITION AGAINST THE RECUTION IN TEACHER COMPENSATION30

1. The Final Plan’s compensation model dramatically reduces the rate of pay
for Parker teachers, which is contrary to the statute, will not attract and
retain highly qualified teacher, and thus undermines the Final Plan’s ability
to maximize the rapid academic achievement of students.....31

2. It has not been established either in the research or through local experience that pay-for-performance systems either improve teacher performance or promote the rapid academic achievement of students	35
a. Research does not support PFP	35
b. The Parker experience does not support PFP.....	37
c. The Lawrence experience cannot be applied to Parker	37
d. Student growth scores are unreliable in determining teacher quality	38
3. The lack of a neutral dispute resolution process undermines a culture of success and inhibits the rapid academic achievement of students	41
V. CONCLUSION.....	43
SUMMARY OF REQUESTED MODIFICATIONS	44
LIST OF ATTACHMENTS	

I. INTRODUCTION

On April 9, 2014, Commissioner Mitchell Chester (“the Commissioner”) issued his final Level 5 turnaround plan (“Final Plan”, Attachment A) for the John Avery Parker Elementary School (“Parker”) in New Bedford, Massachusetts. Members of the New Bedford Educators Association¹ (“NBEA”) have been on the frontline at Parker, witnessing the struggles of their students with external forces such as poverty, hunger, and other social and emotional trials while they simultaneously strive to learn in the classroom. Parker students’ efforts in the classroom have not been helped by the lack of adequate financial support to the school, which has contributed to a lack of curriculum supports, technology, and other necessary educational tools. Yet despite these challenges – most of which are outside their control – Parker educators have been dedicated to their students and found ways to help them realize educational growth.

Despite three years as a “Level 4” school, Parker still did not receive the commitment of financial resources to fully realize the potential of its students’ growth and student growth scores – while improving – are still behind many of their peers across the state. Parker educators and the NBEA are committed to helping to turnaround the school but doing so will take much more than a plan to improve teacher performance. It will take commitment and leadership at all levels, not just at the school or district level, but at the state level by the Board of Elementary and Secondary Education (“the Board”), as Parker is now under the control of the state.

To accomplish meaningful and sustainable change, Parker needs a turnaround plan that is more than aspirational. Change that will result in the rapid academic achievement of students requires a plan that provides the fine details, including how those details will be financially supported. Unfortunately, the Final Plan developed by the Commissioner is surprisingly underdeveloped given that Parker spent three years as a Level 4 school. As a Level 4 school, management and control was turned over to the superintendent. As a Level 5 school, the Commissioner appointed the same superintendent as his receiver; all the same players are involved. Therefore, there is absolutely no reason why the turnaround plan is not fully fleshed out, providing specific details about curriculum, how programs will be developed and implemented, and steps that will be taken to address the non-school conditions impacting learning. After three years as a Level 4 school, a turnaround plan that largely commits to “reviewing”, “studying”, and “developing plans” is not good enough – those actions should have been done already.

Moreover, the turnaround of Parker should not be accomplished at the expense of the hard-working, dedicated educators at the school. The Final Plan institutes extreme changes to working conditions – and thus teaching conditions – that has driven the very same educators who helped Parker students improve to flee the school. A turnaround plan that reduces the

¹ The NBEA is the exclusive bargaining representative under G.L. c. 150E of professional educators employed in New Bedford Public Schools, including those employed at Parker.

rate of compensation of educators, implements a compensation scheme that is unproven and based on unreliable determinatives, and provides no fair and neutral dispute resolution procedure cannot and will lead to a “culture of success”. To the contrary, it punishes those who have worked the hardest and will be a detriment to the recruitment and retention of high-quality teachers.

Since the Final Plan is statutorily deficient and inadequate to realize meaningful and sustainable academic achievement of students, the Board must exercise its constitutional and statutory responsibilities to modify it. Only then can Parker turnaround and the Board fulfill its responsibility to ensure that *all* students in the Commonwealth reach their full potential, including those at Parker.

II. THE BOARD’S ROLE AND OBLIGATIONS

This appeal is filed by the NBEA on behalf of its members pursuant to G.L. c. 69, § 1J(q), seeking modification of the Commissioner’s Final Plan. In October 2013, the Commissioner determined that Parker was chronically underperforming and designated it a “Level 5 school” – “the most serious category in Massachusetts’ accountability system, representing receivership.”² Simply put, Parker has become a state-run school.

The Massachusetts Achievement Gap Act of 2010, St.2010, c. 12, § 3, sets forth the statutory framework and process for officials at the state level to develop a comprehensive turnaround plan for the governance and operation of a Level 5 school. This plan must meet the statutory goal of “maximizing the rapid academic achievement of students.” G.L. c. 69 §1J(m).³ This appeal to the Board of Elementary and Secondary Education (“Board”) is the final opportunity in the comprehensive, statutory procedure for the state to receive input into its turnaround plan for the school for which the Board is now accountable. This appeal thus presents Board members with a vital and painstaking task.

The Board’s constitutional, as well as its statutory, responsibilities to guarantee the adequate education of Massachusetts children underlie its consideration of whether the turnaround plan is sufficient to promote rapid academic achievement. The education clause, Part II, c. V, § II, of the Massachusetts Constitution “impose[s] an enforceable duty on the magistrates and Legislatures of this Commonwealth to provide education in the public schools for the children there enrolled, whether they be rich or poor and without regard to the fiscal capacity of the community or district in which such children live.”⁴ In enacting the Education Reform Act of 1993 (“ERA”), the Legislature codified the policy that a quality public education for *all* children is a paramount goal of the commonwealth:

² <http://www.doe.mass.edu/apa/sss/turnaround/level5/schools/default.html>.

³ A copy of the relevant portions of G.L. cl 69, § 1J is attached at Attachment B for the Board’s reference.

⁴ *McDuffy v. Sec’y of the Exec. Office of Educ.*, 415 Mass. 545, 621 (1993).

It is hereby declared to be a paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to all children, including a school age child with a disability as defined in section 1 of chapter 71B the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy. It is therefore the intent of this title to ensure: (1) that each public school classroom provides the conditions for all pupils to engage fully in learning as an inherently meaningful and enjoyable activity without threats to their sense of security or self-esteem, (2) a consistent commitment of resources sufficient to provide a high quality public education to every child, (3) a deliberate process for establishing and achieving specific educational performance goals for every child, and (4) an effective mechanism for monitoring progress toward those goals and for holding educators accountable for their achievement.

G.L. c. 69, § 1.

Of course, it is the Board that has primary responsibility for ensuring that the Commonwealth's public education system provides students the "opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy." *Id.* Pursuant to G.L. c. 69, the Board has broad responsibilities and for establishing educational policy and supervising public education in the Commonwealth. "The board shall establish policies relative to the education of student in public early childhood, elementary, secondary and vocational-technical schools." G.L. c. 69, § 1B, ¶ 1. The board shall "establish the process and standards for declaring a school, or school district to be 'under-performing' or 'chronically underperforming' in accordance with the provisions of this chapter." G.L. c. 69, § 1B, ¶ 11. And numerous other paragraphs of G.L. c. 69, § 1B vest comprehensive authority in the board in areas of educational policy (establishment of participatory management systems, certification standards, systems of personnel evaluation, maximum pupil-teacher ratios for classes, minimum standards for public school buildings, etc.)

The Board's role in the appeals process is an important extension of its responsibilities to ensure that the education system is robust for all students in the Commonwealth. The statute thus gives the Board the final say in making modifications to the plan that will give Parker while under its auspices.

The turnaround plan may be modified by a majority of the Board if it determines that:

(1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably false information or evidence; or (3) the Commissioner failed to meet the requirements of subsections (m) to (p), inclusive.

G.L. c. 69, § 1J(q). The grounds supporting the Association’s appeal for modification of the plan are set forth in detail later in this appeal. In sum, the Commissioner’s Final Plan (and the process) fails to ensure the rapid academic achievement for these vulnerable students in that it is inconsistent with the mandatory requirements of G.L. c. 69, 1J, subsections (m) to (p), inclusive; it shies away from incorporating proven strategies for advancement of student achievement; and it includes experimental policy decisions irrelevant (and destructive) to the goal of improving student achievement.

There is nothing in statute or the constitution that requires the Board to defer to the Commissioner in ruling on the Association’s appeal. The Commissioner is the secretary to the board, its chief executive officer and the chief state school officer for elementary and secondary education. See G.L. c. 15, § 1F. However, he does not have a vote. Irrespective of the Commissioner’s motivations for designing a particular turnaround plan, the Board has the independent statutory authority to comply with the intent of the constitutional and the ERA, and it must ensure appropriate learning conditions, the consistent commitment of sufficient resources, a deliberate process for establishing and achieving specific educational performance goals for every child, and an effective monitoring mechanism to gauge progress and to hold those responsible accountable. See G.L. c. 69, § 1.

This is a milestone in the Commonwealth’s education reform efforts. The Board and Department of Elementary and Secondary Education have had twenty-one years of experience in education reform efforts since the seminal decision in *McDuffy* and adoption of the ERA. The Board must bring this wealth of experience and best practices to bear now that it is in charge of education for a specific school and targeted students. The turnaround plan should be a model of how to secure the desired results with all due speed, and sufficient in detail to assure the stakeholders and the public-at-large that the programs and resources are planned to accomplish success. If additional resources are needed, including funding, the Board must seek them. The Board’s decision on this appeal will reflect its political and policy judgments about whether the turnaround plan is adequate; whether it is sufficiently funded; whether it is sustainable, and whether it provides the quality education these students deserve to reach their full potential and for the commonwealth to reap the benefits of their contributions to the economic, political and social fabric of the commonwealth.

III. RELEVANT BACKGROUND

PARKER’S HISTORY SHOWS THAT ITS TEACHERS WERE KEY TO ITS STUDENTS SHOWING PROGRESS IN ACADEMIC ACHIEVEMENT DESPITE CHALLENGING CIRCUMSTANCES.

Parker Elementary School is a K-5 school in New Bedford, Massachusetts with approximately 292 students. 88% of its students are low-income with 84.2% eligible for free lunch and the other 3.8% receiving reduced-cost lunches. 27.4% are students with disabilities receiving special education services (approximately 80 students); twenty-one of them are in substantially separate special education classrooms. Additionally, 90% of Parker students are

considered “high needs.”⁵ (Attachment C.) Parker kindergarten teachers state that there are students that enter kindergarten unprepared, especially among students with disabilities. Yet only 4% of eligible neighborhood students attend the Parker’s pre-K program. Final Plan, p. 13. Therefore, many Parker students start school at a distinct disadvantage.

Parker students face other challenges as well. 88.2% of Parker teachers responding to a survey reported that their students (not just kindergarten students) do not have the precursor skills and prior knowledge needed to learn in their classroom. (Attachment D.⁶) 58.8% of the teachers ranked student readiness as the most significant or next to most significant challenge in their school/classroom over the last three years. *Id.* And more than a third of the teachers reported that their students often come to school hungry or tired. *Id.*

The Commissioner declared Parker a Level 4 school during the 2009-10 school year but by the fall of 2010 when a new principal came in, there was still no turnaround plan approved for implementation. In fact, the Level 4 turnaround plan (Attachment E) was not completed until the spring of 2011 so Parker in effect had only two years of operating under a turnaround plan before it was declared a Level 5 school. During this time of uncertainty, staff turnover was high – 30.4% in 2010 and 25% in 2011 before stabilizing somewhat (15% in 2012). (Attachment C.)

But the turnover was not just with staff. Parker also has had substantial mobility among its student population over the past few years. In 2010-11, there was 20% churn (percentage of students who transfer into and out of a school through the school year) of students over the course of the year; in addition, 22.9% of the students did not return to the school for the next school year. In 2011-2012, the churn rate rose to 28.6% and 13.4% did not return for 2012-13. In 2012-13, the churn rate rose again to 30.3%, and 16.8% did not reenroll in 2013-14. Attachment C. The instability of staff and students negatively impact the continuity of instruction and the ability to meet student needs consistently through their elementary school years. Instability in student population also impacts growth scores as teachers are not teaching the same students through a curriculum that is ideally aligned throughout the grade levels.

In addition to the delayed implementation of a turnaround plan and high staff and student turnover, Parker did not get the support and resources necessary to succeed under the Level 4 plan. For example, prior to being designated Level 4, Parker had full-time math and reading coaches. But those positions were eliminated by the district after Parker became Level 4. Parker only was assigned a reading coach at 20% time in the spring of 2011; ELA SGP⁷

⁵ The “High needs” group is an unduplicated count of all students in a school or district belonging to at least one of the following subgroups: students with disabilities, English language learners (ELL) and former ELL students, or low income students (eligible for free/reduced price school lunch).

⁶ The NEBA surveyed teachers at Parker in November 2013. 17 of 19 teachers responded.

⁷ Student Growth Percentiles (“SGP”) measures how a group of students’ achievement has grown as measured by scores on the Massachusetts Comprehensive Assessment (“MCAS”) test relative to other students statewide with

dropped from 41.5 to 40 that year. The next year Parker had a reading coach assigned for 30% time; ELA SGP rose to 52. The following year, the reading coach time was cut to 20%; ELA SGP dropped to 50. To further establish the value of instructional coaches to student performance, in 2012-13 when Parker finally had a full-time math coach again, its Math SGP hit 60 and its CPI⁸ *rose more than 6 points*, from 68.8 to 75. That a district would eliminate instructional coaching positions in a struggling school designated Level 4 is hard to believe and yet that is exactly what occurred.

Moreover, despite being a Level 4 school, Parker teachers were not provided with sufficient curriculum supports. There was no comprehensive science curriculum, the curriculum map and science kits were inadequate, and there was no professional development in this area. Moreover, supporting materials for the science kits were not available and there was inadequate vertical articulation of the science curriculum. Additionally, there was *no* math curriculum.

The technology deficits are equally glaring. Parker classrooms only have one to five computers each (plus a central computer lab) and all are very old. More importantly, they do not support many of the on-line resources teachers are expected to use. They also all run Microsoft XP, which is no longer being supported by Microsoft and thus they are vulnerable to corruption and technical failure that could render them unusable.⁹

The language of the Level 4 turnaround plan for Parker included specific strategies to address the social and emotional supports needed by its students to help them “arrive and remain at school ready to learn.” G.L. c. 69, § 1J(n); Attachment E, pp. 19-21. But Parker teachers report that there was little to no follow-through on the steps in the Level 4 plan concerning these wrap-around services. Therefore, whether due to lack of follow-through by administrative leadership, lack of funding,¹⁰ or both, the wrap-around services goals were not met. As a result, parental involvement is still extremely low, discipline issues continue to disrupt teaching and learning, and teachers report that they are not feel adequately trained to deal with these issues.

Unfortunately, based on reports from staff at Parker, the NBEA is concerned that there is a lack of capacity at the administrative level. A new principal came to Parker at the start of

similar MCAS score history. 603 CMR 2.02. Achieving a median SGP at least one point above the state median (i.e., 51) is considered to be on target. “ELA” is the English Language Arts area of testing.

⁸ Composite Performance Index (“CPI”) measures progress towards narrowing the proficiency gap between a baseline performance measure in 2011 and targeted proficiency measure. All groups are expected to halve the distance between their baseline performance in 2011 and proficiency by 2017.

⁹ <http://www.microsoft.com/en-us/windows/enterprise/end-of-support.aspx>.

¹⁰ Parker was the only school of the thirty-four schools initially designated Level 4 that did not receive a School Redesign Grant.

the 2013-14 school year. Teachers have reported a failure of her administration to timely and appropriately address serious discipline issues, including violent behavior by students.¹¹ Teachers also state that this school year there was inadequate advance planning for professional development time, resulting in what they viewed as subpar professional development that was poorly designed and poorly delivered professional development.

Moreover, prior to March of this school year, the principal largely failed to conduct observations required as part of the district's evaluation system. Teachers therefore did not receive feedback to incorporate into their teaching practice early enough to have an impact on their students' learning. Additionally, teachers have reported that the principal's late year rush to conduct observations has resulted in uninformed and unsubstantiated evaluations that offer little in the way of constructive comments or applicable suggestions for improvement. In addition, this constituted failure of leadership under the Level 4 plan as well, which states that "a clear process is used to evaluate staff, offer feedback, develop professional improvement goals, and provide support in meeting those goals." (Attachment E, p. 18.) Simply put, it appears that the person in charge of providing teachers the on-going feedback vital to ensuring that they were effectively utilizing best instructional practices was not doing her job. Issues with violations of the evaluation process were not limited to Parker, however, but has been experienced district-wide, and thus the NBEA is pursuing a "class action" (district-wide) grievance.¹²

Despite these challenging circumstances, Parker teachers strove to provide the best educational services they could and Parker students have shown significant improvement. Over the last three years, Parker met its targets toward narrowing the proficiency gaps in the "all students" and "high needs students" categories with a PPI rating of 83 and 80, respectively.¹³ And despite the lack of a math curriculum, Parker teachers knew what their students needed to learn and developed their own curriculum that resulted in the number of students who scored advanced in math to triple from 5% to 18%, with the number of students scoring proficient and advanced rising from 24% to 42%. Correspondingly, the number of students scoring in the warning and failing range during that time dropped from 21% to 14%. See Figure 1 (also found

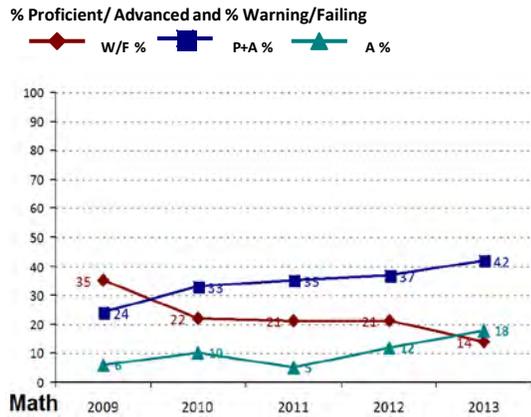
¹¹ Appendix B (Student Rates) of the Final Plan shows an unusually high number of violent incidents at an elementary school the size of Parker – 7 each in 2012 and 2013. Parker teachers state that it is a small number of students who are causing disproportionately high rates of disruption. But the problem continues because of a lack of leadership and will to strongly deal with disruptive students and issue appropriate discipline for violent incidents. Furthermore, much of the staff does not feel they have been adequately trained to deal with such violent, disruptive behavior.

¹² The grievance is considered by the parties to be a "living document" with new issues being brought to light on an on-going basis. Attachment F contains the superintendent's response to the allegations as of May 5, 2014. The NBEA does not necessarily concede to the accuracy of any specific response but the list of alleged violations of the evaluation procedures is instructive here.

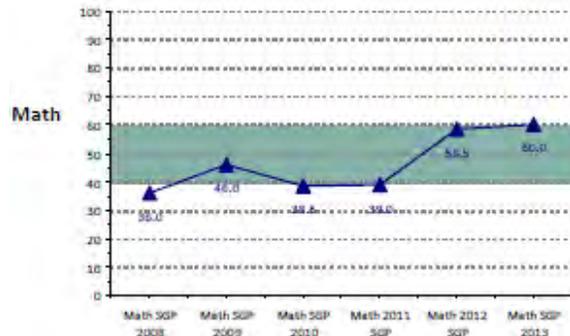
¹³ Progress and Performance Index ("PPI") measures seven categories of data: CPI, SGP, dropout rates, graduation rates, percent students scoring "advanced" on MCAS, percent students scoring "proficient/advanced" on MCAS, and percent students scoring "warning/failing" on MCAS. Schools scoring 75 or higher have met their target.

at Attachment C). Moreover, the Math SGP increased from 39 to 60 from 2011 to 2013 (39 to 60) and the Math CPI increased from 54.1 to 75 from 2008 to 2013. *Id.* Parker teachers have been teaching math skills that have led to math scores being on a consistent upward trajectory.

Figure 1

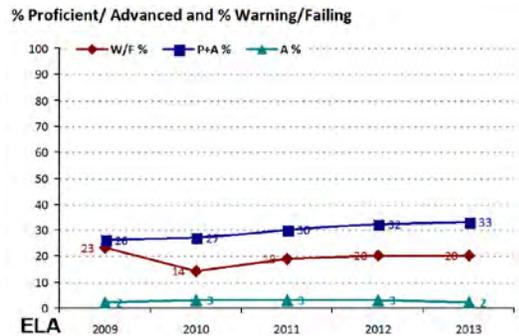


SGP Student Growth Percentile measures how students' MCAS scores have changed over time

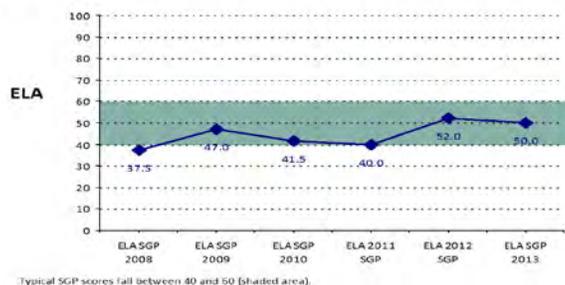


In ELA, the number of students scoring proficient and advanced also increased every year since 2010, albeit not as dramatically as the Math scores. *See* Figure 2 (also found at Attachment C). In addition, every year since 2008, the ELA SGP has been in the “typical” range (40-60), even rising from 40 to 50 from 2011 to 2013. *Id.* The ELA CPI has also increased every year since 2011. Certainly, there is still a lot of work to do in ELA but the building blocks are there, despite the teachers not having adequate coaching and curriculum supports.

Figure 2



SGP Student Growth Percentile measures how students' MCAS scores have changed over time



Interestingly, under the exit criteria currently used for Level 4 schools (authorized as part of Massachusetts' flexibility waiver from the Elementary and Secondary School Act), Level 4 schools need to achieve a cumulative PPI of 75 or higher in the aggregate and for all subgroups of students by the end of the turnaround period. As Parker's aggregate PPI is 83 and high needs students PPI is 80, its performance was well above the threshold to exit Level 4

provisions intended to accomplish that goal. *See id.* In crafting the turnaround process, the Legislature explicitly recognized that any turnaround plan for a chronically underperforming school must include concrete steps to address core societal issues that interfere with students' ability to learn. Thus, the statute requires the Level 5 turnaround plan to include provisions setting:

- steps to address social service and health needs of students and their families so that students arrive and remain at school ready to learn;
- steps to improve child welfare and (if necessary) law enforcement services to promote a safe and secure learning environment;
- steps to improve workforce development services to provide meaningful employment skills for students and families;
- steps to address achievement gaps for low income, special education, and limited English proficient students; and
- provisions for alternative English language learning programs for limited English proficient students.¹⁶

G.L. c. 69, § 1J(n). In addition, a turnaround plan must include a financial plan. *See id.* These are the six statutorily mandated provisions for a turnaround plan that the Legislature identified as necessary to maximize rapid academic achievement.

Not surprisingly, the Legislature also built in accountability for the turnaround process that must also be included in a turnaround plan. A turnaround plan shall include, but not be limited to, thirteen measurable annual goals” that assess a school across multiple measures of school and student performance.¹⁷ *See* G.L. c. 69, § 1J(n). Thus, including measurable annual goals is another statutorily mandated part of a turnaround plan.

The Legislature then identified sixteen flexibilities or authorities available to the Commissioner as specific steps that may be necessary in a school to meet the statute’s goal of

¹⁶ This does not appear to be an issue at Parker and is not addressed in the Final Plan.

¹⁷ “In order to assess the school across multiple measures of school performance and student success, the turnaround plan shall include measurable annual goals including, but not limited to, the following: (1) student attendance ,dismissal rates and exclusion rates; (2) student safety and discipline; (3) student promotion and graduation and dropout rates; (4) student achievement on the Massachusetts Comprehensive Assessment System; (5) progress in areas of academic underperformance; (6) progress among subgroups of students, including low income students as defined by chapter 70, limited English proficient students and students receiving special education; (7) reduction of achievement gaps among different groups of students; (8) student acquisition and mastery of 21st-century skills; (9) development of college readiness, including at the elementary and middle school levels; (10) parent and family engagement; (11) building a culture of academic success among students; (12) building a culture of student support and success among school faculty and staff; and (13) developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable.” G.L. c. 69, § 1J(n).

rapid advancement of academic achievement.¹⁸ See G.L. c. 69, § 1J(o). This is not intended to be an exhaustive list of the steps the Commissioner may take to support the mandated provisions but rather reflects the Legislature’s thinking of the most likely steps that may be required depending on the needs of the particular Level 5 school. That is, it is not a checklist but rather possible ways to accomplish the mandates such as closing achievement gaps. The statutorily mandated provisions, the required measurable annual goals, and the authorities granted to the Commissioner are all part of the process to meet the statutory goal of “maximizing rapid academic achievement”, and any critical review of the components of a turnaround plan (these required provisions and steps available to support them) must be framed by this overarching goal.

Therefore, it is against this statutory framework that this appeal addresses the Parker Final Plan. What becomes apparent upon review is that the Final Plan is deficient in multiple ways in meeting its statutory mandates and is inadequate to maximize rapid academic achievement of students. Where the Final Plan fails to include all the statutory requirements, it is in violation of G.L. c. 69, § 1J(n) and the Board must ensure it meets the statutory

¹⁸ “[T]he Commissioner may, after considering the recommendations of the group of stakeholders: (1) expand, alter or replace the curriculum and program offerings of the school, including the implementation of research based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses; (2) reallocate the uses of the existing budget of the school; (3) provide additional funds to the school from the budget of the district, if the school does not already receive funding from the district at least equal to the average per pupil funding received for students of the same classification and grade level in the district; (4) provide funds, subject to appropriation, to increase the salary of an administrator, or teacher in the school, in order to attract or retain highly qualified administrators or teachers or to reward administrators, or teachers who work in chronically underperforming schools that achieve the annual goals set forth in the turnaround plan; (5) expand the school day or school year or both of the school; (6) for an elementary school, add pre kindergarten and full day kindergarten classes, if the school does not already have such classes; (7) limit, suspend, or change 1 or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school; provided, however, that the Commissioner shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced; and provided further, that the Commissioner may require the school committee and any applicable unions to bargain in good faith for 30 days before exercising authority pursuant to this clause; (8) following consultation with applicable local unions, require the principal and all administrators, teachers and staff to reapply for their positions in the school, with full discretion vested in the superintendent regarding his consideration of and decisions on rehiring based on the reapplications; (9) limit, suspend or change 1 or more school district policies or practices, as such policies or practices relate to the school; (10) include a provision of job embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; (11) provide for increased opportunities for teacher planning time and collaboration focused on improving student instruction; (12) establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (13) establish steps to assure a continuum of high expertise teachers by aligning the following processes with the common core of professional knowledge and skill: hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (14) develop a strategy to search for and study best practices in areas of demonstrated deficiency in the school; (15) establish strategies to address mobility and transiency among the student population of the school; and (16) include additional components, at the discretion of the Commissioner, based on the reasons the school was designated as chronically underperforming and the recommendations of the local stakeholder group in subsection (m).” G.L. c. 69, § 1J(o).

requirements. Where the Final Plan fails to meet the goal of maximizing rapid student academic achievement, the Final Plan is statutorily deficient and the Board must modify it. See G.L. c. 69, § 1J(q)(1)-(3).

When reviewing the Final Plan, the Board should also pay consideration to the multiple areas where the Commissioner rejected initial recommendations of the LSG and/or subsequent proposed modifications to his preliminary plan. Given the value the Legislature put on the input of the LSG, the Commissioner cannot just reject LSG recommendations and modifications without sufficient justification. The burden is on the Commissioner to articulate and support sufficient reasons for rejecting the consensus of the stakeholders, each of whom has specific education interests and expertise. Instead, the Commissioner provided comments dismissive of the LSG proposals without sufficient reasoning or support (for example, that he was “not convinced” it was needed). As well, where the LSG was not given the opportunity to weigh in on provisions mandated by statute to be included in the plan, that requires a modification by the Board to mitigate the damage. See G.L. c. 69, § 1J(q).

Another important consideration for the Board is that the Final Plan makes extreme changes to teachers’ working conditions that have driven almost the entire staff from Parker for the next school year. These changes will also make it difficult to recruit and, equally important, retain high quality teachers. Research has shown that “teacher turnover has a significant and negative effect on student achievement in both math and ELA. Moreover, teacher turnover is particularly harmful to students in schools with large populations of low-performing [] students.”¹⁹ Therefore, the high teacher turnover resulting from these changes will have a negative impact on the ability of the Final Plan to maximize the rapid academic achievement of students. In this regard, the Final Plan does not meet the goal of the statute and the Board must modify it.

A. THE COMMISSIONER FAILED TO MEET THE REQUIREMENTS OF G.L. c. 69, § 1J(p) BY FAILING TO ENSURE THAT THE LSG HAD THE OPPORTUNITY TO REVIEW, FULLY DELIBERATE, AND OFFER MODIFICATIONS ON ALL NECESSARY PROVISIONS OF THE PLAN.

In enacting the Achievement Gap Act, the Legislature clearly envisioned that local stakeholders in the district and community would play a vital role in creating a plan of action to turnaround underperforming schools. To maximize the rapid academic achievement of students, the statute sets forth a detailed process of how a turnaround plan is to be created. As part of that process, the Legislature recognized that the Commissioner cannot possibly create an effective turnaround plan in a vacuum and that forces influencing student learning extend beyond the walls of the school. Therefore, even prior to the Commissioner issuing a

¹⁹ Matthew Ronfeldt, Hamilton Lankford, Susanna Loeb & James Wyckoff, *How Teacher Turnover Harms Student Achievement* 17 (Nat’l Bureau of Econ. Research, Working Paper No. 17176, 2011) (“turnover has a harmful effect on student achievement, even after controlling for different indicators of teacher quality, especially in lower-performing schools.”) (http://www.nber.org/papers/w17176.pdf?new_window=1.)

preliminary plan, the statute requires that he convene a local stakeholder group (“LSG”) of up to thirteen members comprised of representatives of: the district and school administration; the school committee; the teachers; the parents; the teacher’s union; state and local social service, health and child welfare agencies; early education and care providers; and the community. The role of the LSG at this stage is to give the Commissioner recommendations on what they believe is necessary for the plan to attain rapid academic achievement. See G.L. c. 69, § 1J(m). With each of these members bringing different knowledge, experience, and perspective to the process, the Legislature sought to ensure that the Commissioner had broad input from experts and the community in drafting a turnaround plan.

The statute further requires the Commissioner “to give *due consideration*” to the LSG’s recommendations in creating the turnaround plan. G.L. c. 69, § 1J(m). This consideration of LSG recommendations extends to determining what statutorily authorized flexibilities the Commissioner exercises in creating the turnaround plan, such as: curriculum changes; allocation of funds; expanding the school day or year; limiting, suspending or changing collective bargaining agreements and/or district policies; providing pre-kindergarten and full day kindergarten; and so on. See G.L. c. 69, § 1J(o). But the role of the LSG does not end there – the LSG also has the opportunity to propose modifications to the Commissioner’s preliminary turnaround plan. Their role is not to be given just lip-service. Instead, the Commissioner “*shall consider and incorporate the modifications into the plan* if the Commissioner determines that inclusion of the modifications would further promote the rapid academic achievement of students.” G.L. c. 69, § 1J(p) (emphasis added).

With the importance of the LSG providing informed and meaningful recommendations to the turnaround process, procedural issues that arose in regard to the LSG’s ability to give input on all critical areas of the Final Plan are particularly concerning. When the LSG convened on March 24, 2014 to discuss the preliminary plan pursuant to G.L. c. 69, § 1J(p), four of the eleven members of the LSG did not attend. (Preliminary plan at Attachment H.) When stakeholders asked about their absence, the principal stated that they did not attend because they themselves had no modifications to suggest. Whether they had modifications to suggest or not is irrelevant; they had the obligation to participate in the discussion of possible modifications suggested by other LSG members.²⁰ Proposed modifications to the Commissioner come from the LSG as a whole, not from individual stakeholders. The stakeholders have the duty to fully discuss issues with the preliminary plan. While several members of the LSG were very concerned about proceeding with the meeting without the benefit of input from so many stakeholders, the superintendent ignored their concerns and proceeded with the meeting.

²⁰ In addition, the March 24 meeting itself was not conducted in a manner designed to maximize discussion and debate about proposed modifications to further promote rapid student academic achievement. The physical set up of the room and where people sat resulted in a physical split, with the superintendent and principal at one end of the room and all but one of the other stakeholders who were there at the other end. The visual divide was striking and gave the impression of opposing sides, which was enforced by the disrespectful attitude of the superintendent and the principal towards stakeholders who proposed modifications to the preliminary plan.

Not only did four stakeholders neglect to participate in the deliberations about modifications to the preliminary plan, but the group that convened was not given the opportunity to discuss and provide meaningful recommendations for modifications on key parts. One of the most troubling areas concerned the financial plan for the turnaround, or more accurately, the lack thereof. (Problems with the lack of a financial plan also are discussed in section IV.B, *infra*.) The preliminary plan at Appendix C only identified projected funding sources, with no dollar amount attached (except for the school-based appropriation, which did not contain a line-item budget) and those are only for the first year of the turnaround plan. This purported “financial plan” did not contain information on the total funds available or a budget of how those funds will be spent and therefore the LSG was not able to analyze and contribute their collective input on whether the funding would be sufficient to ensure the implementation and success of the turnaround. Nor could they give input through proposed modifications on prioritizing the funds in a way to ensure the rapid student academic achievement. Moreover, the LSG was not able to review the long-term viability of the turnaround plan because it was given no information on how the second and third year of the plan would be funded and how those funds would be spent. The Commissioner’s failure to include a true financial plan meant that the LSG could not make fully informed decisions regarding modifications. *See* G.L. c. 69, § 1J(p). Accordingly, the lack of a financial plan was a significant failing in the statutory process. *See id.*

Similar problems arose with other critical areas of the preliminary plan that were not included; specifically, the lack of a coherent school day and school year schedule and the lack of a fleshed out wrap-around services plan. (*See* sections IV.C.1, *infra*, for additional discussion.) The key point here is that the LSG again was not given the opportunity to review, deliberate, and provide modifications to these areas. This thwarts the intent of the statute in gathering such a diverse group with their respective experience and perspectives to lend their expertise to developing a turnaround plan best designed to further promote the rapid academic achievement of students.²¹ *See* G.L. c. 69, § 1J(p).

The conduct of the superintendent and principal also interfered with the ability of the LSG to deliberate and offer modifications to further promote rapid academic achievement on key provisions that were included. Two teachers on the LSG sought to discuss concerns with the extreme changes to working conditions for teachers included in the preliminary plan. The superintendent and the principal refused to engage in any discussion of issues appearing in Appendix A to the preliminary plan (which contains the same terms as Appendix A to the Final

²¹ Although the stakeholders managed some discussion about other modifications (albeit without the benefit of a financial framework), such discussions were frequently cut short by the superintendent and the principal, who quickly wanted specific language articulated and voted on. If a stakeholder tried to ask a clarifying question or raise a new concern during the vote, they were cut off. The attitude of the superintendent and principal and the artificially imposed voting system (it is not articulated in the statute) often curtailed discussions before stakeholders had a chance to fully explore the underlying concerns.

Plan), claiming that was solely for bargaining between the local union and the Commissioner.²² Other stakeholders pointed out that even though changes to working conditions were set forth separately in Appendix A, they also were *embedded throughout the Plan*. As provisions of the plan, it was their charge to determine if modifications were necessary to ensure the maximization of rapid academic achievement.

Moreover, there is nothing in the statute that forbids the stakeholders from proposing modifications to working conditions the are bargained with the local union pursuant to G.L. c. 69, § 1J(o)(7) because they require changes to the collective bargaining agreement. These changes to working conditions are changes to teaching conditions, which inevitably have a great impact on the education of students – and thus the success of the turnaround plan. Despite very impassioned presentations by the two teachers on the LSG, and the articulated concerns of other stakeholders of the impact of these changes on the ability of the plan to successfully turnaround Parker, the superintendent unilaterally refused to allow any proposed modifications from the LSG on terms found in Appendix A. The stakeholders (except for the superintendent and the principal) did vote to forward to the Commissioner a document with proposed modifications from the NBEA, which two stakeholders had provided to the LSG as part of their discussion. But this document was not considered “proposed modifications” entitled to statutory consideration by the Commissioner under G.L. c. 69, § 1J(p). (LSG Recommendations at Attachment I.)

The two teachers on the LSG warned that the impact of the extreme changes to working conditions would cause most Parker teachers to leave the school – not because they do not want to participate in the turnaround efforts but because the working conditions are patently unfair and burdensome (see discussion in section IV.D, *infra*).²³ The parent representative in particular was very concerned about the possibility of high staff turn-over and the instability that it will cause for the students, although she was not alone. However, since the superintendent and the principal cut off “official” discussion at this point (refusing to participate themselves and not even taking notes of the discussion), this concern of the stakeholders and its impact on the ability to promote rapid academic achievement is in no way reflected in the LSG’s proposed modifications.

²² The superintendent was incorrect – the statute provides that the *school committee* and union engage in bargaining prior to the Commissioner making changes to a collective bargaining agreement. See G.L. c. 69, § 1J(o)(7).

²³ Not surprising to anyone who actually attended this LSG meeting, in fact upon information and belief, only three teachers applied to stay at Parker, one of whom is a long-term sub without certification and one a Teach for America placement. The absentee stakeholders thus were blindsided when they heard that almost all Parker teachers made the heart-breaking decision not to reapply. One absentee stakeholder (the School Committee designee) stated, “Why all these teachers aren’t reapplying, I don’t know. Hopefully, we can try to figure that out so this sort of thing does not reoccur.” New Bedford Standard Times, “Few teachers reapply for their Parker School jobs,” April 18, 2014 (Attachment J).

The Commissioner's failure to include information critical to the LSG's deliberations of possible modifications to the preliminary plan and the superintendent and principal's prohibition of the LSG's deliberations and ability to propose working conditions modifications prevented the LSG from fulfilling its statutory duty and thus violated G.L. c. 69, § 1J(p). Accordingly, the Board should modify the Final Plan as set forth herein. See G.L. c. 69, § 1J(q).

B. THE PLAN FAILS TO INCLUDE THE STATUTORILY REQUIRED FINANCIAL PLAN.

The statute explicitly requires a turnaround plan to include "a *financial plan* for the school, *including* any additional funds to be provided by the district, commonwealth, federal government, or other sources." G.L. c. 69, § 1J(n) (emphasis added). Without knowing in detail what it will cost to implement the various components of the turnaround plan, the turnaround effort is not a serious undertaking. A financial plan is more than merely listing funding sources; competent financial planning requires a detailed review of how those funds are to be spent. In the context of a Level 5 turnaround plan, the *financial plan* is a critical component of the plan itself. In order to be a meaningful document to the turnaround process, the financial plan must contain a detailed, line-item budget that shows how funds are to be allocated to achieving each component of the plan. Moreover, the financial plan must address the financial needs and resources for the three-year length of the plan.

Indeed, the Legislature recognizes the importance of adequate funding for turnaround plans in other provisions of the Achievement Gap Act as well, including the need for funds to allow for robust teacher compensation to support the maximization of student academic achievement. See G.L. c. 69, §§ 1J (o)(4) (the Commissioner may provide funds to increase teacher salaries and attract or retain highly qualified teachers or to reward teachers who work in successful chronically underperforming schools); § 1J(o)(2) (the Commissioner may reallocate or increase funds to the school from the district budget to support a turnaround plan). Without a detailed financial plan, stakeholders and the New Bedford community cannot have confidence in the turnaround effort.

Here, the Commissioner's financial plan is found at Appendix C of the Final Plan and consists of a scant three pages, and most of that is verbiage unattached to budgetary numbers. This financial plan is woefully inadequate and does not comply with the statutory requirements in G.L. c. 69, § 1J(n). The Final Plan provides projected funds only, with no line-item budget articulating how those funds will be spent. Therefore, the Board – which has the obligation to ensure that the Final Plan meets statutory requirements and has sufficient funds to implement its terms and meet its goals towards rapid academic success of students – cannot do its job. Moreover, the Board's mission is "to strengthen the Commonwealth's public education system so that every student is prepared to succeed in postsecondary education, compete in the global economy, and understand the rights and responsibilities of American citizens, and in so doing, to close all proficiency gaps."²⁴ Thus, the Board needs to understand how these funds are being prioritized, not just at Parker but all the Level 5 schools.²⁵

²⁴ <http://www.doe.mass.edu/boe/>

Additionally, the Final Plan is completely lacking in any information on how it will be funded and how those funds will be prioritized as the Final Plan progressed through its second and third years. Accordingly, the Board cannot determine whether the Final Plan is sustainable in the long term. Without the ability to review a professional, detailed, and thorough financial plan for the duration of the Final Plan's term, the Board is unable to ensure sufficient financial resources to its turnaround effort at Parker and is committing this school – now being run under its auspices – to fail.

The Board should also be concerned that the inadequate financial plan, deprived the local stakeholders group of the opportunity to analyze the adequacy of the funding and how the funds were prioritized in providing input in proposing modifications to Final Plan to the Commissioner. This undermined the spirit and intent of the statute that the local stakeholders make recommendations on the entire turnaround plan in order maximize the rapid academic achievement of students. See G.L. c. 69, § 1J(m).

→Requested Modification for Financial Plan & Opportunity for LSG

Recommendations: The Commissioner shall provide an amended financial plan, including a line-item budget, no later than June 15, 2014. The Commissioner shall submit the amended plan to the local stakeholders group for proposed modifications consistent with G.L. c. 69, § 1J(p). The Commissioner shall take into consideration and incorporate the local stakeholder's modifications if they would further promote the rapid academic achievement of students.

C. KEY PARTS OF THE PLAN CONCERNING EDUCATIONAL PRACTICE ARE INSUFFICIENT TO REALIZE THE OVERARCHING GOAL OF MAXIMIZING THE RAPID ACADEMIC ACHIEVEMENT OF STUDENTS AT PARKER.

- 1. The Board must make the following modifications necessary for the Final Plan to comport with the requirements of the statute and move sufficiently towards the statutory goal of maximizing the rapid academic achievement of students.***

²⁵ For example, the Commissioner has allocated \$2,146,000 of state funds to pay for the services of external receivers at the Morgan, Holland, and Dever schools (i.e., moneys dedicated to paying each receiver's program director and its management fees). As part of its oversight role, the Board may want to weigh in on whether this is the best use of state resources or whether significant cost-savings may be had by investing in professional development and other targeted training to ensure that local administration leadership has the capacity to guide the schools through their turnaround. This in turn would free up significant amounts of money that could go towards direct programmatic services for students in these struggling districts, such as pre-kindergarten.

Strategy 1.1: The Final Plan does not commit to implementing the best practices for delivery of services to students with disabilities and thus it will not lead to their rapid academic achievement.

The Final Plan states the intent to “[r]egularly assess programs and services for [] students with disabilities” to ensure they receive rigorous core instruction through the most appropriate delivery model. Final Plan, p. 8. But it states no specific steps (besides regularly assessing their needs, which is required by law) to address the glaring achievement gap between students receiving special education services and their fellow students at Parker. While the CPI for all Parker students in 2013 was 69.3 in ELA and 73 in math, students with disabilities’ scores were 48.3 and 54.3 respectively – significantly lower than “all students”.²⁶ Final Plan, App. B, pp. 47-48. Clearly, *the current model of service delivery is not working*, as recognized by the Commissioner. Final Plan, p. 6.

Despite this fact, the Commissioner rejected the LSG’s proposal to implement a co-teaching model at Parker.²⁷ In doing so, he claimed that elimination of substantially separate and pull-out services “would require consideration of the individual needs of each student’s IEP [individual education plan].” Commissioner’s turnaround plan cover memo (“cover memo”), p. 4, April 9, 2014. While the Commissioner is correct that the individual needs of each student receiving such services must be evaluated and amendments to individualized education plans possibly made, that is insufficient reason to reject moving to having the more widely-accepted co-teaching model of delivering services available for students with disabilities. Ensuring that Parker has a co-teaching model does not mean the total elimination of other delivery models; for example, some students with disabilities may still require pull-out services and a very few may still need a substantially separate model.

The Individuals With Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400 et set.) guarantees a “free and appropriate public education” to students with disabilities. Chapter 766 is the parallel Massachusetts statute. *See generally* G.L. c. 71, § B. Both federal and state law require that students with disabilities receive their education in the least restrictive environment (“LRE”). LRE means “the educational placement that assures that, to the maximum extent appropriate, students with disabilities . . . are educated with students who are not disabled.” 603 CMR 28.02(12). Therefore, “special classes, separate schooling, or other removal of students with disabilities from the general education environment occurs only when the nature or severity of the student’s disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.*; 603 CMR 28.06(2)(b). The “default” best practice then is that students with disabilities should be taught

²⁶ No data on the gap in growth scores was provided for this subgroup of students.

²⁷ There is also an internal incongruency in the Plan. The Commissioner disparages pull-outs from classrooms for specialized services as disruptive to providing high quality instruction. Plan, p. 2. Yet he rejects the modification proposed by the LSG to eliminate to the extent possible the special education pull-outs.

in general education classrooms absent a justification in an individual education plan (“IEP”) of why removal is necessary. See 603 CMR 28.05(4).

Special education services can be provided in the regular education setting either by a co-teaching model (a general classroom teacher and a special education teacher) and/or with the assistance of special education assistants. Using this model greatly benefits students with disabilities as well as their non-disabled peers. The lack of inclusionary practice at Parker gives pause as to whether or not the law is being followed, and whether the district may be engaging in a discriminatory practice if students with disabilities are being denied a free and appropriate public education in the LRE. And without a co-teaching model in place at Parker, the NBEA is gravely concerned that students with disabilities’ assessments for placement are based on the models available (substantially separate and pull-out) rather than on the LRE to which they are entitled.

By failing to commit to substantial movement towards an inclusion special education service delivery model, the Final Plan fails to take sufficient steps to address the achievement gap for special education students as required by G.L. c. 69, § 1J(n). This will lead to Parker students with disabilities to fall even further behind than their peers at Parker and across the Commonwealth.²⁸ Accordingly, the Board must modify this provision. G.L. c. 69, § 1J(q)(1), (3).

→Requested Modification for Strategy 1.1: “Establish a co-teaching model at Parker, staffed and resourced adequately with appropriate professional development for general classroom teachers, so that it is available as a delivery model option for students with disabilities. Reassess all Parker students with disabilities to determine appropriate program/service delivery for each student under current best practices to ensure that all students receive rigorous core instruction in the least restrictive environment given their needs. IEPs will be modified as appropriate. Regularly reassess programs and services to ensure that students’ needs are met in compliance with state and federal law.”

Strategy 1.4: The Final Plan fails to take sufficient steps to increase the pre-K program, thus hindering rapid academic achievement of Parker students.

An extensive and long-standing body of research supports the educational and economic value of investing in early childhood programs for children, particularly for students with limited family resources:

²⁸ In 2004, as part of the proceedings in the Hancock lawsuit regarding school funding, Judge Margaret Botsworth issued a report to the Supreme Judicial Court providing a comprehensive overview of the state of education in four districts in Massachusetts: Springfield, Brockton, Lowell, and Winchendon. Part of her conclusion was that all four districts had areas of concern around the delivery of special education services. In part, she found that the districts failed to “educate these students in the least restrictive environment” and failed to provide them with “meaningful access to the regular education curriculum in regular education classrooms.” McDuffy Report, p. 293. (http://www.doe.mass.edu/finance/chapter70/McDuffy_report.pdf).

- Well-designed preschool education programs produce long-term improvements in school success, including higher achievement test scores, lower rates of grade repetition and special education, and higher educational attainment. Some preschool programs are also associated with reduced delinquency and crime in childhood and adulthood.
- The strongest evidence suggests that economically disadvantaged children reap long-term benefits from preschool. However, children from all other socioeconomic backgrounds have been found to benefit as well.²⁹

Judge Botsworth also wrote extensively about preschool education in her findings in the McDuffy Report. In three of the districts at issue (Springfield, Brockton, and Lowell), the preschool enrollment ranged from 27.2% to 36.7% of kindergarten enrollment, a significantly higher rate than at Parker (which is at 4%). And these three districts scored significantly lower at the kindergarten level than the national average, making them considerably more at risk of school failure because they start school so far behind. McDuffy Report, pp. 325-26. Judge Botsworth also cited expert testimony and research that high-quality preschool programs leads to positive achievement in school. *Id.* at 327.³⁰

This research was borne out recently in Boston. The Boston Public Schools in an Early Childhood Update presentation to the Boston School Committee in 2012 concluded that “early childhood education helps reduce access and achievement gaps that begin even before students enter 1st grade. Students who attended K1 were more likely to receive a score of Proficient or Advanced and less likely to receive a score of Warning.”³¹

At Parker, thirteen students are enrolled in a pre-kindergarten program serving mostly students with disabilities and only a limited number of these students are from the Parker neighborhood. Final Plan, p. 11. The Parker kindergarten enrollment is fifty-two students. The Final Plan’s early education strategy is to “study, develop and expand” the pre-K program with a goal of increasing the “percentage of neighborhood students enrolled in the Parker pre-K program from 4% to 10%” by September 2016. Final Plan, p. 13. These goals are entirely inadequate. If student achievement at Parker is to increase rapidly, making a serious commitment to a preschool strategy at Parker is a proven, research-based and cost effective way to accelerate student learning. “We can invest early to close disparities and prevent achievement gaps, or we can pay to remediate disparities when they are harder and more

²⁹ Preschool Education and Its Lasting Effects: Research and Policy Implications, W. Steven Barnett, National institute for Early Education Research, p. 20.

³⁰ Springfield continues to struggle with providing preschool education and the Morgan Elementary School in Springfield was also just designated Level 5 with much lower scores than New Bedford.

³¹ www.bostonpublicschools.org/cms/lib07/MA01906464/Centricity/Domain/111/4-9-12_early_childhood_presentation.pdf.

expensive to close.”³² This has been recognized by Governor Patrick in his FY2015 budget recommendations:

Increasing educational opportunities for children ages four and five will support [the] long-standing goal of universal third grade literacy. It is widely accepted that literacy by the third grade is one of the most significant milestones in a child’s academic career and an important predictor of future academic success.”³³

A high quality, comprehensive preschool program that is integrated with the curriculum and instructional practices and the culture of the Parker School will be one of the most effective strategies in accelerating the rapid academic achievement of Parker students. This kind of preschool program needs to be an integral component of the Parker turnaround; it should be implemented starting in the 2014-15 and should expand sufficiently such that all Parker kindergarten students have then opportunity to attend as Parker preschoolers no later than the 2015-16 school year.

By failing to aggressively expand the enrollment in Parker’s pre-kindergarten program, the Final Plan fails to provide for sustainable rapid academic achievement of Parker students over the course of the Final Plan and beyond. It thus fails to provide a critical tool in addressing the achievement gap for low income students. G.L. 69, § 1J(n)-(o). In addition, given the long-term positive impacts of pre-K programs, the Final Plan fails to take steps to address promotion rates and college-readiness. *Id.* Accordingly, the Board must modify this provision. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Modifications for Strategy 1.4:** **(a)** Add timeframes to p. 11 so that the data analysis and development a strategy for attracting more Parker neighborhood students to the pre-K program will be completed by December 31, 2014 with execution of the strategy to take place spring 2015. **(b)** Modify implementation milestone on p. 13 so that by September 2016, all potential kindergarten students in the Parker catchment have the ability to attend Parker’s pre-kindergarten program with a goal of 90% of those not receiving high-quality preschool services elsewhere enrolling at Parker.

Strategy 2.2: The Final Plan ignores the teaching of technology literacy and fails to commit resources towards upgrading and increasing access to technology and without these critical educational supports the Final Plan does not promote rapid student achievement.

³² Heckman, James J., “The Economics of Inequality: The Value of Early Childhood Education,” American Educator (Spring 2011) (<https://www.aft.org/pdfs/americaneducator/spring2011/Heckman.pdf>).

³³ http://www.mass.gov/bb/h1/fy15h1/exec_15/hbudbrief2.htm.

While the Final Plan states the intent to “review” Parker’s technology resources, it fails to commit any resources towards upgrading its software, hardware, and infrastructure or towards ensuring sufficient access to such technology in the classroom for all students. Furthermore, the Final Plan completely ignores the teaching of technology literacy skills to students. This is inconsistent with the DESE’s recognition of the importance of learning technology skills.³⁴ Indeed, “[T]echnology is a powerful springboard to higher-level learning.”³⁵ Moreover, it is important that the teaching of technology literacy skills be incorporated in the general curriculum rather than taught in isolation.³⁶

The inclusion of technology in instruction and the teaching of technology literacy is particularly important as districts make the transition to the new PARCC test. Studies have shown that hands-on computer familiarity positively impacts on-line test performance.³⁷ Parker students need to have an appropriate level of experience working with the technology so that unfamiliarity with the means of testing does not interfere with their academic achievement on standardized tests. Studies also show that the positive effect of technology on learning and achievement impacted all major subject areas for both regular and special students at all grade levels (preschool through higher education).³⁸

Parker likely would be rated as “early tech” at best in virtually every area examined in the *STaR Chart*. This is not surprising given the inadequate technology available for teachers and students. Yet none of the technical skills and expectations advised by DESE for students in grades K through 5 are included in the Final Plan and the Final Plan does not commit to addressing the abysmal lack of technology resources. This failing will negatively impact the ability of teachers to differentiate instruction to meet the needs of all students to effect rapid academic achievement of their students. Therefore, the Final Plan fails to address mastering 21st century skills and developing college readiness, areas for which the statute requires measurable annual goals.³⁹ See G.L. c. 69, § 1J(n). Accordingly, the Board must modify this provision. G.L. c. 69, § 1J(q)(1), (3).

³⁴ See, e.g., *Massachusetts Technology Literacy Standards and Expectations*, Mass. Dept. of Elementary and Secondary Educ., April 2008 (<http://www.doe.mass.edu/odl/standards/itstand.pdf>).

³⁵ *Id.* at p. 1.

³⁶ See *id.* at p. 3; *Massachusetts School Technology and Readiness Chart (STaR Chart)*, Education Technology Advisory Council (June 2010) (<http://www.doe.mass.edu/boe/sac/edtech/STaR.pdf>).

³⁷ “Does It Matter If I Take My Writing Test On Computer? An Empirical Study of Mode Effects in NAEP,” *Journal of Technology, Learning, and Assessment*, Vol. 5, No. 2, p. 25-26 (November 2006) (<http://files.eric.ed.gov/fulltext/EJ843858.pdf>).

³⁸ “The Impact Of Education Technology On Student Achievement,” Schacter, John (Milken Exchange On Education Technology, 1999) (<http://www2.gsu.edu/~wwwche/Milken%20report.pdf>).

³⁹ Appendix B to the Plan purports to list measurable annual goals for “mastering 21st century skills” and “developing college readiness.” However, the appendix mostly just reiterates the student growth data listed as in the appendix for student achievement. While certainly narrowing the proficiency gap is important but that is already a separate mandated measurable annual goal. If the Legislature deemed that enough to address the

→**Requested Modifications for Strategy 2.2:** **(a)** Replace last bullet on p. 16 with: “By December 2014, complete review of Parker’s technology needs to ensure it has the resources (financial and otherwise) necessary to maximize rapid academic achievement of its students. By June 2014, have a written plan in place to upgrade all technology (software, hardware, and infrastructure). The plan shall ensure that all classrooms have high-speed internet access and a sufficient number of age-appropriate devices (e.g., tablets or laptop computers) to allow for regular use in preparation for 21st century instructional and assessment activities. The plan shall be implemented SY2015-16.” **(b)** Add sub-bullet: “Professional development shall be provided for teachers and the principal regarding effective incorporation of technology in their instructional practice.” **(c)** Add sub-bullet: “TCTs and other collaboration efforts shall consider the teaching of technology literacy as part of curriculum development.” **(d)** Add to Priority Area 2 “Final Outcomes” to address the acquisition of necessary technology and for incorporating technology literacy in the curriculum.

Strategy 4.4: The Final Plan fails to provide the statutorily required components to address social service and health needs of students and their families, improvement of child welfare services, and improvement of workforce development services for students and their families.

The statute requires the Commissioner to include in a turnaround plan steps to address students’ and their families’ needs for services and supports in addition to those typically addressed by the school: (1) social service and health needs of students and their families so that students arrive and remain at school ready to learn; (2) steps to improve child welfare services; and (3) steps to improve workforce development for students and their families. G.L. c. 69, §1J(c). Addressing “wrap-around service” needs is a cornerstone of the Achievement Gap Act, as reflected in the fact that they comprise three of the six mandatory requirements in the plan. Indeed, addressing the non-academic needs of students, not just classroom instruction, always has been considered a critical strategy of closing the achievement gap.⁴⁰

mastering of 21st century skills and college readiness, it would not have included separate provisions to address them. See G.L. c. 69, §1J(n). Clearly, the Legislature intended these separate measurable annual goals to be more specifically tailored to address what students will need to have skills necessary to succeed in college and modern society. Therefore, the Plan is deficient in addressing all required measurable annual goals. See G.L. c. 69, § 1J(n).

⁴⁰ “By addressing all students’ non-academic needs (that is, those that relate to their physical behavior, and social-emotional health – as well as their housing and other family support challenges) we will put students in the best possible position to access educational opportunities and succeed.” “Closing the Achievement Gap,” Comm. of Mass. Executive Office of Education (<http://www.mass.gov/edu/closing-the-achievement-gap.html>).

This statutory mandate is consistent with research studies. For example, reports from the Center for American Progress found that school communities that offered additional services such as health care, referrals to community providers, supplemental education for parents, additional learning opportunities for students (including early childhood programs) and coordinated these services and tracked student needs resulted in increased student motivation to learn and improved performance on assessments.⁴¹ In addition, students had fewer interruptions in instructional time and families had basic needs met within the community, resulting in decreased mobility. The existence of the wraparound service programs directly benefitted the quality of instruction and teacher effectiveness by decreasing the demands on teachers to broker such supports for students.⁴² Data gathered nationally from Communities in Schools reported that schools with integrated wraparound services have higher percentages of students achieving math and reading proficiency.⁴³

The Final Plan, however, is sorely lacking in specifics about what services are needed and how they will be delivered. The new Family Resource Center (which was in the Level 4 plan but never materialized) appears to be geared towards engaging families in the school community, which is important. But it does not specifically take steps to immediately address social service, health, welfare, and workforce development to improve conditions for learning – all it does is call for a plan to be developed. But after three years as a Level 4 school, a plan to do more studying and planning does not fulfill the statute’s requirement and is entirely inadequate. In order to effectuate rapid change, the Final Plan must contain more specific detail about how to identify the needs and address them. And these measurable annual goals should be adjusted to demonstrate progress of the plan in these areas. Moreover, the coordination and support of the secretaries of health and human services, labor and workforce development, and public safety are only “subject to appropriation,” which, given the lack of a financial plan and sufficient financial resources committed to Parker (see section VI.B, *infra*), is highly questionable. The Final Plan’s financial plan should cover any necessary funding for wrap-around services.

The demographic information about the Parker community supports the paramount need for a robust, substantive plan in these areas to support the turnaround effort. There is no doubt that students are suffering with issues and problems that need to be addressed before they are able to participate in learning at their full potential. The Final Plan should include specific recommendations for identifying existing services and partnerships in the Parker school catchment zone, implementing a tracking system for students and families accessing the services and streamlining common process educators can use the direct students and families

⁴¹ Castrechini, S. & London, R. (2012). *Positive student outcomes at community schools*. Center for American Progress: Washington, DC. (<http://files.eric.ed.gov/fulltext/ED535614.pdf>).

⁴² Chang, T. & Lawyer, C. (2012). *Lightening the load: A look at four ways that community schools can support effective teaching*. Center for American Progress: Washington, DC. (<http://files.eric.ed.gov/fulltext/ED535644.pdf>).

⁴³ Coalition for Community Schools. (2010). *Community schools producing results that turn around failing schools*. Coalition for Community Schools: Washington, DC. (<http://files.eric.ed.gov/fulltext/ED509696.pdf>).

to the appropriate services. Additionally, it should require a process for evaluating the current services available to students and identifying areas of need. This process should include input from educators, service providers and community members. Accordingly, the Board must modify these provisions in the Final Plan. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Modification for Strategy 4.4:** The Commissioner shall provide an amended Strategy 4.4, which identifies the wrap-around service needs of Parker students and families and specific steps in a written plan for providing for and/or referring students and their families to such services and how those services will be funded shall be identified in the financial plan. The Commissioner shall submit the amended section to the local stakeholders group for proposed modifications consistent with G.L. c. 69, § 1J(p). The Commissioner shall take into consideration and incorporate the local stakeholder’s modifications if they would further promote the rapid academic achievement of students.

2. The Board should make the following modifications to the Final Plan as these steps will further promote maximizing the rapid academic achievement of students.

Additional Strategy 1.1: The Final Plan is deficient because it fails to embed common planning time as a strategy to ensure rigorous instruction and provides that non-common planning time activities can intrude on time that should be set aside for collaboration.

It is well-recognized that common planning time and collaboration is a key factor in improving student learning. Indeed, the DESE’s website has several reports addressing collaboration and common planning time, including a tool kit⁴⁴ to assist districts in incorporating common planning time. “Collaboration is a key pedagogical assumption underlying the high standard of learning envisioned by the curriculum frameworks.”⁴⁵ The most useful activities for common planning time are strategizing about effective instructional practices, planning lessons, and analyzing student data.⁴⁶

Given the importance of collaboration and the need for common planning time, it needs to be highlighted and embedded as a key strategy to ensure rigorous instruction. Moreover, this common planning time should not be intruded upon by activities that are not inherent in collaboration and common planning. In the working conditions section of the Final Plan, it

⁴⁴ <http://www.doe.mass.edu/apa/ucd/CPTtoolkit.pdf>.

⁴⁵ *Unlocking the Power of Time*, The Massachusetts Commission on Time and Learning, Final Report, November 1995 (<http://www.doe.mass.edu/edreform/timelearn/trep.html>).

⁴⁶ *Issue Brief: Collaborative Planning in Massachusetts Expanded Learning time (ELT) Schools*, Abt Assoc. (<http://www.doe.mass.edu/research/reports/2013/06ELTS-CollaborativePlanning.pdf>).

states that teachers shall receive “up to 90 minutes of common planning time” per week and it described common planning time activities to include tutoring students, student help sessions, supervision of students, and “other activities, duties or tasks as determined by the administration.” (Final Plan, p. 36.) Nowhere in any of the literature discussing common planning time and collaboration are activities related to providing services to students discussed as being part of collaboration and common planning. To the contrary, such activities are antithetical to the purpose of common planning time as non-instructional time.⁴⁷ Therefore, this description of common planning time activities must be revised so as to exclude activities that will take away from what is intended to be “increased opportunities for teacher planning time and collaboration focused on improving student instruction.” G.L. c. 69, §1J(o)(11). Accordingly, the Board should modify this provision in order to further promote the rapid academic achievement of students. G.L. c. 69, § 1J(q)(1).

→**Requested Additional Modifications for 1.1:** (a) Add new bullet to state: “Teachers shall receive 90 minutes of dedicated common planning and collaboration time per week.” (b) Revise the first full paragraph on p. 36 to provide 90 minutes of common planning time per week (eliminate “up to”) and revise the last sentence of that paragraph to read: “Common planning time activities may include but are not limited to, planning lessons, analyzing student data, strategizing effective instructional practices, working with colleagues, and coaching. Common planning time will not be used for delivery of student services, supervising students, or performing non-instructional related administrative tasks.”

Strategy 1.2: The Final Plan is deficient because it fails to provide a sufficient number of literacy coaches to adequately address academic underperformance in ELA.

Understanding the important contribution of literacy coaches to ensuring high quality and rigorous literacy instruction, the LSG proposed that the Final Plan include two literacy coaches – one for grades K-2 and one for grades 3-5. The Commissioner rejected this proposal, claiming that he is “not convinced that one literacy coach is insufficient.” Cover memo, p. 2. That the Commissioner is “not convinced” is not justification for rejecting the collective opinion of the LSG, informed by the desire of teachers for two coaches to help them achieve rapid academic achievement in an area where Parker students have improved but continue to struggle and perform below their state-wide peers. The data is undeniable and convincing. When the literacy coach was cut, ELA growth scores went down. A part-time coach led to some

⁴⁷ There is also the concern that allowing the administration such flexibility in determining “other activities, duties or tasks” for common planning time will result in this time being co-opted for the “variety of educational and administrative activities” or “additional duties” referenced in several places in the Plan as expectations of the teachers. Plan, pp. 15, 36. There is a serious concern that there are not enough hours in the day and week to accommodate all the expectations on teachers in the Plan and the administration could choose to sacrifice common planning time for other activities. To allow them to do so will have a significant negative impact on the rapid academic achievement of students as it would decrease the time intended to collaborate on effective instructional practices and lesson plans.

gain. If the Commissioner and the Board is serious about “rapid” change to address the achievement gaps, providing two literacy coaches is a proven way of doing so. G.L. c. 69, § 1J(n). Accordingly, it should modify this provision. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Modification for Strategy 1.2:** Add sub-bullet on p. 9 to state, “There will be one literacy coach for grades K-2 and one literacy coach for grades 3-5.”

Additional Priority Area 1 Strategy (A): The Final Plan is deficient because it fails to address class size, which will hinder the ability to maximize the rapid academic achievement of students and minimize the performance gap for low-income students.

Research supports the need for smaller class size –fewer than twenty students – particularly at the early elementary grade levels. For example,

- The Institute of Education Sciences, the research arm of the US Department of Education, concludes that class size reduction is one of only four, evidence-based reforms that have been proven to increase student achievement through rigorous, randomized experiments -- the "gold standard" of research.
- The STAR [Student/Teacher Achievement Ratio] experiment in Tennessee, as well as studies from Wisconsin and elsewhere, demonstrate that students who are assigned to smaller classes in the early grades do better in every way that can be measured: they score higher on tests, receive better grades, and exhibit improved attendance.
- Those students whose performance improves when class sizes are reduced are those who need the most help: children from poor and minority backgrounds, who experience twice the gains as the average student. Estimates are that reducing class size in the early grades shrinks the achievement gap by about 38%.⁴⁸

The McDuffy Report also discussed research supporting the need for smaller class sizes, particularly for urban, minority and low income children. McDuffy Report, p. 329-31. It concluded that the improvements continued beyond small kindergarten classes, especially if small classes continued through the third grade. *Id.* (citing the STAR experiment that studied 12,000 students over four years). Small class sizes are particularly important where additional attention is needed for students coming in unprepared in order to maximize the opportunity for learning gains. *Id.* at 331.

Parker class sizes vary by grade. For example, there are approximately 26 students in each kindergarten class and approximately 23 students in each of the second and third grade class (there are two classrooms per grade except for first grade, which has three). The other

⁴⁸ “Benefits of Class Size Reduction,” Class Size Matters, June 4, 2013 (and references cited therein) (<http://www.classsizematters.org/wp-content/uploads/2013/06/CSR-national-fact-sheet1.pdf>).

levels generally have less than twenty students per class. But due to the high mobility of students, it is not uncommon for classes to lose or gain students throughout the school year, making the class size somewhat unpredictable.

Regardless, in order to ensure that sufficient steps are being taken not only to address the achievement gap for low-income students but long-term improving graduation and drop-out rates and the development of college-readiness, the Final Plan must address reducing and maintaining small class sizes consistently for all grade levels. See G.L. c. 69, § 1J(n). Accordingly, the Board should modify this provision. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Additional Priority Area 1 Modification (A):** Add Strategy 1.6
“Additional staff will be hired to ensure that classes at grades K through 3 have no more than fifteen students and grades 4 through 5 have no more than twenty students.”

Additional Priority 1 Strategy (B): The Final Plan is deficient because it fails to address the compelling need for professional development at the administration level.

The statute provides that the Commissioner may “establish a plan for professional development of administrators at the school, with an emphasis on strategies that develop leadership skills and the use of the principals of distributive leadership.” G.L. c. 69, § 1J(o)(12). As discussed above, there is a need to ensure that the administration at Parker has the skills and capacity to fulfill key terms of the Final Plan related to staff professional development, student discipline, evaluation, and instructional support and guidance to teachers. Having a leader with the knowledge and skills to support Parker teachers under the turnaround plan is vital to realizing the maximization of rapid student achievement cannot be realized. Moreover, without an atmosphere of trust and mutual respect, establishing a collaborative professional environment to support the steps of the Final Plan will be very difficult. And without confidence in leadership, the Final Plan will fail to recruit and retain high-quality teachers. See G.L. c. 69, § 1J(o)(13). The Board has spelled out the standards and indicators of effective administrative leadership practice. See 603 CMR 35.04. And the Board recognizes that enhancing the professionalism and accountability of administrators will enable them to assist all students to perform at high levels. See 603 CMR 35.01(3). Yet the Final Plan disturbingly lacks any required plan for professional development at the administration level. Therefore, the Board must modify the Final Plan to ensure that the principal receives adequate training in leadership and communication skills, the evaluation system, and the same professional development required of Parker teacher as a key strategy to further promote the rapid academic achievement of students.

→**Requested Additional Priority Area 1 Modifications (B):** Add Strategy 1.7 “Use Level 5 authorities to increase the amount of focused professional development for Parker administration to ensure that the Parker staff receive the leadership, guidance, and support they need to successfully provide rigorous instruction.”
Bullets for Strategy 1.7: (1) all members of the Parker administration will

receive professional development with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (2) all administrators conducting evaluations will receive training/professional development on educator evaluation; (3) the Parker principal shall participate in all professional development in areas over which she is listed as an “owner” of a key strategy (e.g., 1.1, 1.2, 1.5, 2.2, 3.3, 4.3).

Additional Priority Area 1 Strategy (C): The Final Plan lacks clarity around the school day for students and teachers and it is questionable that all the requirements in the Final Plan can be accommodated.

While the Final Plan lists a plethora of responsibilities for teachers and many additional requirements for students, it fails to provide a schedule of how all of that will work in a typical school day and school week. Because this information was not provided in the Final Plan, the local stakeholders group did not have the opportunity to review schedules and recommend proposed modifications in that area. G.L. c. 69, § 1J(p). The Final Plan therefore contravened the processes set forth in the statute for ensuring that stakeholder’s views are taken into consideration on all aspects of the plan, that the union had the opportunity to negotiate over all contemplated changes to the collective bargaining agreement. And since the schedule was not included in the Final Plan, Parker teachers were asked to reapply for positions without all the information necessary to make an informed decision.

→**Requested Additional Priority Area 1 Modifications (C):** Add Strategy 1.8 “To ensure that all elements of the Plan are accommodated in the students’ and teachers’ daily and weekly schedules, the Commissioner and superintendent shall develop student and teacher schedules by June 15, 2014. These schedules will go back to the local stakeholders group for recommendations for modifications consistent with G.L. c. 69, § 1J(p). In addition, the schedules will be provided to the local union and the Commissioner will provide the union with the opportunity to negotiate regarding impacts on the collective bargaining agreement consistent with G.L. c. 69, § 1J(o).”

Strategy 2.2: Parker staffing and resources are inadequate to effectively for the intervention and acceleration period called for in the Final Plan.

In recent years, special education teachers have been called upon to provide intervention services and they state that they have not been adequately trained to do so. Reports are that having to do these intervention periods also negatively impacts their ability to fulfill some of their primary responsibilities. Moreover, Parker has not had sufficient intervention resources; the only intervention materials available are for grades 3-5 in reading. In order for interventions to be effective, they should be provided by a specialists (e.g., a

reading specialist⁴⁹) trained in intervention. By failing to ensure adequate and appropriately trained staff to provide the intervention and acceleration services required in the Final Plan, the Final Plan fails to adequately address the achievement gaps for all students. G.L. c. 69, § 1J(n).

→**Requested Modification for Strategy 2.2:** Modify the next to last bullet on p. 16 by adding the following: “Specialists in intervention and gifted and talented teaching will be hired to ensure qualified staff are providing this service to maximize the rapid academic achievement of these students.”

Strategy 2.3: The incentive-based system based on student results will drive good teachers away, make retaining teachers difficult, and if based on a faulty premise.

See section IV.D, *infra*, for a full discussion and proposed modifications.

D. THE FINAL PLAN IS STATUTORILY DEFICIENT BECAUSE THE EFFECT OF THE PLAN ON TEACHING CONDITIONS WILL NEGATIVELY IMPACT THE RAPID ACADEMIC ACHIEVEMENT OF STUDENTS AT PARKER IT DIRECTLY CONFLICTS WITH THE STATUTE’S PROHIBITION AGAINST THE REDUCTION IN TEACHER COMPENSATION.

As discussed above, the LSG voted to include a document from the NBEA that contained proposed modifications, many of which the two teachers on the LSG discussed at the March 24 meeting. The NBEA’s proposals included, among other issues, recommended modifications to the preliminary plan concerning working conditions for the Parker teachers. When he issued the Final Plan, the Commissioner rejected the NBEA’s proposal that the Final Plan include “negotiated fair compensation for specific additional time devoted to the Parker School.” The Commissioner’s justification is that, under the Final Plan’s “compensation plan, teachers will receive an increase in pay in return for the increased work year.” (Cover memo, p. 5.) This statement hides the truth. This pay increase must be measured against the hundreds of additional hours in the teacher schedule, teachers actually suffer a sharp decrease in their pay when expressed as an hourly rate; i.e., their rate of compensation will decrease.

To reduce teacher compensation in this manner violates the letter and purpose of chapter 69, which is to “recruit and attract high- quality teachers” and to “maximize the rapid academic achievement of students.” See *e.g.*, G.L. c. 69, § 1J (m) and (n) and (o)(4). In fact, of the nineteen teachers currently employed at Parker, it is believed that only three applied to work at Parker next year (and virtually all other non-teaching professional staff also did not reapply for Parker). Moreover, scientific research has produced insufficient evidence to support the assumption that the Final Plan’s “Pay for Performance” (PFP) model, which compensates teachers based upon their ratings on performance evaluations, will incentivize

⁴⁹ A specialist differs from a coach. Coaches assist teachers and provide instructional leadership; specialists work directly with students.

teachers to boost their performance and effectiveness and will promote student growth. (Final Plan, p. 37.)

Additionally, the Final Plan provides that student academic growth constitutes evidence upon which is based judgment of a teacher’s performance in the PFP system. If student academic growth is determined by test scores or other similar measures of student performance, the PDP system is based upon a flawed metric because student growth scores have been shown to be unreliable in determining teacher quality.

Furthermore, the lack of a neutral dispute resolution process undermines a culture of success. Grievance procedures that are regarded as fair and impartial decrease employee turnover and enhance an organization’s performance by signaling problem areas to management that require action and monitoring. Without a neutral decision-maker, educators will fear speaking out about the turnaround process for fear of retribution that cannot be remedied by a fair grievance process. What is more, there is absolutely no justification provided for eradicating the grievance process in the NBEA collective bargaining agreement, which contributes to an atmosphere of distrust and thus the high turnover of Parker staff.

1. **The Final Plan’s compensation model dramatically reduces the rate of pay for Parker teachers, which is contrary to the statute, will not attract and retain highly qualified teacher, and thus undermines the Final Plan’s ability to maximize the rapid academic achievement of students.**

Charts A and B, below, demonstrate how the turnaround compensation plan will sharply reduce teacher pay in academic year 2014-15. Chart A shows the teacher schedule in the Final Plan. This schedule requires teachers to work up to 1750 hours in the 2014-15 school year, which is an increase of 392 hours over the 1358 hour schedule in 2013-14.

Chart A

Parker School: Teacher Work Hours 2013-2014 and 2014-2015

2013-14			
	Days	Hours/day	Total hrs
Standard day	185	7.33	1,356.1
Open house			1
Evening events			1
Total hours (rounded)			1,358
2014-15			
	Days	Hours/day	Total hrs
Standard day	185	8	1,480
Extended year			

16 days at 6.5 hours per day	16	6.5	104
9 days at 8 hours per day	9	8	72
After-school curriculum meetings 3 monthly for 10 months @ 1.25 hours per meeting	30	1.25	37.5
Parent teacher conferences, evening events, open house			14
Parent engagement meetings 2 meetings per month for 7 months @ 3 hours per meeting	14	3	42
Total hours (rounded)			1,750

Chart B demonstrates that, when accounting for the increased hours in Chart A, teachers will have a significant decrease in the hourly rate of pay in 2014-15 over what each earns this year. The 2014-15 salary levels in Chart B are set out in the Final Plan (pp. 37-40). Based on statutory mandate, Parker teachers must be placed at a level on the new career ladder reflecting a salary no lower than what they each respectively earn this year. The 2013-14 salary levels reflect what Parker teachers are currently being paid. The 2014-15 rate of pay was calculated by dividing each respective salary category by 1750, the hours in the expanded schedule. The rate of pay for 2013-14 was calculated by dividing what each teacher is earning now by the hours in Parker’s current schedule, or 1358.

Chart B

Parker School: Impact of Reduction of Hourly salary Rate on 2014-15 Salaries

	2014-15 salary		2014-15 hourly salary rate*		Corresponding 2013-14 salary**		Corresponding 2013-14 hourly salary rate*		Change in salary		Change in compensation due to reduction in hourly salary rate from 2013-14 to 2014-15***	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Developing Level I	53,000	53,000	30	30	46,500	49,010	34	36	6,500	3,990	-7,000	-10,500
Developing Level II	56,000	56,000	32	32	50,207	51,057	37	38	5,793	4,943	-8,8750	-10,500
Career Level I	63,000	63,000	36	36	52,431	52,431	39	39	10,569	10,569	-5,250	-5,250
Career Level II	66,500	66,500	38	38	60,566	60,566	45	45	5,934	5,934	-12,250	-12,250
Career Level III	70,000	70,000	40	40	61,871	61,871	46	46	8,129	8,129	-10,500	-10,500
Career Level IV	75,000	75,000	43	43	65,277	73,098	48	54	9,773	1,902	-8,750	-19,250
Career Legacy****	81,288	85,824	46	49	79,788	84,324	59	62	1,500	1,500	-22,750	-22,750
Average	69,909	69,909	40	40	65,181	65,181	48	48	4,728	4,728	-14,000	-14,000
2013-14 hours	1,358											
2014-15 hours	1,750											

Change in hours	392											
For "Corresponding 2013-14 salary" columns, "low" is lowest 2013-14 salary (including \$7,000 stipend and longevity) for teachers assigned to each 2014-15 salary level.												
"High" is highest salary. "Low" and "high" in "2014-15 salary" columns are 2014-15 salaries of teachers at the 2013-14 "low" and "high" salaries, respectively.												
* Rounded to nearest whole dollar												
**2013-14 scheduled salary + \$7,000 stipend + longevity, where applicable.												
***Calculated as 2014-15 hours time difference between 2013-14 and 2014-15 hourly salary rates.												
****2014-15 salary for Career Legacy teachers = salary + \$7,000 stipend + longevity payment (all for 2013-14) + \$1,5000												
Teachers placed at minimum 2014-15 salary necessary to avoid reduction in total salary (including stipend and longevity) they would have received in 2014-15 under the "old" salary schedule assuming movement of one step. In three cases (all Career Level 4), such a reduction could not be avoided.												
No current teachers were placed in the "Novice" category.												

Reference to the data in Career Level IV illustrates the reduction in teacher pay: There are teachers currently working at Parker who earn salaries between \$65,227 and \$ 73,098. In 2014-15, these teachers will be assigned to the Career Level IV, which is compensated at \$75,000. While these teachers will realize an increase in gross salary on account of being assigned to Career Level IV, each will suffer a significant loss in his or her hourly rate (from \$5.00 to \$11.00 per hour) due to the vast increase in the 2014-15 required hours. This results in an effective annual loss of salary for these five teachers in a range of \$8,750 to \$19,250, were they to continue to teach at Parker next year.

G.L. c. 69, § 1J(o)(4) provides that the Commissioner may provide funds to increase teacher salaries and attract or retain highly qualified teachers or to reward teachers who work in successful chronically underperforming schools. Robust teacher compensation is consistent with the legislative intent that teacher pay must sufficiently compensate the important work of a turnaround plan. Thus, G.L. c. 69, §1J(o)(7) warns that the Commissioner *shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced*. In other words, the Commissioner may not reduce a teacher’s rate of pay.

Maintaining the proportionality between a teacher’s current pay and schedule is not required in traditional G.L. c. 150E bargaining. Under normal circumstances, if a public school district proposes to add hours to a teacher’s schedule, the parties are free to negotiate any pay arrangement in return for the expanded schedule, be it a higher, lower, or same rate or some other consideration such as a stipend. However where, as here, the Commissioner elects to take the extraordinary and destabilizing step under G.L. c. 69, sec. 1J(o)(8) of unilaterally altering a negotiated salary schedule in an unexpired contract, the Legislature has imposed strict limitations upon the Commissioner’s ability to economize at the expense of a teacher’s compensation. Specifically, the Law ensures that where such contract alteration affects work schedules, a teacher’s current compensation will remain proportional to her modified work hours. The Commissioner cannot circumvent the prohibition in G.L. cl 69, § 1J(o)(8) against

reducing compensation unless the hours are proportionately reduced by simply increasing a teacher's hours without proportionately increasing her pay.

It is settled that increasing hours without proportionately increasing pay, like reducing compensation without reducing hours, has the effect of diminishing a teacher's rate of compensation. See *German v. Comm.*, 410 Mass. 445 (1991) (where a public counsel attorney was required to work eight extra days for no pay under the state furlough, the Supreme Judicial Court found that this adjustment in her paid work schedule created a "new [reduced] rate of compensation"). Indeed, Massachusetts courts routinely express salary as a *rate* of compensation when considering the appropriate amount to be paid in connection with an adjusted annual schedule. See *Leslie v. Boston Software Collaborative, Inc.*, 14 Mass. L. Rapt. 379, 2002 WL 532605 (Mass. Super., Feb 12, 2002) (where employee earned an annual salary of \$157,000 and severance was calculated from 5/1/00 through 12/31/00, proper severance was \$104,667 based on individual's annual *rate* of compensation); cf. *Chokel v. First Nat. Supermarkets, Inc.*, 421 Mass. 631, 660 N.E. 2d. 644,651, n. 14 (1996) (net corporate income of \$1.228 million for first twelve weeks of a fiscal year represents and annual *rate* of income of \$5.321 million). Hence, unless the compensation for the extra work hours reflects a rate of pay that accounts for the teachers' adjusted schedule, the arrangement will violate the proportionality requirement of G.L. c. 69, § 1J(o)(8) and its mandate not to reduce their compensation.

Reducing the rate of pay of Parker teachers is not only inconsistent with the letter of chapter 69, but with its underlying goals and policy as well. It is axiomatic that all the words in a statute are construed in connection with the main object to be accomplished. See *Seideman v. City of Newton*, 452 Mass. 472 (2008); *Flemings v. Contributory Ret. Appeal Bd.*, 431 Mass. 374 (2000) (words in a statute are construed so that the enactment considered as a whole shall constitute a consistent and harmonious whole). The Legislature's explicit intent in chapter 69 is to promote "a culture of support and success" for students among the faculty and to facilitate a system of compensation that is sufficient to "recruit and retain teachers" in underperforming schools. Therefore, it is utterly illogical that the Legislature would have permitted the Commissioner to finesse the proportionality requirement by simply increasing work hours without proportionately increasing pay. See *North Shore Realty Trust v. Comm.* 434 Mass. 109 (2001) (a court will not adopt a literal construction of a statute if the consequences produce absurd or unreasonable results).

Furthermore, collective bargaining agreements may be altered *only if* the Commissioner "considers it necessary to maximize the rapid academic achievement of students in the applicable school." Where struggling schools are concerned, it may be advisable to adjust the contract by increasing the school day or year in order to "maximize rapid student academic achievement." However, there is simply nothing in logic or in the language of G.L. c. 69, § 1J that justifies the claim that it is necessary to promote student achievement by altering the contractual salary and schedule so that teachers can be paid below their original contract rate for additional work. Thus, when interpreting the term "compensation" in G.L. c. 69, § 1J(d)(8), it must be defined as "rate of compensation" in order to achieve the goals of G.L. c. 69, § 1(J).

Therefore, the salary reduction that will result from this Final Plan is wholly inconsistent with chapter 69.

2. It has not been established either in the research or through local experience that pay-for-performance systems either improve teacher performance or promote the rapid academic achievement of students.

As noted, the Commissioner proposes to replace the 2014-2015 collectively bargained salary schedule with a “Pay for Performance” (PFP) compensation system that, according to the Final Plan, will compensate “professional employees based on individual effectiveness, professional growth, and student academic growth.” Final Plan, p. 37. He specifically rejected the recommendation of the NBEA, which the LSG appended to its recommendations, to study “all forms of salary schedule constructs’ to determine which will be the most effective at the Parker School.” (Cover memo, p. 5.)

PFP is based upon the notion that “if teachers lack motivation or incentive to put effort into lesson planning, parental engagement, and so on, financial incentives for student achievement may have a positive impact by motivating teachers to increase their effort.”⁵⁰ Armed with the cynical assumption that teachers by nature “lack motivation” and perform well only if they receive an explicit financial incentive to do so, PFP proponents conclude that a performance-based compensation model is an effective intervention to “attract and retain” good teachers.⁵¹ Research does not bear out this proposition and rather than retain good teachers, the Parker PFP has already driven away teachers who have achieved student growth.

a. Research does not support PFP.

The Commissioner claims that the PFP “will help to improve student learning by attracting new high potential teachers and allowing the school to retain its most effective leaders and teachers.” *Id.* In fact, the financial incentives in the Final Plan are insufficient for this purpose. Researchers agree that pilots testing the effectiveness of PFP plans must include incentives that are high enough to “attract and retain” teachers.⁵² As noted, given the 392 hour increase in schedule, Parker teachers will be paid less next year calculated on an hourly basis and virtually all the experienced teachers are fleeing Parker. Therefore, even if the Commissioner’s proposition that generally PFP “will work” were correct, the Final Plan’s compensation system does not include adequate monetary incentives essential element to a successful PFP plan.

⁵⁰ Fryer, R.G. *Teacher Incentives and Student Achievement: Evidence from New York City Public Schools*, National Bureau of Economic Research (2011), p. 3.

⁵¹ Glazerman, S., and Seifullah, A., *An Evaluation of the Teacher Advancement Program in Chicago: Year Two Impact Report*. Mathematica Policy Research, Inc., (2010), xiii.

⁵² Fryer, at p. 3 and 22; Springer, at p. 2.

Even where a PFP is carefully constructed and administered, evidence is insufficient to support the claim that PFP will attract and retain teachers or “maximize the rapid academic achievement of students.” On the contrary, in a series of recent controlled experiments using randomized trials with treatment and control groups in Nashville, New York City and Chicago, researchers have consistently found that there is no evidence that “performance-based” teacher incentives increase student performance and/or teacher behavior.

In a three-year pilot conducted in Nashville schools, the authors found that \$5,000, \$10,000 and \$15,000 incentives to individual teachers based on student test scores of middle school students did not confirm the hypothesis that such incentives work, as students of teachers randomly assigned to the treatment group did not outperform students whose teachers were assigned to the control group.⁵³

Commencing in academic year 2007-08, the New York City Department of Education and the United Federation of Teachers launched a massive, two-year pilot in approximately 400 of the City’s lowest performing schools to determine whether financial initiatives paid to teachers could improve student performance. If a participating school met its annual performance targets based in part upon student performance and growth metrics, teachers in the school could receive a bonus of \$3000. The success of the pilot was examined by two, separate research entities. A study of the New York pilot run by the National Bureau of Economic Research found that the incentive had no effect on student performance, attendance or graduation, or on teacher behavior, and in fact may have caused student achievement to decline in some schools.⁵⁴ The Rand Corporation, a non- partisan non-profit, confirmed that New York’s incentive program did not improve student achievement in any grade level and had no effect on school progress report scores.⁵⁵

Finally, in 2007, the Chicago Public Schools undertook a two-year study of twenty Chicago schools where teachers could earn extra pay, promotions, and performance bonuses based upon a combination of student achievement and observed classroom performance.⁵⁶ The goal was to attract and retain talented teachers. Researchers concluded that these incentives, including annual teacher performance bonuses ranging from \$1,100 to \$15,000,

⁵³ Springer, M.G., Ballou, D., Hamilton, L., Le, V., Lockwood, J.R., McCaffrey, D.F., Petter, M. Y., and Stecher, B.M. (2010). *Final Report: Experimental Evidence from the Project on Incentives in Teaching*. National Center on Performance Incentives, p.2.

⁵⁴ Fryer, at pp. 21- 22.

⁵⁵ Marsh, J.A., Springer, M.G., McCaffrey, D.F., Yuan, K., Epstein, S., Koppich, J., Kalra, Ni. DiMartino, C., and Peng, A. (2011). *The Big Apple for Educators: New York City’s Experiment with Schoolwide Performance Bonuses*. RAND Corporation, xxi.

⁵⁶ Glazerman, S., and Seifullah, A., *An evaluation of the teacher advancement program in Chicago: Year two impact report*. Mathematica Policy Research, Inc., (2010), xiii and p. 15.

produced no evidence that the program raised student test scores.⁵⁷ In addition, the researchers did not find a detectable difference between schools where teachers received the incentives and those that did not when it came to teacher retention.⁵⁸

In addition to the lack of evidence that performance-based incentives improve student performance, there are concerns that such systems negatively affect teacher morale and motivation.⁵⁹ This weakens a PFP's ability to "attract and retain" good teachers and compromises the Final Plan's ability to "maximize the rapid achievement of students."

b. The Parker experience does not support PFP.

Focusing specifically on Parker, the potential of the PFP arrangement to undermine the statutory goal of "attracting and retaining high quality teachers" is evidenced by the fact that only three current Parker teachers reapplied to remain at Parker. Of those applying to stay, one of them is a person posted at Parker by "Teach for America" and another is a long-term substitute. The replacements for the teachers who will be leaving Parker are likely to be, for the most part, teachers who are new to New Bedford. DESE has found that teachers without professional teacher status (i.e., teachers in their first three years in the district) were more likely than PTS teachers to receive low evaluation ratings.⁶⁰ And teachers with low ratings are, in turn, more likely than other teachers to achieve low student academic growth.⁶¹ Therefore, the PFP compensation system will not maximize the rapid academic achievement of students.

c. The Lawrence experience cannot be applied to Parker

The Commissioner supports his conclusion that the Parker PFP will attract and retain high quality teachers by reference to the experience in Lawrence, stating that "early results in Lawrence Public Schools (Level 5 District), where a similar compensation plan is in place, are demonstrating the efficacy of compensation based on performance that is tied to opportunities for teacher leadership and expanded responsibilities." (Cover memo, p. 5.) As in the Lawrence compensation plan, a feature of the Parker compensation plan provides financial rewards that are limited to teachers applying for additional "responsibilities and leadership roles". *Id.* That a few teachers may be drawn to additional, paid "opportunities for teacher leadership and expanded responsibilities" is immaterial to whether financial incentives improves performance in the vast majority of teachers (those who by choice or limited availability of such additional roles are paid according to their evaluation ratings and student data).

⁵⁷ *Id.*, at xiii and p. 15.

⁵⁸ *Id.* at 23.

⁵⁹ Springer, at 4.

⁶⁰ Mass. Dep' of Educ., *Educator evaluation data: Student growth percentiles, race/ethnicity, gender, and professional teaching status* (April 2014, ii). (Attachment K.)

⁶¹ *Id.* at i.

So while the PFP “succeeds” in providing a few teachers additional pay for additional responsibilities, there is simply no data available from the Lawrence pay experiment that PFP improves *teaching*. This is so because the Lawrence PFP plan was instituted for the first time in the current academic year, 2013-14, and there is simply no data, much less historical data gathered over a number of years, to ascertain whether financial incentives have improved teacher performance this year, as ratings on teacher summative evaluations and growth scores are not yet available. Even should evaluation ratings improve in future years, it will be difficult (if not impossible) to factor out other possible causes of improved performance such as improved professional development, frequent observations with constructive feedback on performance, improved learning conditions due to wrap-around services, and an overall improvement in school climate.

There are other compelling reasons why the Lawrence experience is completely inapposite from that of the Parker School in terms of the ability of the district to attract and retain good teachers. First, a hallmark of the Lawrence turnaround plan is school-based decision-making which will seek “teacher input based upon the unique needs and culture of their school, and seeks to ensure each school’s process is made transparent to the faculty.”⁶² This school-based model will deal with a wide variety of topics including working conditions, curriculum, school and safety issues, and allocation of discretionary funds.⁶³ Teachers engagement and collaboration is a critical element of teacher satisfaction with their assignment. But such constructs for teacher input and engagement are virtually absent in the Parker Final Plan.

The point is that there are many factors that attribute to attracting, recruiting, and retaining high-quality teachers.⁶⁴ Not only is it premature to declare PFP has been successful in these areas in Lawrence, very fundamental differences between the Lawrence district plan and the Parker School plan make it impossible to extrapolate conclusions from Lawrence to Parker.

c. *Student growth scores are unreliable in determining teacher quality.*

The PFP system in the Final Plan also provides that a teacher’s performance for purposes of advancement in salary is part of the evidence to be considered. If student

⁶² Lawrence Turnaround Plan, App. A.1, *Turnaround Plan Implementation Terms Relating to Teachers*, p.2 (<http://www.doe.mass.edu/apa/sss/turnaround/level5/districts/LawrencePlan.pdf>).

⁶³ *Id.* at pp. 2-3.

⁶⁴ For example, another critical difference concerns collective bargaining agreement in Lawrence, which is more respectful of teacher due process and associational rights, preserves a grievance procedure that culminates in arbitration before a neutral in most instances, and protects fair practices and individual teacher rights. See section IV.D.3, *infra*, for further discussion.

academic growth is determined by test scores or other similar measures of student performance, then the PFP system is based upon a flawed metric because student growth scores are unreliable in determining teacher quality. Both the Massachusetts Teachers Association and the Massachusetts Association of School Superintendents take this position.

“[L]ittle evidence has been provided which establishes a reliable and valid correlation between overall educator performance ratings and student impact ratings (ratings based upon student growth scores), as they measure very different things according to very different criteria. Conflating these distinct items will contribute to public confusion as to their meaning and may be cited by some as the basis for incorrect or unsupported judgments and conclusions about a particular school, school system, or even individual teachers.⁶⁵

This position is consistent with the weight of research, which concludes that student test scores are not sufficiently reliable to form the basis of high-stakes personnel decisions.⁶⁶ High-stakes decisions would include those that underlie ratings in the evaluations upon which a Parker teacher’s compensation will be based. That the PFP will use student data to measure growth and not achievement on a particular test or tests does not make the system “fair.” In fact, the position that students who begin at different achievement levels should gain at the same rate and that gain should be attributed to the teacher to whom the scores are attached has been challenged by current research.⁶⁷ In fact, research has shown that student test score gains correlate to the socioeconomic and other characteristics of students.⁶⁸ In addition, the academic support a student receives at home, plus family resources, student health, family mobility, and the socioeconomic status of neighborhood peers all influence student learning growth.⁶⁹ Neither the MCAS nor the Student Growth Percentile upon which the growth of Parker students will be assessed accounts for these socioeconomic factors.

A student’s growth is also affected by “peer-to-peer interactions and the overall classroom climate.”⁷⁰ Class size and school resources influence student growth.⁷¹ In addition, a

⁶⁵ *MASS Model Collective Bargaining Agreement Language on District Determined Measures* (March 19, 2014, p.1). (Attachment L.)

⁶⁶ *Economic Policy Institute Briefing Paper*, August 29, 2010, (EPI Paper) p. 2. <http://www.epi.org/publication/bp278>.

⁶⁷ EPI Paper, p. 9.

⁶⁸ EPI Paper, p. 10.

⁶⁹ EPI Paper, p. 3.

⁷⁰ Braun, Henry, 2005. *Using Student Progress to Evaluate Teachers: A Primer on Value Added Models*. Princeton, NJ: Educational Testing Service. (Braun) p. 8. <http://www.ets.org/Media/Research/pdf/PICVAM.pdf>; p. 9.

⁷¹EPI Paper, p. 9.

student's learning gains are rarely stimulated by a single teacher, but by more than one teacher. "Prior teachers have lasting effects, for good or ill, on students' later learning, and several current teachers can also interact to produce students' knowledge and skills."⁷²

Finally, the sample size of the data base of student measures and the short period of time during which student data is collected will be limited in 2014-15. This further contributes to the unreliability of using student growth. There are just too many variables to rely on it for high stakes decisions such as Parker teachers' performance and salary entitlement.⁷³ And accumulating data over a number of years does not eliminate entirely the error measurement in a teacher effect estimate. In one study using a sophisticated computer model (VAM) the error rate in distinguishing between "relatively high or relatively low performing teachers from those with average performance was about 26% when three years of data was used for each teacher."⁷⁴ This is especially dramatic when compared to what is considered to be an acceptable measurement error on standardized tests with high stakes for students, which is no more than 20%, but preferably 10% to 15%.⁷⁵ Increasing the duration of data collection to ten years still produced a 12% error rate.⁷⁶

The Final Plan's compensation model violates G.L. c. 69, § 1J(n) by reducing educator's rate of compensation. It further negatively impacts the ability to recruit and retain high-quality teachers, thus hindering the maximization of the rapid academic achievement of students. Accordingly, the Board must modify these provisions. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Modifications for Compensation System:** **(a)** The financial plan at Appendix C will commit available RTTT or other state resources to a compensation plan that will not result in a reduction in the hourly rate of pay for educators at the Parker School. This can be accomplished by increasing pay for available staff, or by hiring an expanded, licensed educators to staff a staggered work schedule that will result in a reasonable number of hours for each Parker teacher. **(b)** The Final Plan shall not include a compensation system that is based

⁷² EPI Paper, p. 9; Darling-Hammond, Linda and Rustique-Forrester, Elle, 2005. *The Consequences of Student Testing for Teaching and Teacher Quality, The Uses and Misuses of Data in Accountability Testing*, 104th Yearbook of the National Society for the Study of Education, Malden, MA: Blackwater Publishing, p. 306; ("Efforts of teachers who emphasize higher order thinking skills in the early elementary grades . . . are often not evaluated on standardized tests until later years.")

⁷³ Kupermintz, Haggai, 2003. *Teacher Effects and Teacher Effectiveness: A Validity Investigation of the Tennessee Value Added Assessment System*, Haifa, Israel, Education Evaluation and Policy Analysis, p. 291; EPI Paper, p. 11.

⁷⁴ EPI Paper, p. 12.

⁷⁵ Haertel, Edward, 2013. *Reliability and Validity of Inferences About Teachers Based on Student Test Scores*. Princeton, NJ: Educational Testing Service, p. 19. http://www.ets.org/s/pdf/23497_Angoff%20Report-web.pdf

⁷⁶ *Id.*

upon student growth scores and teacher performance ratings and all references to the use of student growth in any way except to inform instruction shall be deleted. (c) The school committee, the Commissioner, and the NBEA will jointly study all forms of salary schedule constructs to determine which will be most effective in attracting and retaining high- quality teachers at the Parker School.

3. The lack of a neutral dispute resolution process undermines a culture of success and inhibits the rapid academic achievement of students.

The Turnaround Plan announces that its “Grievance Procedure”, among other working conditions, is “necessary for the successful transformation of the John Avery Parker School” for the success of the turnaround plan. (Final Plan, p. 33.) This replaces the impartial grievance procedure in the existing collective bargaining agreement between the NBEA and the New Bedford School Committee, the final step of which is a hearing before a neutral arbitrator selected by the parties. The Final Plan’s “Grievance Procedure,” unlike the one in the collective bargaining agreement, is biased and partial. Specifically, the Commissioner, who establishes the turnaround plan and appoints the receiver (the Superintendent), is the final decision-maker. (Preliminary Plan, p. 32.) While he has had experience as an educator, there is no evidence that he has had any experience in dispute resolution or with the standards regarding the weighing of evidence for the purpose of rendering a fair decision. And his self-interest in defending the turnaround plan and/or the position of the Superintendent (whom he appointed as receiver) seriously undermines the impartiality of the process. Moreover, the procedure gives the decisions of the receiver “substantial deference.” This further contributes to the procedure’s bias and partiality since the position of Commissioner’s chosen receiver is given significant advantage irrespective of its merit. Indeed, overwhelming and credible evidence on behalf of the grievant’s position would be trumped by the required “deference” given to the receiver’s less convincing evidence.

Abundant research supports the intuitive conclusion that neutral decision-makers with no personal interest in an outcome are essential to an impartial workplace grievance procedure. Joshua A. Reece, *Throwing the Flag on the Commissioner: How Independent Arbitration Can Fit into the NFL’s Off-Field Discipline Procedures Under the NFL CBA*, 45 VAL. U. L. REV. 359, 390-92 (2010) (discussing the problems arising from the fact that the NFL Commissioner, an interested party, decides appeals of workplace discipline.)⁷⁷ In addition,

⁷⁷See also Alexander J.S. Colvin, *The Relationship Between Employment Arbitration and Workplace Dispute Resolution Procedures*, 16 OHIO ST. J. ON DISP. RESOL. 643, 646 (2001) (discussing the inherent weakness of resolving disputes via an internal review where a manager is the final step in the process, specifically stating, “[a] weakness of this type of management appeal procedure is that the employee is often appealing up a chain of command in which higher-level managers will feel pressure to support and affirm the decisions of the lower level managers and supervisors who are their subordinates.”); see generally Richard C. Reuben, *Democracy and Dispute Resolution: Systems Design and the New Workplace*, 10 Harv. Negot. L. Rev. 11 (2005) (generally categorizing democratic-minded, impartial dispute resolution as an important part of the modern workplace); see also; Jessica Oser, *The Unguided Use of Internal ADR Programs to Resolve Sexual Harassment Controversies in the Workplace*, 6 CARDOZO J. CONFLICT RESOL. 283, 295-97 (2005) (discussing problems with partial, internal reviews of workplace disputes in the context of sexual harassment).

research that is especially pertinent to the statutory goals of “recruiting and retaining” high quality staff to advance student achievement shows that grievance procedures that are regarded as fair and impartial *decrease employee turnover* and *enhance an organization’s performance* by signaling problem areas to management for action and monitoring.⁷⁸ The Commissioner’s grievance procedure, on the other hand, will strongly discourage the staff from working at Parker for fear that their issues will not be seriously addressed and that frank discussions with school officials about how the turnaround plan is serving students (or *not* serving students) will result in reprisals that cannot be challenged. Parker educators working under the Final Plan would be obliged to resort to litigation in courts and agencies, would be distracting and costly for both parties.

As well as utterly offending the notion of a fair dispute resolution process, the “Grievance Procedure” also offends the letter and spirit of the Law. As noted earlier, the Legislature permits, but does not require, the Commissioner to limit, suspend, or change one or more provisions of a collective bargaining agreement *provided* further that he may require the school committee and the union to “bargain in good faith” before he does so. G.L. c. 69, § 1J(o)(8). Inherent in this provision is that the Commissioner may make changes to the collective bargaining agreement *only to the extent necessary* for steps in the turnaround plan to meet the goal of maximizing the rapid academic achievement of students. The Final Plan “Grievance Procedure,” as written, applies to *any* dispute that would be covered by the collective bargaining agreement. Because the Final Plan abrogates entirely the grievance procedure in the NBEA collective bargaining agreement, the NBEA and its members are left with no way to enforce any of the terms of the agreement, whether they are related to the Final Plan’s terms (e.g., teacher dismissal, layoffs) or not (e.g., health and safety, retirement).

The Commissioner and the Board should not lightly ignore that dispute resolution by a neutral is widely accepted and favored public policy in the Commonwealth. The Commissioner gives no reason at all as to why he replaced the impartial, contractual dispute resolution process with the one-sided and biased in the Final Plan. For example, he cites no data or experience from Parker that suggests that a fair grievance procedure has caused the academic struggles of Parker students. Nor has he articulated how utilizing the collective bargaining agreement’s grievance procedures to address a dispute related to, for example, retirement, would hinder the ability of the Final Plan to maximize the rapid academic achievement of students. Finally, the Commissioner’s grievance procedure stands in stark contrast with that preserved by Receiver Jeff Riley in Lawrence. The Lawrence collective bargaining agreement includes in a grievance procedure that culminates in impartial arbitration conducted by a neutral arbitrator relative to disputes regarding teacher discipline (except to the extent limited by statute) (Article 36), fair practices (Article 6) and protection of individual rights (Article 10), among other provisions of the contract.⁷⁹

⁷⁸ Lewin, D. and Mitchell, D.J. B., “Systems of Employee Voice: Theoretical and Empirical Perspectives” *California Management Review* (Spring 1992) 95-111.

⁷⁹ Grievance Procedure from Lawrence Collective Bargaining Agreement at Attachment *Tentative Draft Collective Bargaining Agreement between the Lawrence Teachers Union and Receiver Jeff Riley*, March 2014.

Because the Commissioner overstepped his authority in replacing the grievance procedure in the collective bargaining agreement with one that is neither fair nor impartial, the “Grievance Procedure” in the Final Plan violated G.L. c. 69, § 1J(n). Its destabilizing effect, negative impact on the free exchange of ideas related to the turnaround, and contribution to staff turnover, also make it an obstacle to the maximization of the rapid academic achievement of students. Accordingly, the Board must modify this provision. G.L. c. 69, § 1J(q)(1), (3).

→**Requested Modifications for Dispute Resolution Process:**⁸⁰ **(a)** Amend the “Collective Bargaining Agreement” section on pp. 31-33 for members of the NBEA and insert “The grievance and arbitration procedures contained in the NBEA collective bargaining agreement shall be in effect, except as provided for in G.L. c. 69, § 1J related to teacher dismissals.” **(b)** Delete the second sentence of Appendix A (p. 32).⁸¹

V. CONCLUSION

For the reasons set forth above, the NBEA respectfully requests that the Board make the requested modifications to the Final Plan set forth herein.

Respectfully submitted,
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By its attorney,

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⁸⁰ Although the NBEA did not initially object to the grievance process listed in the turnaround plan during G.L. c. 69, § 1J(n) bargaining (although it raised its concerns to the LSG), that does not obviate the need for the Board to modify this provision, for the reasons set forth above, in order to further promote the rapid academic achievement of students.

⁸¹ The statute does provide the Commissioner and Superintendent to make changes to a turnaround plan, including changes to a collective bargaining agreement, without following the process set forth in the statute. See G.L. c. 69, § 1J(t) (the superintendent may develop additional components of the plan and annual goals for those components *consistent with G.L. c. 69, § 1J(n)*, which includes bargaining over changes to a collective bargaining agreement).

SUMMARY OF REQUESTED MODIFICATIONS

Requested Modification for Financial Plan & Opportunity for LSG Recommendations: The Commissioner shall provide an amended financial plan, including a line-item budget, no later than June 15, 2014. The Commissioner shall submit the amended plan to the local stakeholders group for proposed modifications consistent with G.L. c. 69, § 1J(p). The Commissioner shall take into consideration and incorporate the local stakeholder's modifications if they would further promote the rapid academic achievement of students.

Requested Modification for Strategy 1.1: "Establish a co-teaching model at Parker, staffed and resourced adequately with appropriate professional development for general classroom teachers, so that it is available as a delivery model option for students with disabilities. Reassess all Parker students with disabilities to determine appropriate program/service delivery for each student under current best practices to ensure that all students receive rigorous core instruction in the least restrictive environment given their needs. IEPs will be modified as appropriate. Regularly reassess programs and services to ensure that students' needs are met in compliance with state and federal law. "

Requested Additional Modifications for 1.1: (a) Add new bullet to state: "Teachers shall receive 90 minutes of dedicated common planning and collaboration time per week." (b) Revise the first full paragraph on p. 36 to provide 90 minutes of common planning time per week (eliminate "up to") and revise the last sentence of that paragraph to read: "Common planning time activities may include but are not limited to, planning lessons, analyzing student data, strategizing effective instructional practices, working with colleagues, and coaching. Common planning time will not be used for delivery of student services, supervising students, or performing non-instructional related administrative tasks."

Requested Modification for Strategy 1.2: Add sub-bullet on p. 9 to state, "There will be one literacy coach for grades K-2 and one literacy coach for grades 3-5."

Requested Modifications for Strategy 1.4: (a) Add timeframes to p. 11 so that the data analysis and development a strategy for attracting more Parker neighborhood students to the pre-K program will be completed by December 31, 2014 with execution of the strategy to take place spring 2015. (b) Modify implementation milestone on p. 13 so that by September 2016, all potential kindergarten students in the Parker catchment have the ability to attend Parker's pre-kindergarten program with a goal of 90% of those not receiving high-quality preschool services elsewhere enrolling at Parker.

Requested Additional Priority Area 1 Modification (A): Add Strategy 1.6 "Additional staff will be hired to ensure that classes at grades K through 3 have no more than fifteen students and grades 4 through 5 have no more than twenty students."

Requested Additional Priority Area 1 Modifications (B): Add Strategy 1.7 “Use Level 5 authorities to increase the amount of focused professional development for Parker administration to ensure that the Parker staff receive the leadership, guidance, and support they need to successfully provide rigorous instruction.” Bullets for Strategy 1.7: (1) all members of the Parker administration will receive professional development with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (2) all administrators conducting evaluations will receive training/professional development on educator evaluation; (3) the Parker principal shall participate in all professional development in areas over which she is listed as an “owner” of a key strategy (e.g., 1.1, 1.2, 1.5, 2.2, 3.3, 4.3).

Requested Additional Priority Area 1 Modifications (C): Add Strategy 1.8 “To ensure that all elements of the Plan are accommodated in the students’ and teachers’ daily and weekly schedules, the Commissioner and superintendent shall develop student and teacher schedules by June 15, 2014. These schedules will go back to the local stakeholders group for recommendations for modifications consistent with G.L. c. 69, § 1J(p). In addition, the schedules will be provided to the local union and the Commissioner will provide the union with the opportunity to negotiate regarding impacts on the collective bargaining agreement consistent with G.L. c. 69, § 1J(o).”

Requested Modification for Strategy 2.2: Modify the next to last bullet on p. 16 by adding the following: “Specialists in intervention and gifted and talented teaching will be hired to ensure qualified staff are providing this service to maximize the rapid academic achievement of these students.”

Requested Modifications for Strategy 2.2: (a) Replace last bullet on p. 16 with: “By December 2014, complete review of Parker’s technology needs to ensure it has the resources (financial and otherwise) necessary to maximize rapid academic achievement of its students. By June 2014, have a written plan in place to upgrade all technology (software, hardware, and infrastructure). The plan shall ensure that all classrooms have high-speed internet access and a sufficient number of age-appropriate devices (e.g., tablets or laptop computers) to allow for regular use in preparation for 21st century instructional and assessment activities. The plan shall be implemented SY2015-16.” (b) Add sub-bullet: “Professional development shall be provided for teachers and the principal regarding effective incorporation of technology in their instructional practice.” (c) Add sub-bullet: “TCTs and other collaboration efforts shall consider the teaching of technology literacy as part of curriculum development.” (d) Add to Priority Area 2 “Final Outcomes” to address the acquisition of necessary technology and for incorporating technology literacy in the curriculum.

Requested Modification for Strategy 4.4: The Commissioner shall provide an amended Strategy 4.4, which identifies the wrap-around service needs of Parker students and families and specific steps in a written plan for providing for and/or referring students and their families to such services and how those services will be funded shall be identified in the financial plan. The Commissioner shall submit the amended section to the local stakeholders group for proposed modifications consistent with G.L. c. 69, § 1J(p). The Commissioner shall take into

consideration and incorporate the local stakeholder’s modifications if they would further promote the rapid academic achievement of students.

Requested Modifications for Compensation System: (a) The financial plan at Appendix C will commit available RTTT or other state resources to a compensation plan that will not result in a reduction in the hourly rate of pay for educators at the Parker School. This can be accomplished by increasing pay for available staff, or by hiring an expanded, licensed educators to staff a staggered work schedule that will result in a reasonable number of hours for each Parker teacher. (b) The Final Plan shall not include a compensation system that is based upon student growth scores and teacher performance ratings and all references to the use of student growth in any way except to inform instruction shall be deleted. (c) The school committee, the Commissioner, and the NBEA will jointly study all forms of salary schedule constructs to determine which will be most effective in attracting and retaining high- quality teachers at the Parker School.

Requested Modifications for Dispute Resolution Process: (a) Amend the “Collective Bargaining Agreement” section on pp. 31-33 for members of the NBEA and insert “The grievance and arbitration procedures contained in the NBEA collective bargaining agreement shall be in effect, except as provided for in G.L. c. 69, § 1J related to teacher dismissals.” (b) Delete the second sentence of Appendix A (p. 32).