

**HOLYOKE TEACHERS ASSOCIATION'S APPEAL
OF THE COMMISSIONER'S LEVEL 5 TURNAROUND PLAN
FOR THE MORGAN FULL SERVICE COMMUNITY SCHOOL,
HOLYOKE, MASSACHUSETTS**

**Submitted
May 19, 2014**

I. INTRODUCTION

On April 18, 2014, Commissioner Mitchell Chester (“the Commissioner”) issued his final Level 5 turnaround plan (“Final Plan,” Attachment A) for the Morgan Full Service Community School (“Morgan”), a K-8 school in Holyoke, Massachusetts. Classroom teachers, members of the Holyoke Teachers Association¹ (“Association”), have witnessed the struggles of their students with external forces such as poverty, hunger, lack of English language proficiency and other social and emotional trials while they strive to learn in the classroom. There are also impediments to learning within the school, as well; Morgan has no laboratories and no space at the school building for a Pre-Kindergarten.²

While the challenges just described are daunting, ultimately the most important in-school factor contributing to a child’s academic success is the teacher who stands in front of him or her in the classroom. However, academic success has been sidetracked at Morgan by high teacher turnover. For most of the time between 2008 and 2011, the instructional staff was relatively stable, and academic performance showed steady improvement. Unfortunately, in academic year 2010-11, Morgan suffered a 35% turnover of staff; in 2011-12, a 25% turnover; and in 2012-13, a 13.2% turnover. In addition, during this time, instructional and other key positions were eliminated because of budget cuts. Student turnover was also high. Thus, the trend toward improvement stalled. While in June, 2010, Morgan commenced operating under a three-year Level 4 turnaround plan, the plan simply could not compensate for the loss of an essential element of academic success—classroom teachers with experience working with Morgan students and their families. The Legislature has acknowledged that success at Level 5 demands a commitment and leadership at the state level to recruit and retain these teachers. If the goal of attracting and retaining qualified and seasoned staff is not the centerpiece of the turnaround plan, the plan will fail.

State level leadership requires that the Board of Elementary and Secondary Education ensure that the turnaround plan accomplishes meaningful and sustainable change, making the engine of that change the experienced teacher, supported by adequate resources. The Final Plan was developed by the Commissioner and his receiver, Project GRAD USA, a Texas corporation, that has announced on its website that Morgan will be its first Elementary GRAD Academy.³

¹ The Association is the exclusive bargaining representative under G.L. c. 150E of professional educators employed in Holyoke Public Schools, including those employed at Morgan.

² Many of the concerns of Morgan teachers regarding these challenges, their affection for their students and their reaction to Level 5 process is detailed in a video that was delivered to the Board of Elementary and Secondary Education (“the Board”) Board in April. The Association urges Board members to watch it.

³ GRAD started the management of Dean Technical High School this year, so it is too early to assess from concrete measures whether the consultant has been successful.

The Final Plan, itself, is seriously underdeveloped with regard to the essential elements of a turnaround plan, including curriculum, educational strategies and other resources. It ignores the Legislature's command to include steps to address the achievement gaps for English Language Learners and children with special needs, and to include alternative English language programs for students with limited English proficiency. Also, while there is nothing in the Plan relative to restoring instructional staff lost to budget cuts, considerable resources are devoted to adding unnecessary and/or redundant non-instructional staff.

The Final Plan developed by the Commissioner also lacks a financial plan, an explicit statutory requirement to ensure fiscal transparency. Without such a plan, local stakeholder groups knowledgeable of district conditions are not able to propose modifications to the Plan's expenditure priorities. Because the Commissioner altogether failed in his legal obligation in this regard, the Association was obliged to make a public records request from the Department of Elementary and Secondary Education (DESE) for relevant financial information. The documents supplied by DESE show that the priorities of the enormous state and federal expenditure to Project GRAD are gravely misaligned. In fact, inordinate funds are being committed to salaries and management fees for Project GRAD and other consultants and to activities that will not improve student performance in English Language Arts and Math or support English Language Learners or students with special needs. The Association could detect nothing in its review of this information that reveals an intent to restore lost instructional positions to Morgan.

Finally, the Final Plan utterly fails to curb any additional teacher turnover or to attract new, high-quality teachers because it institutes extreme changes to working conditions – and thus teaching conditions – that have driven experienced and dedicated educators from Morgan. Rather than fairly compensating teachers, the Plan reduces the rate of compensation of educators, and implements a compensation scheme that is unproven and based on unreliable determinatives. It imposes an unfair and biased dispute resolution procedure that undermines the statutory goal of recruiting and retaining good teachers. Confronted with these conditions and with the opaque strategy of the Plan, only 7 of 43 Morgan teachers have applied for a position next year. Only two of those teachers possess professional status, that is, have three or more years of service in Holyoke. Approximately 38 teachers applied for a transfer out of Morgan. In sum, the Plan's working conditions have punished the experienced and dedicated staff that is necessary for the success of any turnaround plan.

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 the Board fulfill its responsibility to ensure that *all* students in the Commonwealth reach their full potential, including those at Morgan. The Board is Morgan's best hope for an effective educational program.

II. THE BOARD'S ROLE AND OBLIGATIONS

This appeal is filed by the Association 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 Morgan was chronically underperforming and designated it a "Level 5 school" – "the most serious category in Massachusetts' accountability system, representing receivership."⁴ Simply put, Morgan's success is now the state's responsibility.

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).⁵ This appeal to the 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."⁶ 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:

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

⁴ <http://www.doe.mass.edu/apa/sss/turnaround/level5/schools/default.html>.

⁵ A copy of the relevant portions of G.L. c. 69, § 1J is attached at Attachment S for the Board's reference.

⁶ *McDuffy v. Sec'y of the Exec. Office of Educ.*, 415 Mass. 545, 621 (1993).

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 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. 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 Morgan turnaround plan while the school operates under the Board's 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 constitution and with 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 DESE have had 21 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 specific Level 5 schools 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. If funds are being unwisely spent, the Board must change this. 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 and competently funded; whether it is sustainable, and whether it provides the quality education that 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

A. MORGAN'S JOURNEY TOWARD ACADEMIC SUCCESS OF ITS NEEDY STUDENT POPULATION HAS BEEN CHALLENGED BY STAFF AND STUDENT TURNOVER.

Morgan enrolls 400 students in grades K-8. Over 98% are low income with almost all of those students eligible for free lunch (97.8%). See Attachment B, Morgan Summary Data drawn from http://profiles.doe.mass.edu/state_report/. Morgan has the highest percentage of students eligible for free lunch in Holyoke and the fourth highest rate among all schools in Massachusetts. *Id.* The student population is 92.5% Hispanic and almost half of the students (46.8%) are English Language Learners (ELL). *Id.* The Special Education enrollment in the school is 19%. *Id.*

Morgan students face significant challenges programmatically, academically and physically. There is no Pre-Kindergarten program at Morgan, and only three children entered Kindergarten this year knowing their letters. Attachment C, Preliminary Plan, p. 54. Nearly two-thirds -63.6%- of Morgan teachers responding to a survey reported that their students do not have the precursor skills and prior knowledge needed to learn in their classroom. Attachment

D, p.3, Morgan Teacher Survey.⁷ 90.0% of the teachers reported that their students present with a variety of special needs and that they lack the support to work with each of them effectively, and 63. 6% reported that their students often come to school hungry or tired. *Id.*

Adding to the challenges to academic achievement at Morgan is the substantial mobility among its student population. During the course of the 2012-13 school year, about 31% of the total enrollment transferred in or out. Only 81% of students enrolled on October 1 were still at the school at the end of the year. Another 14.6% of the students enrolled in the previous school year did not return in September. All of these mobility statistics are substantially greater than for Massachusetts schools as a whole and among the highest in Holyoke. *Id.*

In 2010-11, there was 32.3% 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, 20% of the students did not return to the school for the next school year. *Id.* In 2011-2012, the churn rate was still significant at 30.2%, and 12.6% did not return for 2012-13. In 2012-13, the churn rate rose to 31.1%, and 15% did not reenroll in 2013-14. *Id.* Lack of stability of the student population negatively impacts the continuity of instruction and the ability to meet student needs consistently through their elementary school years. *Id.* 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. *Id.* The charts, below, were constructed from the Morgan Summary Data, Attachment B.

→ **Student Mobility Statistics**

	Attrition	Churn	Stability
2013-14	14.6	Not Yet Available	
2012-13	15.0	31.1	81.3
2011-12	12.6	30.2	81.7
2010-11	20.0	32.3	81.6
2009-10	19.0	27.3	81.3

Student turnover is not the only artifact of instability relative to the Morgan population; there is a high turnover rate of staff.

⁷ The Association surveyed teachers at Morgan in November 2013. 11 teachers responded.

→ **Staff Turnover**

	%
2013-14	
2012-13	13.2
2011-12	24.4
2010-11	35.4
2009-10	4.4
2008-09	27.1

The year after the Level 4 designation and the subsequent launch of the Level 4 plan in 2010 (when the turnover rate was 4.4%), Morgan staff suffered a turnover rate of more than one-third. *Id.* In 2011-12, the rate was almost 25%, and was over 10% in the next year. *Id.* In addition, during this time there were severe budget cuts resulting in the loss of essential positions, some of them instructional. In 2011-12, the librarian, an ELL teacher position and a SPED teacher position were cut. In 2012-13, the math coach was eliminated. Attachment E, DESE Monitoring Site Visit Report (MSV Report), p. 9. Subsequently, the ELA coach was abolished, too. In 2013-14, an eighth grade ELA and a middle school math position were eliminated. Indeed, the final turnaround plan released on April 18, 2014 acknowledges that only 21 of the 41 teachers who were on the faculty in academic year 2010-11 remained on the faculty in 2013-14. Final Plan, p. 4.

→ **MCAS Scores**

In 2008, the MCAS CPI and SGP scores for the Morgan were at the lowest point in 13 years. (Morgan Summary Data). In ELA, 56% of the students scored in the Warning/Failing category and only 8% were Proficient or higher. *Id.* The ELA SGP score in 2008 was 16. In Math, the 2008 scores were lower – 73% of the students in Warning/Failing and only 6% Proficient or above. *Id.* The Math SGP was 20.5. *Id.*

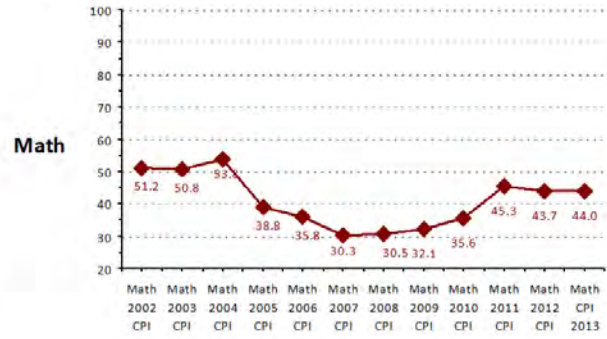
Between 2008 and 2011, the Morgan scores showed steady improvement. It is significant that staff turnover in 2009-10 was only 4.4%! *Id.* The percentage of students with ELA Warning/Failing scores dropped from 56% to 30%; in Math, the drop was from 73% to 48%. During the same time period, SGP scores increased from 16 to 53 in ELA and from 20.5 to 67.5 in Math. *Id.* CPI scores in ELA jumped from 39.2 to 56.9 and Math CPI from 30.5 to 45.3. *Id.*

Unfortunately, the trend toward improvement halted after the designation of Morgan as a Level 4 School in the spring of 2010. Indeed, given the sharp increase in staff turnover

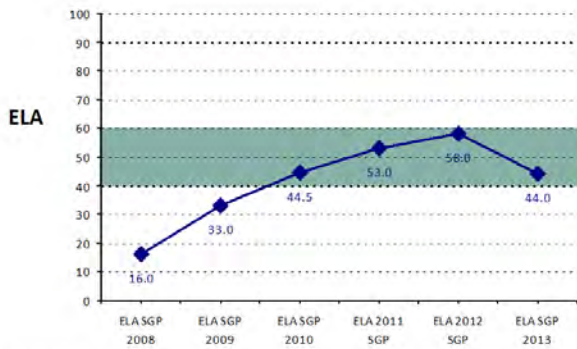
commencing in academic year 2010 -11 and the elimination of key positions, it is no surprise that during the years of implementation of the Level 4 Plan, MCAS scores at the school have steadily declined. ELA Warning/Failing percentage has climbed 12 percentage points to 42% and the math Warning/Failing percentage increased almost 10 points to 47%. The ELA SGP is down to 44 (from a high of 58) and the Math SGP is at 49.5, a decline of 18 points.

The charts below show the trend of MCAS scores for Morgan after the Level 4 designation (Morgan Summary Data):

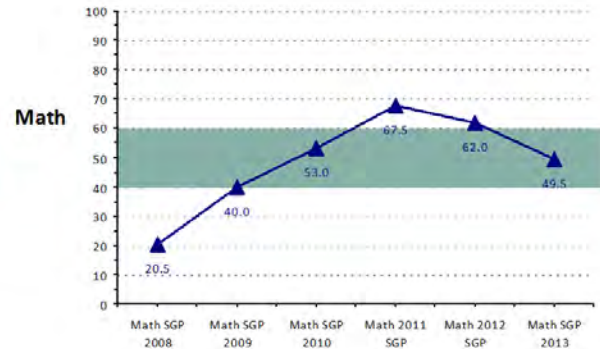
CPI The Composite Proficiency Index assigns 100, 75, 50, 25, or 0 points to each student participating in MCAS tests based how close they came to scoring Proficient or Advanced.



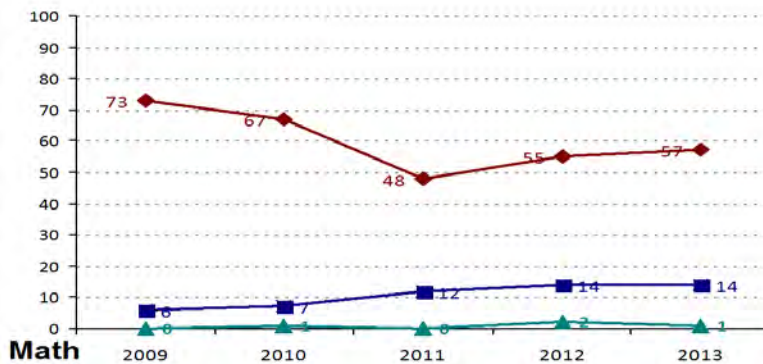
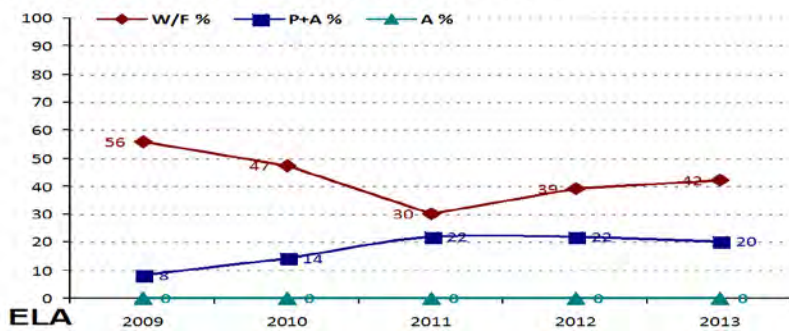
SGP Student Growth Percentile measures how students' MCAS scores have changed over time compared to students whose previous scores are similar.



Typical SGP scores fall between 40 and 60 (shaded area).



% Proficient/ Advanced and % Warning/Failing



B. MORGAN'S TURNAROUND EFFORTS

1. *The Level 4 Turnaround Plan was an earnest attempt at improvement that established a specific strategy for success.*

If the Commissioner declares a school underperforming, the superintendent is obligated to prepare a turnaround plan that is informed by the input of a local stakeholder group (LSG or stakeholder group). G.L. c. 69, §1 J (b)⁸ In June, 2010, the Holyoke superintendent released a Level 4 turnaround plan for Morgan, with the input from stakeholders. Attachment F, Level 4 Plan.

The Level 4 Plan established a Steering Committee made up of key district officials that met on a regular basis to oversee the redesign. Level 4 Plan, p. 1. The Steering Committee, in turn, assisted Morgan in establishing an Instructional Leadership Team made up of Morgan teachers who met twice monthly to track implementation of the plan, communicating regularly with faculty. Level 4 Plan, p. 2.

In addition, the Level 4 Plan called for a change in the staffing, schedule and programs of the school. It added a full -time ELL coach to Morgan's staff who was licensed in English as a Second Language (ESL) and was trained in Sheltered English Instruction (SEI). Level 4 Plan, p. 3. Significantly, the Level 4 Plan recommended the introduction of a Pre-K program. Level 4 Plan, p. 6. The Plan also included an expanded school schedule that could be used, in part, for student access to necessary curriculum such as ALEKS for mathematics (grades 3-8) and READ 180 or System 44 for literacy. Level 4 Plan, p. 7.

The Plan was specific in identifying programs to assist teachers in planning and delivering lessons to ELL students⁹ and children with special needs.¹⁰ Level 4 Plan, p. 3. Targeted professional development for ELA, math and classroom management was introduced. Level 4 Plan, p. 17.

⁸ The ten members of the stakeholder group must include the commissioner or a designee, the chair of the school committee, or a designee, the president of the local teacher's union, or a designee, an administrator from the school, who may be the principal, chosen by the superintendent, a teacher from the school chosen by the faculty of the school, and a parent from the school chosen by the local parent organization. Among the 10 are also representatives of state and local social service, health and child welfare, local workforce development and education agencies. A member of the community appointed by the chief executive of the city or town must also be in the stakeholder group.

⁹ Sheltered Instruction Observation Protocol (SIOP).

¹⁰ The District contracted with Mindwing concepts to provide training in *Story Grammar Marker*, a product for narrative development and *Thememaker*, an approach to help students visualize, organize and comprehend non-fiction material. It contracted with Lindamood-Bell to provide support to teachers through observation, consultation and lesson modeling.

The Level 4 Plan launched a comprehensive strategy of tiered instruction, outlining specific instruction arranged in three tiers, each of which was designed to serve students according to the level of support they needed.¹¹ Level 4 Plan, p. 8. The Plan was very precise with respect to the literacy interventions it would utilize.¹²

The Plan called for the establishment of a Full Service Community School (FSCS) model, which is a comprehensive system of family, school and community support to provide students with the services needed to improve academic performance. Level 4, Plan, p. 12. The model focused on attendance, data assessment, and safety programs. Level 4 Plan, p. 13. Specific community partners were named, including the River Valley Counseling Center which, to date, provides private, in-school mental health counseling to 30% of the Morgan students each week. Other partners included Homework House (tutoring), Project 13 (intensive mentoring for middle school students) and PIRC, a parent resource center. Level 4 Plan, p. 14.

The FSCS model retains a Family Engagement Coordinator to serve as a liaison to parents and a Community Partner Coordinator to coordinate with community partners. Staff reports that a new pilot started this school year, 2013-14, under the auspices of FSCS, supports students with chronic attendance problems by coordinating with the Department of Children and Families and the court system.

As noted above, Morgan suffered a significant rate of turnover during the three years of the Level 4 turnaround plan that was implemented in June, 2010. In addition, during this time there were severe budget cuts resulting in the loss of essential positions, some of them instructional. MSV Report, p. 9. Approximately one-half of the teachers at Morgan in 2011 remained through 2013-14. Final Plan, p. 4.

2. The Morgan Level 4 Redesign Grant Monitoring Site Visit, conducted in February 2013, identifies strengths and areas for growth relative to the concrete components of the Level 4 plan upon which the Final Plan could have built.

In the midst of the crisis in staff turnover in February of 2013, DESE deployed DESE staff and employees of School Works, LLC to conduct a Monitoring Site Visit to Morgan. The purpose of an MSV is to provide Level 4 schools and School Redesign Grant (SRG) recipients with formative feedback in support of turnaround efforts. MSV Report, p. 1.

¹¹ Based upon specific assessments, students are grouped into (Tier 1) differentiated instruction in the core curriculum; (Tier 2) frequent supplemental support is provided in small groups several times a week; and (Tier 3) and Intensive intervention for those students unsuccessful in Tier 2.

¹² Heinemann Leveled Literacy Intervention, Soar to Success, READ 180, System 44, Book Clubs, Lindamood Phoneme Sequencing Program, Seeing Stars*, Story Grammar Marker*, Thememaker*, Early Reading Intervention. Level 4 Plan, p. 9. Similarly, mathematics interventions are listed: ALEKS, Cloud Nine*, Larson Math, Math Mates, Touchmath*. The starred interventions are designed for students with IEPs. Level 4 Plan, p. 10.

Notwithstanding the loss of key staff at Morgan, the MSV team acknowledged significant strengths in the implementation of Morgan’s turnaround plan. Its curriculum was aligned to the state curriculum frameworks and the MCAS performance level description. *Id.* The team acknowledged regular staff discussions of learning expectations both horizontally (classes at same level) and vertically (between grades). MSV Report, p. 4. The team found that there was a sound system for monitoring instructional practice. MSV Report, p. 15. It found that the specific measures outlined in the Level 4 plan constituted a balanced system of assessments. *Id.* Finally, citing specific components of the model¹³, the team concluded that the FSCS model was an effective system for addressing the social, emotional, and health needs of students.

However, the MSV team found the following areas for further growth: While comprehensive, teacher –friendly curriculum maps existed in math, the same could not be said for ELA. MSV Report, pp. 4 and 15. The team acknowledged that the extended schedule was designed to provide adequate learning time for all students in core subjects, but it found that not all time was maximized. MSV Report, p. 15. Also, likely due to severely diminished instructional and other essential staff, the team found that district instructional practices were not fully implemented across all classrooms and that staff needed to be able to identify and understand the process by which students were referred, placed and moved within the tiered intervention instruction system. *Id.*

3. Project GRAD USA

On October 30, 2013, the Commissioner designated Morgan as a chronically underperforming school. Pursuant to G.L. c. 69, §§ 1J (l) and (r), he elected to retain a receiver to manage and operate the Morgan turnaround plan.¹⁴ The Legislature intended that a receiver be qualified to serve the neediest students in Massachusetts. Therefore, it required that a receiver be an entity or individual with a demonstrated record of success in improving low-performing schools or the academic performance of disadvantaged students. G.L. c. 69, §§ 1J (h.)

The receiver retained by the Commissioner is Project GRAD USA (Project GRAD or GRAD). GRAD is a Texas corporation that is in business to provide educational services in low-income areas. In 2012, GRAD expanded its business to managing high schools under “restart”

¹³ For example, FSCS developed behavior management work group meets monthly to address and to document and track disruptive student behavior. The protocol includes behavioral consequence, inventory of behaviors that should be managed by teachers, behaviors managed by intervention response team outside classroom, behaviors referred to wraparound services. Disciplinary referrals reduced by half since September of 2012. A WRAP team composed of guidance counselor, adjustment counselor, assistant principals, FSCS project manager, outreach worker nurse, and parent and community engagement liaison met every Thursday morning to establish wraparound services protocol and action steps involving direct service to students and families, connecting to local partners and compiling data in order to better understand student needs. FSCS also includes a family outreach component, offering ESL classes to parents, making contact to each family on a regular basis, sponsoring middle school night to prepare students for high school and “pirates’ cove” night focusing on math literacy and a PMAD group that helps raise funds for family events and other projects.. MSV Report, pp.13-14.

¹⁴ www.projectgrad.org

models, or Academies.”¹⁵ The curriculum of GRAD Academies focuses on “Science, Technology, Engineering and Math. (STEM).”¹⁶ On its website, GRAD states that it implements the NewTech Network high school model, drawing on NewTech’s curriculum development, coaching, and professional development principals (sic) for GRAD Academies.¹⁷ In addition to collecting its own management fees and salaries, GRAD intends to deliver to NewTech and other consultants hundreds of thousands of dollars over the life of the Morgan project. *See, infra*, IIIA.

Morgan will be the first Elementary GRAD Academy.¹⁸ *Id.* This makes the Board’s critical scrutiny of the Final Plan and of GRAD’s performance as a receiver essential because there is a fundamental difference between educating elementary school students and high school students. Students in elementary school are taught basic underlying concepts to facilitate “how to” read, perform math tasks and other skills; students in high school are taught to absorb and analyze specific content.¹⁹ The distinction between the type of education delivered at the elementary school level and that at the high school level is acknowledged by the Massachusetts Educator Licensure Regulations.²⁰

Because of the statutory requirement that a receiver be qualified and the lack of GRAD experience in managing an elementary “Academy,” the Board and the Commissioner have a heightened responsibility to assure the stakeholders, the Morgan community and the public that the Final Plan represents the expenditure of government resources on a program of academic improvement with specific strategies, curriculum and student support.

¹⁵ <http://projectgrad.org/about/history/>

¹⁶ <http://projectgrad.org/management-model/>

¹⁷ <http://projectgrad.org/management-model/>

¹⁸ GRAD started the management of Dean Technical High School this year, so it is too early to tell whether from concrete measures whether the consultant has been successful.

¹⁹ <http://everydaylife.globalpost.com/differences-between-elementary-secondary-school-assessments-30952.html> Assessments in elementary school focus on a basic understanding of certain subjects; assessments in secondary school focus on applying, evaluating and synthesizing understanding of those subjects. For example, following the Common Core standards, a third grader would be evaluated on her ability to understand a reading selection, while an 11th grader would demonstrate her ability to cite textual evidence to support an analysis of a selection.

²⁰ <http://www.doe.mass.edu/lawsregs/603cmr7.html?section=all> 603 CMR 7.06 (5) provides that teachers at Levels PreK-2 must know how to teach students to read. For example, they must know the significant theories, approaches, practices, and programs for developing reading skills and reading comprehension, the relationships between beginning writing and reading, and theories of first and second language acquisition and development. *Id.* On the other hand, an English teacher of students at Levels 5-8 and 8-12 must focus on content. For example, she teaches American and World Literature. 603 CMR 7.06 (8). She must know the characteristics of different genres of literature and the various schools of literary criticism. *Id.* Regulations governing high school and elementary school mathematics illustrate similar distinctions in content and goals. 603 CMR 7.06 (17).

IV. ****GROUND**S FOR APPEAL**

The guiding principal of G.L. c. 69, § 1J is to turnaround underperforming and chronically underperforming schools “by *maximizing the rapid academic achievement of students.*” G.L. c. 69, §§ 1J(c), (n) (emphasis added). The purpose of the turnaround plan is to design specific 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 substantive 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.

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.²¹ *See* G.L. c. 69, § 1J (n). Thus, including measurable annual goals is another statutorily mandated part of a turnaround plan.

²¹ “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).

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 rapid advancement of academic achievement.²² 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 on 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 Morgan 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

²² "[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).

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 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).

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 Morgan 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."²³ As observed above, research is reality at Morgan. 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 INCLUDE A FINANCIAL PLAN.

The statute explicitly requires that a turnaround plan 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) (99-101) (emphasis added).²⁴ A financial plan is more than a list of funding sources. A competent financial plan is a budget strategy that includes an itemized forecast of an entity's income and expenses for a specific period.²⁵ As is clear from the Legislature's use of the word "plan," the statute does not require final figures, but commands that the turnaround plan include any available projections. A turnaround plan is deficient as a matter of law if it does not contain a financial plan setting out both estimated income and proposed expenditures over the three- year duration of the plan. This material violation attaches at the time that the final plan is released. It attaches at the preliminary plan stage, as well, if the Commissioner does not include funding and expenditure details in the

²³ 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.)

²⁴ 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)(134-138) (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 Holyoke community cannot have confidence in the turnaround effort.

²⁵ http://www.investorwords.com/8592/financial_plan.html

preliminary plan that are sufficient for the stakeholders to review and make recommendations on. Without these details, the stakeholders' right to make modifications on a critical component of the turnaround plan is read out of the statute. See G.L. c. 69, § 1J (m) and (p). This violates 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. Hence, the Commissioner²⁶ may not release a preliminary, much less a final, plan that is devoid of projected income and expenses.

In this case, the Commissioner utterly failed in his statutory responsibility to include in the final plan a financial plan in sufficient detail for the stakeholder group and the Board to review and make modifications. It is particularly egregious that the Commissioner, in fact, had ample, detailed expenditure information as early as January 2014 that could have and should have been included in both the preliminary and final plans. The relevant facts are as follows:

The Commissioner issued his preliminary plan on March 7, 2014 and his final plan on April 18, 2014. This document was a collaboration between the Commissioner and the receiver, Project GRAD USA. *Id.* at 1. The one-paged preliminary financial plan, which covers only FY 15, includes no estimates of amounts attributed to local, state, and federal funding sources. Preliminary Plan, p. 50. Of more concern, however, is that it does not identify on what items the Receiver will spend money and how much it will spend. The Commissioner's Final plan, which again, covers only FY 15, consists of a scant three pages of verbiage unattached to budgetary numbers, is also wholly inconsistent with the statutory requirements in G.L. c. 69, § 1J(n). The Plan provides projected funds only, with no line-item budget articulating how those funds will be spent. As the Plan is utterly devoid of expenditure items, the Board does not have sufficient information to fulfill its statutory and constitutional duty to assure that sufficient resources will be provided or requested so that Morgan students will succeed. Nor can the Board order modifications on a key feature of the Plan, i.e., what government funds are required and how they will be spent. The Board needs to understand how these funds are being allocated, not just at Morgan but at all the Level 5 schools.²⁷

Additionally, the Plan is completely lacking in any information as to how it will be funded and how those funds will be allocated through the second and third years of its implementation. Without insisting that the Commissioner provide a professional, detailed, and thorough financial plan for the duration of the Plan's term, the Board is shirking its duty which is to ensure that sufficient financial resources support the turnaround effort, and risking that this school – now being run under its auspices – will fail.

²⁶ It is no defense for the Commissioner to say that data is not "ready" as he controls the timing of the development of the turnaround plan in that his initial declaration of chronic underperformance commences the timeline for final plan development.

²⁷ In total, the Commissioner has allocated \$2,146,000 of state funds to pay for the Morgan, Holland, and Dever receivers' program directors 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 this money would be better spent in direct programmatic services for students in these struggling districts, such as instructional staff and pre-kindergarten.

Again, the Plan's lack of transparency regarding funding is utterly indefensible because documents held by DESE show that the Commissioner had expenditure information as early as January, 2014 relative to the anticipated costs of GRAD over and above school-based local appropriation for salaries and other items (hereinafter "Morgan budget").²⁸ Yet, the Commissioner did not include this information in either the preliminary or the Final Plan. The development through the winter and spring 2014 of the body of financial information available to the DESE, but withheld from the stakeholders, the Holyoke School District and the public, is as follows:

1. **By January 24, 2014, a Procurement Work Form (PWF) fully executed by Project GRAD and DESE included the following projected expenditures for the Morgan three-year turnaround plan. Attachment G.** The charts, below, represent GRAD's attachments to the PWF. They set out how much money in addition to the Morgan Budget was anticipated for the funding of GRAD start-up costs through June 30, 2014 and for the funding for each of the three academic years of the Plan, 2014-15 (FY15), 2015- 16(FY 16), and 2016-17 (FY17), including :
 - a. travel costs for GRAD employees amounting to \$105,000 from January 2014 through June 30, 2017;
 - b. a Management Fee of \$200,000 for "planning" from approval (January) through June 30, 2014, with an additional \$50,000 to the GRAD Project Director;
 - c. a salary to the Project GRAD director of \$120,000 per year and a "Management Fee" that is \$200,000 in FY15 which soars to \$400,000 for each of FY16 and FY17;
 - d. substantial expenditures, that are unidentified in the Plan, earmarked for other consultants: TeachPlus [FY 15 - \$44,493; FY 16- \$203,936; FY 17- \$199, 217]; New Tech Network [FY 15 - \$36,000; FY 16- \$59,000; FY 17- \$59,000]; the Parent – Child Home Program [Start –up costs-\$10,000; FY 15 - \$90, 000; FY 16- \$100,000; FY 17- \$100,000]. While NewTech is mentioned in passing in the Final Plan, it is included in a list of several partners that will participate in curriculum development; it is not clear what NewTech's role is. Final Plan, p. 26. TeachPlus and Parent-Child Home Program are not mentioned at all;
 - e. total projected expenditures to GRAD that re even larger in the years subsequent to FY 15 [FY 15 - \$840,493; FY 16- \$1,222,936; FY 17- \$1,138,217].

²⁸ The Holyoke Teachers Association acknowledges the quick response to its public records request pursuant to G.L. c. 66, § 10 and G.L. c. 4, § 7(26) ["Public Records Law"] for the financial data in this section and the substantive information was produced. Nevertheless, this does not relieve the Commissioner of his obligation to have included this information in the preliminary and final plans as chapter 69 places the burden to produce a financial plan on him. It is not the stakeholders' or Appellant's responsibility to chase down information required to be in the respective plans in the first place.

→GRAD’s anticipated costs over the Morgan budget from January, 2014 through June 30, 2015 is \$1,542,936 [\$320,000(start-up)²⁹ +\$840,493(FY 15)³⁰].

From approval to June 30, 2014 (planning year):

Title	January – June 30, 2014
Leadership and Learning	\$15,000
Math and literacy coaches	\$10,000
Project GRAD Management Fee	\$200,000
Project GRAD Project Director	\$50,000
Recruitment – teachers and leaders	\$20,000
The Parent-Child Home Program	\$10,000
Travel	\$15,000
TOTAL	\$320,000

From July 1, 2014 to June 30, 2015 (first year of managing the school):

Title	July 1, 2014 – June 30, 2105
Leadership and Learning	\$25,000
Literacy program	\$100,000
Math and literacy coaches	\$120,000
New Tech Network	\$36,000
Project GRAD Management Fee	\$200,000
Project GRAD Project Director	\$120,000
TeachPlus	\$44,493
Technology	\$75,000
The Parent-Child Home Program	\$90,000
Travel	\$30,000
TOTAL	\$840,493

²⁹ On April 1, 2014, Erica Champagne, DESE staff member, informed Greg Oliver, GRAD CEO, that DESE will suspend remaining School Redesign Grant for Holyoke and give it GRAD instead for “start up efforts for L5 at Morgan.” Attachment H. This amount is \$200,000 to be distributed to GRAD in four installments from May 1 through August 1, 2014, with “all monies spent by August 31, 2014.”

³⁰ DESE staff was using the PWF FY 15 estimate of costs [\$840,493] in any communications regarding funding as of February 26, 2014. Email from Pakos to Montiero, et al. Attachment I .

From July 1, 2015 to June 30, 2016 (second year of managing the school):

Title	July 1, 2015– June 30, 2106
Leadership and Learning	\$15,000
Literacy program	\$100,000
Math and literacy coaches	\$120,000
New Tech Network	\$59,000
Project GRAD Management Fee	\$400,000
Project GRAD Project Director	\$120,000
TeachPlus	\$203,936
Technology	\$75,000
The Parent-Child Home Program	\$100,000
Travel	\$30,000
TOTAL	\$1,222,936

From July 1, 2016 to June 30, 2017 (third year of managing the school):

Title	July 1, 2016 – June 30, 2107
Leadership and Learning	\$15,000
Literacy program	\$100,000
Math and literacy coaches	\$120,000
New Tech Network	\$59,000
Project GRAD Management Fee	\$400,000
Project GRAD Project Director	\$40,000
TeachPlus	\$199,217
Technology	\$75,000
The Parent-Child Home Program	\$100,000
Travel	\$30,000
TOTAL	\$1,138,217

2. **On March 7, 2014, the Commissioner issued his preliminary plan that included the “financial plan” described, above, that was completely devoid of any detail, much less those regarding GRAD’s anticipated costs.** Preliminary Plan, p. 50.
3. **On March 24, 2014, Alix Olian, GRAD’s Chief of Staff, informed William Bell, DESE’s Associate Commissioner for Administration and Finance, of an increase in the cost of “managing Morgan” (in FY 15) to around \$950,000. The programs appear to be roughly the same as appear in the PWF. Attachment J.** Ms. Olian states that the number “includes the following: teacher and leader PD, kindergarten program, math and literacy programs, math and literacy coaches, New Tech Network for 6-8 STEM Academy, Project GRAD management fee, Project GRAD project director, and an early childhood parent-child literacy program. [W]e also see these costs changing slightly in the coming years, as we

would include additional programs such as TeachPlus and make other changes.”³¹ Once again, TeachPlus is not mentioned in the Level 5 Plan.

4. **On April 4, 2014, GRAD gave an amended breakdown of the FY15 figure, increasing the expenditures to \$963,000. Attachment K:**

GRAD education delivery cost	\$ 350,000
GRAD project director	\$ 130,000
Pre-Kindergarten	\$ 75,000
Leadership and learning	\$ 68,000
Literacy and Math coaches	\$ 140,000
Literacy and Math program	\$ 100,000
PCHP	\$ 100,000
<hr/>	
Total	\$963,000

5. **On April 14, 2014, the Holyoke Public School Department issued the projected FY 15 budget, showing an 8.5% decline in resources. Carleton to Bell: Attachment L.**
6. **On April 28, 2014, GRAD provided a “breakdown of the Morgan Educational Delivery Fee” (Project Grad Management Fee) Attachment M.** This breakdown gives conclusory and largely uninformative explanations of the \$350,000 management fee. In each section, for example, GRAD charges for “close collaboration with DESE and HPS as appropriate.” In addition, each section announces that the charge is, in part, for “[s]upport primarily by Project GRAD CEO, “ and other named staff, although the nature of the support is not described. It is, therefore, impossible to ascertain whether there is overlap with the activities of the Project Director who already receives \$130,000 per year.
7. **On April 18, 2014, the Commissioner issued his final turnaround plan that identifies a total “funding source” of \$1,497,689 in state and federal funds in addition to those identified in the local Morgan budget. Final Plan, p. 64. Yet, there is not a single item that shows how these funds are going to be spent. *Id.*** The “Funding Source” entry entitled “State Turnaround Plan contribution” that allocates money to “Operation of the school” and “Priority Area support” aligns with the cost for GRAD fees and salaries amounting to \$500,000 (education delivery cost fee and Project Director salary.) The \$2,423,420 aligns with the April 14, Morgan budget’s school-based local appropriation. Attachment L. It remains uncertain how the rest of the funds will be spent.

³¹On March 24, 2014, in response to Olian’s email, Liza Veto, DESE staff, asked “Does the 950K include any pre-K costs?” Olian responded, “It includes about \$75,000 for pre-K. If we have to rent a space, though, that cost could go significantly up. ...that is a good catch.” Attachment J. It is not apparent from the financial documents that the additional cost of leasing space has been included.

While the FY15 cost projections increase from the January PWF figure of \$840,493 to the April 4th \$963,000 figure, the data consistently sorts into the following broad categories: GRAD management fee, salary for GRAD project director, Leadership and Learning, Literacy Program, Math and Literacy Coaches, Parent Child Home Program.³²

In any case, it is apparent that there was abundant expenditure data in sufficient detail in the PWC to be included in the preliminary plan that the Commissioner released to the Morgan Stakeholder Group on March 7, 2014. If the stakeholders had this data, they could have asked questions about the expenditures and made recommendations for modifications regarding spending priorities. For example, the LSG could have inquired of the Commissioner and GRAD as to the amount of the GRAD Project Manager salary and GRAD Management Fee and why the Management Fee doubles in FY16 and FY 17. They could have asked for a breakdown of the Management Fee to assess whether it accurately reflected legitimate activities and did not include those already performed by the Project Director. They could have probed the reason why GRAD, a consultant retained by the Commissioner for its unique expertise in turning around struggling schools, was, itself, requesting hundreds of thousands of dollars in fees over the Plan's duration for three other consultants to assist in performing GRAD's task. They could have asked if any additional instructional positions or Special Needs or ELL teachers were included in GRAD's proposed costs. They could have asked why GRAD was charging tens of thousands in travel costs when GRAD already is present in Holyoke as Dean Tech's Level 4 Receiver. They could have asked which costs estimated in the PWF, if any, were absorbed into the April 4, 2014 summary identified in paragraph 4, above, and which were added or abandoned.

Of course, the stakeholders never asked these and other questions or suggested modifications critical to the successful operation of the turnaround plan and proper management of public money. This is so because the Commissioner did not include any data regarding how he and GRAD intended to use this money in the preliminary plan. Consequently, the stakeholders' ability to perform their statutory obligation to recommend meaningful modifications to the turnaround plan was hijacked.

Moreover, the Board is similarly handicapped in recommending modifications to the Final Plan because the financial plan included in it is devoid of detail. A school committee or an entity applying for charter school status is held to a much higher level of expenditure specificity than exists in the Final Plan. The Board, however, is not powerless. To the contrary, it can and must hold the Commissioner accountable for creating a financial plan that includes sufficient detail for the Board to fulfill its duty to ensure that Morgan will have the funds to succeed. Otherwise, the Final Plan is useless as a blueprint for student achievement which the Board can review and upon which it can make modifications.

³² An additional \$122,000 was added projected costs from January to April, including \$75,000 in Pre-K.

→**Requested Modification of Financial Plan:** 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 to promote the rapid academic achievement of students.

B. THE COMPONENTS OF THE PLAN THAT RELATE TO THE DELIVERY OF EDUCATIONAL SERVICES TO THE STUDENTS AT MORGAN ARE INCONSISTENT WITH G.L. c. 69, § 1J (n) AND/OR ARE NOT SUFFICIENT TO REALIZE THE GOAL OF MAXIMIZING THE RAPID ACADEMIC ACHIEVEMENT OF MORGAN STUDENTS.

- 1. The Board must make the following modifications to the Final Plan in order to comply with specific statutory requirements, including the guiding statutory principle of maximizing the rapid academic achievement of students.**

There is a profound lack of detail relative to the programs, strategies and curriculum in the Morgan Level 5 turnaround plan. This deficit is especially glaring when accounting for the fact that the Level 4 plan identified programs with specificity and that the Level 4 Monitoring Site Visit conducted under the auspices of DESE in February of 2013 found strengths and areas for growth in the progress of the Level 4 plan upon which the Commissioner could have built.

Strategies 4.1, 4.2, 4.5 and 4.6: The Final Plan does not identify and/or describe any curriculum, instructional strategies or assessments that will be implemented to maximize the rapid academic achievement of students, including those strategies and programs with regard to ELA, Math, ELL and special needs.

- *Strategies 4.1 (ELA) and 4.2 (Math)*

Strategies 4.1 and 4.2 acknowledge the essential nature of “[a]system of standards, curriculum and instructional strategies and assessments” elevating the performance of ELA and math. However, the Commissioner does not identify what specific standards, curriculum, strategies and additional assessments will be utilized in these areas. The Commissioner promises that in June, the Receiver will “select [initial] resources that provide the strategies, tools and classroom supports” for ELA instruction, but gives no hint as to what these resources will be. Strategy 4.1, Final Plan, p. 26. The Final Plan makes a similar promise relative to math instruction. Strategy 4.2, *Id.* The lack of detail in the Level 5 plan stands in sharp contrast to the Level 4 plan that identifies clear and definite initiatives in order to give guidance to those who participated in the turnaround process. There is no evidence in the Level 5 plan that its drafters analyzed what worked and what did not from among the particular features of the Level 4 plan.

The failure of the Final Plan in this regard is especially concerning in light of the fact that curriculum is considered an “essential condition” to school improvement according to the MSV process that was undertaken under DESE auspices. The absence of curricular resources and strategies in the Plan raises the question of whether the fact the Morgan is GRAD’s first

elementary “Academy” means that GRAD is unprepared to deliver the necessary education to the school’s students. Moreover, the promise to come up with “resources [texts?], strategies, tools and supports” in the future does not comport with the Commissioner’s statutory obligation to secure stakeholder input regarding the essential components of the Final Plan before it is released.

The Commissioner’s plan also asserts that “[t]he school is currently full of materials but it is unclear what those materials are [and] the extent of their alignment with state standards.” Final Plan, p. 24. The Association is informed that it was GRAD that conducted this review of materials. This is a puzzling and disturbing pronouncement, indeed, in light of the fact that the MSV team confirmed in 2013 that Morgan had succeeded in this category, and that the curriculum was horizontally and vertically aligned. The Commissioner makes no effort to explain why it disagrees with DESE’s own MSV team regarding whether Morgan texts and materials are aligned with Massachusetts curriculum frameworks.

Nor do the architects of the Final Plan acknowledge that the MSV team concluded that, while math had appropriate curriculum maps, ELA did not. Again, the Final Plan does not discuss whether or not the Commissioner and Receiver agree with the MSV team assessment, much less what steps it will take to address this presumed disparity.

The programmatic priorities of the Final Plan are not only unformed, they are misaligned. In the most recent MCAS assessment, of the 232 students at Morgan in Grades 3-8, 80% scored in the Needs Improvement category or Warning in ELA, and 85% scored in Needs Improvement or Warning in Math. Final Plan, p. 11. Yet, as noted, there is no program identified to improve performance in these subjects. Indeed, the only program the Plan identifies with any detail or enthusiasm is STEM, primarily a high school program, which GRAD has historically promoted and which is limited at Morgan to delivering science, technology, engineering and math to grades 6 through 8. In fact, unlike ELA and Math, STEM has its own Priority Area. Priority Area #3, Final Plan, p. 17. Significant sums are being spent on STEM, including for a new, non-instructional STEM principal. Final Plan, p. 20. There is no suggestion in the Plan as to how GRAD will adapt STEM to grade school students, particularly in the younger grades, or how GRAD will integrate any curriculum that is developed with a math and ELA curriculum that is aligned to Massachusetts Curriculum Frameworks. In sum, the Board should consider whether a high school STEM model will bring about rapid academic achievement rather than a specific, robust ELA and Math program in Morgan grades 3-8.

- *Strategies 4.5 (ELL) and 4.6 (Special Needs)*

The student population at Morgan is 92.5% Hispanic and almost half of the students (46.8%) are ELL. The Special Education enrollment in the school is 19%. General Laws c. 69, § 1J (n) (4) requires that a Level 5 plan include steps to address the achievement gaps for ELL and special education children. Subsection (n) (5) requires that the plan include alternative English language learning programs for students with limited English proficient (LEP) students.

The Plan does not establish an alternative program for LEPs, nor does it identify meaningful steps to address the achievement gaps for ELL students. While the Plan states that those teaching ELL will have SEI endorsements and that differentiated assignments and support materials will be identified in summer workshops, there are no materials or strategies whatsoever identified in the plan, itself. Indeed, a competent Level 5 plan for ELL would have identified, in addition to SEI training, the strategy for the implementation of whole school English Language Development (ELD) that focuses on language instruction in tandem with content instruction.³³ It would have had a plan for targeted individualized daily English language instruction in small groups for students who need it and for specific environmental supports, including specific resources and materials. The Plan would have specified literacy interventions across all subjects. Simply put, there are no thoughtful or substantive steps in the Plan to address the achievement gap for ELL students. Indeed, it does not include an alternative LEP program at all. Thus, the Plan provides nothing for the stakeholders or the Board to review or upon which they can make modifications. Whatever programs, including resources, utilized at Morgan will be created after the Level 5 plan development process is over. This is a clear violation of G.L. c. 69, § 1J (n) (4) and (5).

Aside from a laconic promise to follow the law and student IEPs, the Final Plan is similarly silent regarding the specific resources that will be introduced or the steps that will be followed in order to close the achievement gap for Special Needs students. Strategy 4.6, Final Plan, p.27. Thus, the Plan does not include “steps to address achievement gaps for special education” students. In contrast is the Level 4 Plan that focused on training in specific instructional models for Special Needs inclusion teachers. See, Section III B, 1, *infra*.

As noted in Section IV. A, Project GRAD’s staff, programs and consultant partners are being richly funded. This fact and the mandates of chapter 69 require that the Plan designate a specific curriculum with accompanying resources and describe how these resources will be deployed for the duration of the turnaround plan. This did not occur, rendering the Plan wholly inconsistent with the statute and is an ineffective roadmap for student achievement upon which the LSG or the Board could have made modifications.

→Requested Modifications for Strategies 4.1, 4.2, 4.5 and 4.6: (1) Modify each of the Strategies 4.1(ELA) and 4.2(Math) to include the following language: “By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan students and shall describe how such strategies and resources will be implemented for the duration of the turnaround plan.” **(2)** Modify Strategy 4.5(ELL) to include the following language: “By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan ELL students and will describe how such strategies and resources will be implemented for the duration of the turnaround plan to address the achievement gap relative to these students. These strategies will include a plan for the implementation of whole school English Language

³³ The Board’s attention is directed to the Dever Level 5 plan that includes a comprehensive and systematic approach to the delivery of education to ELL students.

Development (ELD), for targeted individualized English language instruction and environmental supports, and for literacy intervention strategies and programs across all subjects.” **(3)** Modify Strategy 4.6(Special Education) to include the following language: “By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan special needs students and shall describe how such strategies and resources will be implemented for the duration of the turnaround plan to address the achievement gaps relative to these students.” **(4)** Further modify Strategy 4.6 include the following language: “The Commissioner will identify a comprehensive alternative English language learning program for LEP students. “ The foregoing resources, plans for implementation and programs will be returned to the local stakeholder group for its recommendations for modifications consistent with G.L. c. 69, § 1J (p).

→**Requested Modification: Remove Priority #3:** The Board should modify the plan to remove Priority # 3, (STEM) in light of other learning priorities as are demonstrated by current assessments of student performance in Math, ELA, ELL and SPED.

Additional Strategy 1.9A (Priority Area #1) (A): The Final Plan has not restored needed instructional positions, but rather has added non-instructional positions that are unnecessary and redundant.

While the Final Plan does restore teacher coaches positions, the Plan does not restore a single additional instructional position lost due to budget cuts since the establishment of the Level 4 plan in 2010. The LSG confirmed the need to increase the number of positions to Morgan in its recommendations to the Commissioner in connection with the development of the turnaround plan. Preliminary Plan, p.55 (increase bilingual staff); *Id.* 56 (restore the librarian position). However, it is not apparent from the Plan that a penny of the \$1,497,689 in state and federal funds allocated to GRAD’s operation in FY 15 is committed to restoring lost instructional positions or increasing the number of positions in essential disciplines. Final Plan, p. 64.

The Final Plan provides, in addition, that GRAD intends to hire a Director of Business Operations. Final Plan, p. 9. Currently, the Holyoke Public Schools has an Accounting Manager, a Director of Finance, and a Director of State and Federal Programs, a superintendent, assistant superintendent and other staff who manage the business operations of Holyoke Public Schools, including Morgan.³⁴ The Final Plan also adds another new position to the administrative staff, a STEM principal. Final Plan, p 22. As noted above, it is questionable as to whether STEM should be a priority at all for Morgan in light of more critical needs in ELA, Math, ELL and SPED. Certainly, additional non-instructional staff should not be added to support STEM when there are students at Morgan who struggle to read and count. The Board is responsible for guaranteeing that the staffing choices made will ensure rapid academic achievement for students.

³⁴ <http://www.hps.holyoke.ma.us/personnel.htm>

→ **Requested Modification: Additional Strategy 1.9A (A):** Add the following language to new Strategy 1.9A. “The Commissioner will restore the instructional positions eliminated since the establishment of the Level 4 Plan in June of 2010.”

→ **Requested Modification: (Priority #1) and Strategy 3.3:** The Board will modify the implementation benchmarks in Priority #1 to remove the position of the Director of Business Operations and will modify Strategy 3.3 to remove the position of STEM principal.

Additional Strategy 1.9A (Priority Area #1) (B): 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.

At Morgan, some class sizes are unacceptably high. For example, in Kindergarten where small class size is essential, there are approximately 56 students sorted between two kindergarten classes. In the fourth, grade the situation is worse. There are approximately 58 fourth grade students divided between two classes. 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%.³⁵

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. (The McDuffy Report).³⁶ The McDuffy Report

³⁵ “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>)

³⁶ (http://www.doe.mass.edu/finance/chapter70/McDuffy_report.pdf)

discussed research supporting the need for smaller class sizes, particularly for urban, minority and low income children. *Id.*, pp. 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.

With Kindergarten students, in particular, small class size is essential. Subsequent analysis of the Project STAR data concluded “that entering a small class in kindergarten or grade 1 and remaining in that setting for at least three years produces, on average, significant and noteworthy improvements in academic achievement at least through grade 8 in all school subjects.” Finn, J., Gerber, S., Achilles, C., & Boyd-Zaharias, J. (2001). *The Enduring Effects of Small Classes. Teachers College Record 103 (2)*. April 2001, p. 174.

Thus, in order to ensure that sufficient steps are being taken not only to address the achievement gap for low-income students but for long-term improvement in 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 Modification: Additional Strategy 1.9A; for Priority Area# 1(2):** Add the following language to new Strategy 1.9A. “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.”

Strategy 4.4: The Final Plan is deficient in that it fails to take steps to establish a Pre-K program for the Fall of 2014, thus hindering rapid academic achievement of Morgan students.

There is no Pre-K program at all at Morgan. Only three children entered Kindergarten this year knowing their letters. Preliminary Plan, p. 54. The LSG proposed as a modification to the preliminary plan that the Final Plan should “reflect that Pre-K at Morgan is a top priority item for the school, and that the receiver should make a firm commitment to open a Pre-K classroom there in the Fall.” April 13, 2014 letter from Commissioner Chester to Superintendent Paez, 3. *Proposed Modifications to the Morgan Preliminary Turnaround Plan*, N (April 13, 2014 Chester to Paez). The Commissioner declined to adopt the modification as the pre-kindergarten would only exist “pending space.” *Id.*

The Plan, itself, includes aspirational language regarding Pre-K, [Strategy 4.4], but there is nothing in the Plan that illustrates a firm commitment to instituting Pre-K this year, such as describing any steps the Commissioner will take to secure necessary space.³⁷ Further eroding

³⁷ GRAD should explore the possibility of all available space in Holyoke, including:
<http://www.loopnet.com/Listing/18549831/650-Beaulieu-Street-Holyoke-MA/>
<http://www.loopnet.com/Listing/15643864/361-South-Street-Holyoke-MA/>

confidence in the commitment to Pre-K, the documents received by the Association pursuant to its Public Records request show that there are apparently no funds earmarked for leasing space this year for the Pre-K program. See n. 31.

Establishing a Pre-K program in 2014 -15 is essential to any level of sustained student achievement at Morgan, much less rapid student achievement. 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:

- 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.³⁸

Judge Botsworth 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. At Morgan, no child is enrolled in Pre-K. These three districts scored significantly lower at the kindergarten level than the national average, making them considerably more at risk of school failure because students 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.

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.”³⁹

<http://www.loopnet.com/Listing/16521993/620-Beaulieu-Holyoke-MA/>

³⁸ Preschool Education and Its Lasting Effects: Research and Policy Implications, W. Steven Barnett, National Institute for Early Education Research, p. 20.

³⁹ www.bostonpublicschools.org/cms/lib07/MA01906464/Centricity/Domain/111/4-9-12_early_childhood_presentation.pdf.

“We can invest early to close disparities and prevent achievement gaps, or we can pay to remediate disparities when they are harder and more expensive to close.”⁴⁰ 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.”⁴¹

A high quality, comprehensive preschool program that is integrated with the curriculum and instructional practices and the culture of the Morgan School will be one of the most effective strategies in accelerating the rapid academic achievement of Morgan students. This kind of preschool program needs to be an integral component of the Morgan turnaround, and it should be implemented in Fall 2014.

By failing to implement for academic year 2014-15 a pre-kindergarten program at Morgan, the Final Plan fails to provide for sustainable rapid academic achievement of Morgan students over the course of the term 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 4.4:** Add the following language to Strategy 4.4 of the Final Plan: “The Commissioner and the Receiver shall take any and all steps to introduce a Pre-Kindergarten program to the Morgan School by Fall 2014, including finding appropriate space and sufficient funding so that all Morgan students may enroll.”

Strategies 5.2, 5.3, and 5.4: The Final Plan fails to assure 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 by maintaining the current structure and initiatives of the Morgan Full Service Community School Model (FSCS).

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

⁴⁰ 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>).

⁴¹ http://www.mass.gov/bb/h1/fy15h1/exec_15/hbudbrief2.htm.

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 by 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.⁴²

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.⁴³ 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.⁴⁴ Data gathered nationally from Communities in Schools reported that schools with integrated wraparound services have higher percentages of students achieving math and reading proficiency.⁴⁵

At Morgan, the MSV gave its wholehearted endorsement to the school’s Full Service Community School model, stating that it was an effective system for addressing the social, emotional and health needs of students. MSV, pp. 14 and 15. Indeed, as noted above, FSCS has instituted structures facilitating significant outreach and programs for students and families, including:

- A WRAP team composed of a guidance counselor, an adjustment counselor, assistant principals, the FSCS project manager, an outreach worker nurse, and the parent and community engagement liaison who meet every Thursday morning to establish wraparound services protocols, to develop action steps involving direct service to students and families, to connect to local partners and to compile and study data in order to better understand student needs;

⁴² “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>).

⁴³ 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>).

⁴⁴ 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>).

⁴⁵ 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>).

- A behavior management work group meets monthly to address, to document and to track disruptive student behavior. As a result, disciplinary referrals reduced by half since September of 2012;
- In-school mental health therapy delivered by counselors from River Valley Counseling Center which 30% of the students currently utilize;
- A pilot started this school year, 2013-14, that supports students with chronic attendance problems by coordinating with the Department of Children and Families and the court systems;
- ESL classes for parents three nights a week;
- Contact with each family on a regular basis;
- Evening events of value and interest to families such as middle school night to prepare students for high school and “pirates cove” night focusing on math literacy; and
- And a staff/parent group that helps raise funds for family events and other projects.

While the Final Plan maintains the current Family Engagement Coordinator and Community Partner Coordinator, it is light on other proposed strategies to assist children and families. Final Plan, pp. 32-33.⁴⁶ The Final Plan proposes a “Walk for Success,” an event where staff will walk to homes to engage families and the opening of a Welcome Center, the location for which is not confirmed as Morgan has no space. Final Plan, p. 32.

The Plan also suggests it will sponsor conferences, night activities and will partner with “an early childhood intervention program.” Like the rest of the Plan, however, there is little detail regarding what these programs consist of and how much they will cost. There is no evidence in the Plan that the Commissioner used the body of data gathered by the WRAP team and others in selecting the initiatives in Priority #5.

Finally, the Plan does not specify which among the myriad of successful FSCS initiatives it will adopt, and which it will not. This caused uneasiness among the LSG members who recommended that the Final Plan include a commitment to the FSCS strategy, a strategy that the unbiased MSV, retained by the Commissioner himself, had concluded was successful. See April 14, 2014 letter from Chester to Paez, p. 4. The Commissioner declined to adopt the modification. *Id.* The stakeholders were concerned that programs delivering critical wraparound services will be dismantled or left to founder. The Board should share that concern.

In sum, the Plan does not adequately describe the steps it will take to address the social service, mental health, substance abuse and safety needs required by the statute. G.L. c. 69, § 1J (n). Accordingly, the Board must modify these provisions in the Final Plan. G.L. c. 69, § 1J (q) (1), (3).

⁴⁶ The Association is informed that these positions will now be called the Campus Family Support Manager and the Campus Family Support Coordinator, respectively.

→ **Requested Modification: Additional Strategy 5.6:** The Board should require the addition of Strategy 5.6 which reads to follows: “The Commissioner will identify specific programs of delivery of wraparound services, and the cost of such programs.” If such programs do not include those currently implemented in FSCS, the Commissioner will give written justification to the Board, the District, the local stakeholder group and the Association as to why the FSCS programs were not adopted. The Commissioner shall submit new Section 5.6, together with any justification for not adopting current FSCS measures, 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 modification to the Final Plan as these steps will further promote maximizing the rapid academic achievement of students.***

Strategy 2.6: While the Final Plan adds 395 hours to the schedule over the expanded schedule in the Level 4 plan, there is no master schedule in the Final Plan or justification for additional learning time hours to determine if these hours will be effectively utilized to lead to the rapid academic achievement of students.

The Final Plan adds 395 hours to the already expanded Level 4 schedule and states the intent to revise the master schedule to “accommodate common planning, data analysis and prep time.” Final Plan, p. 14. While some of the extra time will be spent during the summer professional development (Strategy 1.3), this does not account for all of the additional time. The absence of a master schedule is especially troubling in light of the fact that the Final Plan inserts so many non-instructional activities in the schedule that it is not clear how these activities will fit into instructional time. See, e.g. Strategy 1.2 (instructional planning, conversations and feedback with coaches); Strategy 1.4 (Professional Learning Community [PLC] time to study exemplar lessons, observe one another’s classrooms and provide feedback); Strategy 1.5 (weekly PLC time to look at data, plan lessons, discuss effectiveness of SEI strategies); Strategy 2.2 (quarterly data and planning meeting where school leaders, coaches and teacher teams use data to monitor progress and determine student need); Strategy 2.6 (prep time); Strategy 3.3 (STEM math coach co-plans with individuals and grade level teams); Strategy 4.5 (ELL specialists work with teacher teams to identify and develop grade level differentiated assignment and support materials); Strategy 4.6 (collaborative planning among general educators, specialists, and paraprofessionals to deliver service and instruction).

In addition, the fact that the Final Plan does not explain the need for extra student learning time is especially problematic given the fact that the MSV Report, upon which GRAD and the Commissioner should have relied in developing the Final Plan, does not fault the Level 4

plan for devoting too little time to learning. On the contrary, it found the expanded learning time included in the Level 4 Plan time was not “maximized.” MSV Report, p. 11.

In fact, it is unclear whether any improved student performance as a result of expanded learning time outweighs its detrimental contribution to student fatigue and to lack of enthusiasm for school. This is especially significant at Morgan where students already come to school tired. Teacher Survey, p. 3. In February 2012, ABT Associates completed a study of the five-year implementation of the Massachusetts Expanded Learning Time (ELT) Initiative.⁴⁷ The findings on the impact on student achievement outcomes find little or no impact from the additional time:

- Descriptive analyses restricted to ELT schools indicated variation in student performance levels among schools both before implementation began and in the most recent school year (2010-11), and indicated no consistent patterns of results. Descriptive analyses indicated that some schools have substantially increased the percentage of students that reached proficient or advanced performance levels, while others have experienced little change or decreased percentage of students at these same levels.
- On average, there were no statistically significant effects of ELT after one, two, three, or four years of implementation on MCAS student achievement test outcomes for 3rd, 4th, or 7th grade ELA, 4th, 6th, or 8th grade math, or 8th grade science.
- There was a statistically significant positive effect of ELT after four years of implementation on the MCAS 5th grade science test.

The ABT findings on the impact on non-academic outcomes support the concerns that Morgan staff have expressed about the impact of expanded learning time on students, particularly those in the lower grades. The findings include:

- Significantly more teachers in ELT schools reported that teacher and staff fatigue, as well as student fatigue, were problem areas than would be expected without ELT. Likewise, a significantly higher proportion of students in ELT schools reported that they were tired in school.
- Significantly fewer students in ELT schools reported that: they look forward to going to school; like being in school; that all of their classes are important to them; and that they like the length of their school day, than would be expected without ELT.

The Board should conclude that there is no need for further expansion of the students’ day in the Final Plan absent an analysis of whether steps to maximize the time in the current expanded schedule as recommended by the MSV would promote more successful learning. By failing to provide a master schedule and justification of expanded learning time, the Final Plan has not demonstrated that it supports the rapid maximization of student achievement.

In addition, some Morgan teachers reported that because they had no idea what their activities would be next year and when they would be doing them, they were discouraged from

⁴⁷ <http://abtassociates.com/AbtAssociates/files/fe/fe87ef4f-3978-4e07-9704-2acbb010680c.pdf> ;
<http://abtassociates.com/Reports/2012/-ELT-Year-5-Final-Report.aspx>

reapplying to Morgan for next year. The Plan, itself, has resulted in failure to retain quality teachers. G.L. c. 69, § 1J (o) (13).

Finally, because a master schedule 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).

→**Requested Modification: Additional Strategy 2.8:** Add Strategy 2.8 that reads as follows: “To ensure that all elements of the Plan are accommodated in the students’ and teachers’ daily and weekly schedules, the Commissioner and GRAD shall develop student and teacher schedules by June 15, 2014.” The schedule will include a justification for any increased learning time. The 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 Association and the Commissioner will provide the Holyoke Teachers Association with the opportunity to negotiate regarding impacts on the collective bargaining agreement consistent with G.L. c. 69, § 1J (o).

Strategy 1.7: The incentive system which is based on student results is supported by a faulty premise and will drive good teachers away.

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

C. 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 MORGAN AND DIRECTLY CONFLICTS WITH THE STATUTE’S PROHIBITION AGAINST THE REDUCTION IN TEACHER COMPENSATION.

The LSG recommended “revisions to the required hours/days worked by teachers and/or the compensation provision of the plan in order to provide for a compensation structure that will support the receiver’s ability to hire and retain high-quality teachers.” April 13, 2014 Chester to Paez, p.4. This Commissioner declined to adopt this modification. *Id.* When he issued the Final Plan, the Commissioner rejected the Association’s proposal that the Final Plan include “negotiated fair compensation for specific additional time devoted to the Morgan School.” The Commissioner’s justification is that the Final Plan’s “compensation program will support the Receiver’s ability to attract and retain high-quality teachers.” *Id.*, p. 5. This statement hides the truth. This pay increase measured against the hundreds of additional hours in the teacher schedule shows that 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, only

7 of 43 teachers have applied for a position with Morgan next year. Only two of the teachers who have reapplied possess professional status, that is, have three or more years of service in Holyoke. Approximately 38 teachers applied for a transfer out of Morgan.

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 teachers to boost their performance and effectiveness. Final Plan, p. 44.

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 not speak 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 Association collective bargaining agreement, which contributes to an atmosphere of distrust and thus the high turnover of Morgan staff.

- 1. The Final Plan's compensation model dramatically reduces the rate of pay for Morgan teachers, which is contrary to the statute, will not attract and retain highly qualified teachers, 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 1692 hours in the 2014-15 school year, which is an increase of 395 hours over the 1297 hours schedule in 2013-14.

Chart A

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

2013-14			
	Days	Hours/day	Total hrs
Standard day (student plus orientation)	184	6.62	1,218
Monday extended time	28	1.75	49
Summer professional development	5	6	30
Total hours (rounded)			1,297
2014-15			
	Days	Hours/day	Total hrs
Standard day	185	8.5	1572
School year professional development	5	8	40
Summer professional development	10	8	80
Total hours (rounded)			1,692

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 (p. 45). Based on statutory mandate, Morgan teachers must be placed at a level on the new career ladder reflecting a salary no lower than what they each earn this year. The 2013-14 salary levels reflect what Morgan teachers are currently being paid. The 2014-15 rate of pay was calculated by dividing each salary category by 1692, 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 Morgan's current schedule, or 1297.

Chart B

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

											2013-14 to 2014-15 chg. in salary due to reduction in hourly salary rate***	
	2014-15 salary		2014-15 hourly salary rate*		Corresponding 2013- 14 salary**		Corresponding 2013-14 hourly salary rate*		Chg. in salary			
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
Developing Level I	49,000	49,000	29	29	44,713	46,342	34	36	4,287	2,658	-8,460	-11,844
Developing Level II	51,000	51,000	30	30	46,176	47,703	36	37	4,824	3,297	-10,152	-11,844
Career Level I	57,000	57,000	34	34	47,635	52,595	37	41	9,365	4,405	-5,076	-11,844
Career Level II	61,500	61,500	36	36	52,146	55,770	40	43	9,354	5,730	-6,768	-11,844
Career Level III	66,000	66,000	39	39	59,323	59,323	46	46	6,677	6,677	-11,844	-11,844
Career Level IV	70,500	70,500	42	42	60,689	70,122	47	54	9,811	378	-8,460	-20,304
Career Legacy****	72,975	80,712	43	48	71,475	79,212	55	61	1,500	1,500	-20,304	-21,996
Average	67,359	67,359	40	40	63,845	63,845	49	49	3,514	3,514	-15,228	-15,228
2013-14 hours	1,297											
2014-15 hours	1,692											
Chg. in hours	395											
% chg. in hours	30.5%											

For "Corresponding 2013-14 salary" columns, "low" is lowest 2013-14 salary (including \$5300 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 + \$5300 stipend + longevity, where applicable.

***Calculated as 2014-15 hours times difference between 2013-14 and 2014-15 hourly salary rates.

****2014-15 salary for Career Legacy teachers = salary + \$5300 stipend + longevity payment (all for 2013-14) + \$1500

Underlying assignment of teachers to 2014-15 salary levels generated by Project Grad and provided to Holyoke Teachers Association.

Reference to the data in Career Level IV illustrates the reduction in teacher pay: There are teachers currently working at Morgan who earn salaries between \$60,689 and \$70,122. In 2014-15, these teachers will be assigned to the Career Level IV, which is compensated at \$70,500. 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 to \$12 per hour) due to the vast increase in the 2014-15 required hours. This results in an effective annual loss of salary for these teachers in a range of \$8460 to \$20,304, were they to continue to teach at Morgan next year.⁴⁸

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) prohibits the Commissioner *from reducing the compensation of an administrator, teacher or staff member unless the hours of the person are*

⁴⁸ The Receiver reserves the right to add ten days at the end of the school year upon notice by December 1 each year. Final Plan at p.42. This increases the hours represented in Chart A from 1692 to 1772, resulting in an additional reduction in a teacher's hourly rate of pay from that represented on Chart B.

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, § 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. c. 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 an employee'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 violates the proportionality requirement of G.L. c. 69, § 1J(o)(8) and its mandate not to reduce teacher compensation.

Reducing the rate of pay of Morgan 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 proposition 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 understood 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” 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. 44. He specifically rejected the recommendation of the LSG to study “all forms of salary schedule constructs to determine which will be the most effective at the Morgan School.” April 13, 2014, Chester to Paez, 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.”⁴⁹ 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.⁵⁰ Research does not bear out this proposition and rather than retain good

⁴⁹ Fryer, R.G. *Teacher Incentives and Student Achievement: Evidence from New York City Public Schools*, National Bureau of Economic Research (2011), p. 3 (http://scholar.harvard.edu/files/fryer/files/teacher_incentives_and_student_achievement_evidence_from_new_york_city_public_schools.pdf).

⁵⁰ Glazerman, S., and Seifullah, A., *An Evaluation of the Teacher Advancement Program in Chicago: Year Two Impact Report*. Mathematica Policy Research, Inc., (2010), xiii (http://www.mathematica-mpr.com/publications/PDFs/education/tap_yr2_rpt.pdf).

teachers, the Morgan PFP has already driven away teachers who have achieved student growth.

a. Research does not support PFP.

The Commissioner claims that the PFP “will contribute to increases in student outcomes by attracting new high-potential teachers and retaining our best performers and leaders.” Final Plan, at 44. 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.⁵¹ As noted, given the 395 hour increase in schedule, Morgan teachers will be paid less next year calculated on an hourly basis and virtually all the experienced teachers are fleeing Morgan. 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 to a successful PFP plan.

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 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.⁵²

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

⁵¹ Fryer, at pp. 3 and 22; 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.
(<https://my.vanderbilt.edu/performanceincentives/files/2012/09/Full-Final-Report-Experimental-Evidence-from-the-Project-on-Incentives-in-Teaching-2012.pdf>).

⁵² Springer, *Id.*

graduation, or on teacher behavior, and in fact may have caused student achievement to decline in some schools.⁵³ 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.⁵⁴

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.⁵⁵ 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, produced *no evidence* that the program raised student test scores.⁵⁶ 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.⁵⁷

In addition to the lack of evidence that performance-based incentives for teachers improve student performance, there are concerns that such systems negatively affect teacher morale and motivation.⁵⁸ 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 Morgan experience does not support PFP.

Focusing specifically on Morgan, 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 7 of 43 teachers have applied for a position with Morgan next year, only two of whom have professional status. Approximately 38 teachers applied for a transfer out of Morgan. The replacements for the teachers leaving Morgan are likely to be, for the most part, teachers new to Holyoke. 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.⁵⁹ And teachers with low ratings are, in turn, more likely than other teachers

⁵³ Fryer, at pp. 21- 22.

⁵⁴ 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 (http://www.rand.org/content/dam/rand/pubs/monographs/2011/RAND_MG1114.sum.pdf).

⁵⁵ 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.

⁵⁶ *Id.*, at xiii and p. 15.

⁵⁷ *Id.* at 23.

⁵⁸ Springer, at 4.

⁵⁹ Mass. Dep't of Educ., *Educator evaluation data: Student growth percentiles, race/ethnicity, gender, and professional teaching status* (April 2014, ii). Attachment O.

to achieve low student academic growth.⁶⁰ Therefore, the PFP compensation system will not maximize the rapid academic achievement of students.

c. The Lawrence experience cannot be applied to Morgan

The Commissioner supports his conclusion that the Morgan 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.” April 13, 2014, Chester to Paez, p. 5. As in the Lawrence compensation plan, a feature of the Morgan compensation plan is 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 improve performance of the vast majority of teachers (those who by choice or limited availability of such additional roles are paid according to their evaluation ratings).

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 Morgan 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.”⁶¹ 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.⁶² Teacher

⁶⁰ *Id.* at i.

⁶¹ Lawrence Turnaround Plan, App. A.1, *Turnaround Plan Implementation Terms Relating to Teachers*, p.2 (<http://www.doe.mass.edu/apa/ss/turnaround/level5/districts/LawrencePlan.pdf>).

⁶² *Id.* at pp. 2-3.

engagement and collaboration is a critical element of teacher satisfaction with their assignment. This novel construct does not appear in the Morgan Final Plan.

The point is that there are many factors that attribute to attracting, recruiting, and retaining high-quality teachers.⁶³ Not only is it premature to declare PFP has been successful in these areas in Lawrence, but very fundamental differences between the Lawrence district plan and the Morgan School plan make it impossible to extrapolate conclusions from Lawrence to Morgan.

d. Student growth scores are unreliable in determining teacher quality.

Most PFP systems provide that student growth scores are part of the evidence to be considered in determining a teacher's performance. The Massachusetts Teachers Association (MTA) believes that if student 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. The Massachusetts Association of School Superintendents also takes 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.⁶⁴

On April 10, 2014, Paul Toner, the president of the MTA, contacted Commissioner Chester in connection with a meeting for the following day at which Mr. Toner was to seek assurance from the Commissioner that Level 5 turnaround plans for MTA affiliates would be "consistent with the fundamental statewide understandings MTA has with DESE regarding the Massachusetts system of teacher evaluation." Attachment Q, *Email correspondence between Paul Toner and Mitchell Chester*, at Q(a) and (b), respectively. Specifically, Mr. Toner wanted to secure a commitment from DESE that, while student growth scores could be used in teacher evaluations, "neither student test scores nor student growth scores derived from student test scores, will be used as an independent factor in any personnel decisions at Morgan and Parker." *Id.*, at Attachment, Q(b). Mr. Toner supplied a chart that illustrated modifications to the

⁶³ 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.C.3, *infra*, for further discussion.

⁶⁴ MASS Model Collective Bargaining Agreement Language on District Determined Measures (March 19, 2014), p.1. Attachment P.

Morgan Final Plan that reflected these statewide understandings. Attachment, Q(c). MTA representatives met with the Commissioner on April, 11, 2014 at which time he agreed to make the Morgan Plan modifications suggested by the MTA which confirmed that that test scores and growth scores derived from test scores would not be used as an independent factor in personnel decisions. The Association requests that the Board ratify the understanding between the MTA and the Commissioner by modifying Morgan's Level 5 plan, accordingly.

This position of the MTA, the MASS and DESE 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.⁶⁵ High-stakes decisions would include those that underlie ratings in the evaluations upon which a Morgan 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, research has shown that student test score gains correlate to the socioeconomic and other characteristics of students.⁶⁶ 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.⁶⁷ Neither the MCAS nor the Student Growth Percentile upon which the growth of Morgan 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."⁶⁸ Class size and school resources influence student growth.⁶⁹ In addition, a 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."⁷⁰

Finally, the sample size of the data base of student measures and the 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 for high-

⁶⁵ *Economic Policy Institute Briefing Paper*, August 29, 2010, (EPI Paper) p. 2.
<http://www.epi.org/publication/bp278>.

⁶⁶ EPI Paper, p. 10.

⁶⁷ EPI Paper, p. 3.

⁶⁸ Braun, Henry, 2005. *Using Student Progress to Evaluate Teachers: A Primer on Value Added Models*. Princeton, NJ: Educational Testing Service. (Braun) p. 8-9 (<http://www.ets.org/Media/Research/pdf/PICVAM.pdf>).

⁶⁹ EPI Paper, p. 9.

⁷⁰ 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.")

stakes decisions such as Morgan teachers' performance and salary entitlement.⁷¹ 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."⁷² 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%.⁷³ Increasing the duration of data collection to ten years still produced a 12% error rate.⁷⁴

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 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 Morgan School. This can be accomplished by increasing pay for available staff, or by hiring more licensed educators to staff a staggered work schedule that will result in a reasonable number of hours for each Morgan 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 Association 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 Morgan School.

⁷¹ 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.

⁷² EPI Paper, p. 12.

⁷³ 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).

⁷⁴ *Id.*

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 Morgan” for the success of the turnaround plan. Final Plan, p. 40. This replaces the impartial grievance procedure in the existing collective bargaining agreement between the Association and the Holyoke 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, is the final decision-maker. Final Plan, p. 41. While the Commissioner 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. Also, his self-interest in defending the turnaround plan and/or the position of the Receiver whom he appointed 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.)⁷⁵ In addition, 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.⁷⁶ The

⁷⁵See 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).

⁷⁶ Lewin, D. and Mitchell, D.J. B., “Systems of Employee Voice: Theoretical and Empirical Perspectives” *California Management Review* (Spring 1992) 95-111.

Commissioner's grievance procedure, on the other hand, will strongly discourage the staff from working at Morgan 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. Morgan educators working under the Final Plan would be obliged to resort to litigation in courts and agencies, which 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 Association collective bargaining agreement, the Association 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 Morgan that suggests that a fair grievance procedure has caused the academic struggles of Morgan 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.⁷⁷

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,

⁷⁷ Grievance Procedure from Lawrence Collective Bargaining Agreement at *Tentative Draft Collective Bargaining Agreement between the Lawrence Teachers Union and Receiver Jeff Riley*, March 2014. Attachment R.

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:** (a) Amend the “Collective Bargaining Agreements” section on pp. 40-41 for members of the Association and insert “The grievance and arbitration procedures contained in the Association collective bargaining agreement shall be in effect, except as provided for in G.L. c. 69, § 1J related to teacher dismissals.”⁷⁸

V. **CONCLUSION**

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

Sandra Quinn, Esquire
MASSACHUSETTS TEACHERS ASSOCIATION
Division of Legal Services
20 Ashburton Place
Boston, MA 02108
P: (617) 878-8289
F: (617) 248-6921
squinn@massteacher.org.

Date: May 19, 2014

⁷⁸ 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

1. **Requested Modification of Financial Plan:** 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 to promote the rapid academic achievement of students.
2. **Requested Modification: Additional Strategy 1.9A (A):** Add the following language to new Strategy 1.9A. "The Commissioner will restore the instructional positions eliminated since the establishment of the Level 4 Plan in June of 2010." The Board will modify the 'implementation benchmarks' in Priority #1 to remove the position of the Director of Business Operations and will modify Strategy 3.3 to remove the position of STEM principal."
3. **Requested Modification: Additional Strategy 1.9A (B):** Add the following language to new Strategy 1.9A. "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."
4. **Requested Modification: (Priority #1) and Strategy 3.3:** The Board will modify the implementation benchmarks in Priority #1 to remove the position of the Director of Business Operations and will modify Strategy 3.3 to remove the position of STEM principal.
5. **Requested Modification: Additional Strategy 2.8:** Add Strategy 2.8 that reads as follows: "To ensure that all elements of the Plan are accommodated in the students' and teachers' daily and weekly schedules, the Commissioner and GRAD shall develop student and teacher schedules by June 15, 2014." The schedule will include a justification for any increased learning time. The 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 Association and the Commissioner will provide the Association with the opportunity to negotiate regarding impacts on the collective bargaining agreement consistent with G.L. c. 69, § 1J(o).
6. **Requested Modification: Remove Priority #3:** The Board should modify the plan to remove Priority # 3, (STEM) in light of other learning priorities as are demonstrated by current assessments of student performance in Math, ELA, ELL and SPED.
7. **Requested Modifications for Strategies 4.1, 4.2, 4.5 and 4.6: (1)** Modify each of the Strategies 4.1(ELA) and 4.2(Math) to include the following language: "By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan students and shall describe how such strategies and resources will be

implemented for the duration of the turnaround plan.” **(2)** Modify Strategy 4.5(ELL) to include the following language: “By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan ELL students and will describe how such strategies and resources will be implemented for the duration of the turnaround plan to address the achievement gap relative to these students. These strategies will include a plan for the implementation of whole school English Language Development (ELD), for targeted individualized English language instruction and environmental supports, and for literacy intervention strategies and programs across all subjects.” **(3)** Modify Strategy 4.6(Special Education) to include the following language: “By June 1, 2014, the Commissioner shall identify specific strategies and resources that will be utilized for Morgan special needs students and shall describe how such strategies and resources will be implemented for the duration of the turnaround plan to address the achievement gaps relative to these students.” **(4)** Further modify Strategy 4.6 include the following language: “The Commissioner will identify a comprehensive alternative English language learning program for LEP students.” The foregoing resources, plans for implementation and programs will be returned to the local stakeholder group for its recommendations for modifications consistent with G.L. c. 69, § 1J(p).

- 8. Requested Modifications for Strategy 4.4:** Add the following language to Strategy 4.4 of the Final Plan: “The Commissioner and the Receiver shall take any and all steps to introduce a Pre-Kindergarten program to the Morgan School by Fall 2014, including finding appropriate space and sufficient funding so that all Morgan students may enroll.”
- 9. Requested Modification: Additional Strategy 5.6:** The Board should require the addition of Strategy 5.6 which reads to follows: “The Commissioner will identify specific programs of delivery of wraparound services, and the cost of such programs.” If such programs do not include those currently implemented in FSCS, the Commissioner will give written justification to the Board, the District, the local stakeholder group and the Association as to why the FSCS programs were not adopted. The Commissioner shall submit new Section 5.6, together with any justification for not adopting current FSCS measures, 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.
- 10. Requested Modifications for Compensation System:** **(a)** The financial plan 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 Morgan School. This can be accomplished by increasing pay for available staff, or by hiring more licensed educators to staff a staggered work schedule that will result in a reasonable number of hours for each Morgan 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 Association 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 Morgan School.

- 11. Requested Modifications for Dispute Resolution Process: (a)** Amend the “Collective Bargaining Agreements” section on pp. 40-41 for members of the Association and insert “The grievance and arbitration procedures contained in the Association collective bargaining agreement shall be in effect, except as provided for in G.L. c. 69, § 1J related to teacher dismissals.”