

# VII.B.

## Connecticut State Board of Education Hartford

**To Be Proposed:**  
**November 2, 2022**

**Resolved:** That in accordance with Section 10-4b of the Connecticut General Statutes, as well as Section 10-4b-8 of the Regulations of Connecticut State Agencies, the State Board of Education ["SBE"] hereby finds that there is reasonable cause to believe that the Killingly Board of Education ["Killingly Board"] has failed or is unable to make reasonable provisions to implement the educational interests of the state of Connecticut, and in accordance with such finding, and pursuant to Sections 10-4b-8 and 10-4b-9 of the Regulations of Connecticut State Agencies, the SBE orders an inquiry before a duly designated hearing panel serving on behalf of the SBE, the scheduling and form of which hearing, shall be communicated in conjunction with this resolution to the Killingly Board by the Commissioner of Education.

Approved by a vote of \_\_\_\_\_ this second day of November, Two Thousand Twenty-Two.

Signed: \_\_\_\_\_

Charlene M. Russell-Tucker, Secretary  
State Board of Education

**Connecticut State Board of Education  
Hartford**

**TO:** State Board of Education  
**FROM:** Charlene M. Russell-Tucker, Commissioner of Education  
**DATE:** November 2, 2022  
**SUBJECT:** Killingly Board of Education Section 10-4b Complaint

**Introduction**

On April 5, 2022, 57 Killingly residents acting collectively under the caption “Concerned Residents/Parents of Killingly Students” [“Complainants”] filed with the Connecticut State Department of Education [“CSDE”] a complaint [“Complaint”] against the Killingly Board of Education [“Killingly Board”] pursuant to Section 10-4b of the Connecticut General Statutes [“C.G.S.”]. Section 10-4b(a) provides in part:

Any resident of a local or regional school district, or parent or guardian of a student enrolled in the public schools of such school district who has been unable to resolve a complaint with the board of education of such local or regional school district may file with the State Board of Education a complaint in writing . . . alleging the failure or inability of the board of education of such local or regional school district *to implement the educational interests of the state in accordance with section 10-4a.*

Id. (emphasis added). The “educational interests of the state” as set forth in Section 10-4a of the Connecticut General Statutes encompass the requirement that each child have an “equal opportunity to receive a suitable program of educational experiences” as well as “the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education.” Conn. Gen. Stat. §10-4a.

These mandates include Section 10-220(a) of the Connecticut General Statutes, which provides in relevant part:

Each local or regional board of education shall . . . implement the educational interests of the state . . . and . . . shall provide an appropriate learning environment for all its students which includes . . . adequate . . . staffing . . . [and] a safe school setting.

Id. Section 10-220(a) further requires that local and regional boards of education “make such provisions as will enable each child of school age residing in the district to attend some public day school for the period required by law.” Id.

Pursuant to Section 10-4b(d), the CSDE adopted implementing regulations, which, in part, direct the Commissioner of Education to order an investigation if a Section 10-4b complaint “is found to

be substantial.” Conn. Agencies Regs. §10-4b-5(c)(2). The regulations define “substantial complaint” as “a complaint that sets forth basic facts which state a cause of action concerning an alleged violation of the educational interests of the state.” Conn. Agencies Regs. § 10-4b-1(c). Such a finding does not constitute a determination or conclusion that the allegations in the complaint are accurate; rather, it is merely an initial determination as to whether the complaint is without merit and should be dismissed or whether it warrants further investigation.

If an investigation is ordered, the individual whom the Commissioner has designated as the investigator must, at the conclusion of the investigation, submit a written report to the Commissioner, who, in turn, shall submit to the State Board of Education [“SBE”] the results of the CSDE’s investigation, essentially consisting of the factual findings, a determination as to whether these facts establish either the implementation or the failure to implement the educational interests of the state, and a recommendation for action. Conn. Agencies Regs. §10-4b-7. These elements are all contained in the investigation report, and as I am in agreement with them, they are incorporated into and made a part of this Commissioner’s report as if fully set forth herein.

Upon receipt of the Commissioner’s report, the SBE is empowered to dismiss the Section 10-4b complaint if it determines that “there is no reasonable cause to believe that a board of education has failed or is unable to make reasonable provisions to implement the educational interests of the state.” Conn. Agencies Regs. §10-4b-8. In the alternative, the SBE can: “Order an inquiry if the findings indicate that there is reasonable cause to believe that a board of education has failed or is unable to make reasonable provisions to implement the educational interests of the state.” Id. The term “inquiry” as used in the Regulations means “hearing,” which at the SBE Chair’s discretion would be held before either the full SBE or a hearing panel consisting of three members of the SBE. Conn. Agencies Regs. §10-4b-9.

## **Procedural History**

The basis of the April 5, 2022, Section 10-4b Complaint is that the Killingly Board allegedly:

failed to fulfill the educational interests of the state of Connecticut by failing to provide the minimum services and supports necessary to deal with the social, emotional and mental health needs of the students at Killingly High School.

4/5/2022 Complaint, p. 1. The Complaint further claims that the Killingly Board “has failed to avail itself of any . . . mechanism of meeting the social, emotional and mental health needs of all its students,” Id., p. 8, and “has refused to address a critical education need that has been well documented.” Id. Although the primary predicate of the Complaint was the Board’s March 16, 2022, vote to reject the placement of a School Based Health Center [“SBHC”] at Killingly High School, the Complainants noted that the SBHC was but “one of a number of possible ways to deal with the severe mental health crisis among students in Killingly.” 5/16/22 Complainants’ Reply, p. 4. Similarly, the CSDE advised the Killingly Board that the SBHC was not the singular focus of the CSDE’s investigation, but rather an element of determining whether the Killingly Board’s overall response – or lack of response -- to the social emotional and mental health needs of its students directly implicated the Killingly Board’s obligations under Section 10-220(a), and thus Section 10-4a, to provide its students with “a safe school setting.”

On April 11, 2022, the Commissioner of Education notified the Killingly Board that the CSDE had determined that the April 5 Complaint was “substantial” as defined in Conn. Agencies Regs. § 10-4b-1(c) and thus ordered an investigation. Killingly submitted its response on May 3, 2022. Both the Complainants and the Killingly Board subsequently made additional filings, the last of which was dated May 19, 2022. These filings were lengthy, detailed, and included voluminous supporting documents as well as multiple hyperlinks to other sources, all of which were reviewed. In addition, the CSDE reviewed the Killingly website, video recordings of multiple Killingly Board meetings, both televised and print news articles, additional documents that it requested of, or were voluntarily provided by, Killingly, the Complainants, and witnesses, and data and related information within its possession pertinent to the statements in both parties’ submissions.

On August 8, 2022, the CSDE sent the Chair of the Killingly Board a six-page letter, requesting specific information regarding questions that had arisen from the Killingly Board’s May 3, 2022, response as well as the Complainants’ May 16, 2022, reply to that response. It further requested that representatives of Killingly attend an in-person meeting with the CSDE to discuss these questions. That meeting occurred on August 26, 2022, at the CSDE. The CSDE subsequently interviewed representatives of the Complainants, including a current staff member of Killingly Public Schools, on September 6, 2022. Additional witness interviews were conducted in both August and September 2022 and additional information was reviewed by the CSDE through October 2022.

As noted, included with and incorporated into this Commissioner’s report are the results of the CSDE investigation.

### **Recommendation**

It cannot be denied that in the wake of the COVID-19 pandemic, students in school districts across Connecticut have experienced an increase in mental health, behavioral and social-emotional needs. It similarly cannot be denied that the mental and behavioral health of Connecticut’s students has become an integral part of the state’s educational interests. Since 2019, the General Assembly has passed no fewer than seven Public Acts [“P.A.”] that address aspects of student mental, behavioral, and social-emotional health: P.A. 19-63; P.A. 21-35; P.A. 21-46; P.A. 21-95; P.A. 22-47; P.A. 22-80; and P.A. 22-81. These are, in many ways, a natural evolution of the legislatively mandated duty of local and regional boards of education to provide students with a “safe school setting.” C.G.S. Section 10-220(a).

In its defense to the Section 10-4b Complaint, Killingly cites this widespread increase in mental health and behavioral challenges, essentially claiming to be no different than other districts. It is true that this surge in students’ mental health and behavioral needs has resulted in substantial demands being placed on many districts, and it would perhaps be unfair to fault such districts should they be unable to fully remediate these needs despite their best efforts. What Killingly’s argument fails to recognize, however, is that the focus of the Complaint and the subsequent investigation is not the fact that it was confronted with a significant increase in student mental health needs; rather, the root of the Complaint is Killingly’s lack of response to those needs.

There is a difference between working to ensure sufficient supports for students, however unsuccessful, and declining to prescribe *any* meaningful interventions despite acknowledging that

there is a clear and present need to do so. A lack of adequacy does not necessarily equate with what appears to be the deliberate indifference demonstrated by the Killingly Board to its students' significant and widespread mental health issues, and it is that systemic indifference that distinguishes this from other school boards confronting these issues. In Killingly, the district's Administration recognized an urgent need to address the sharp increase in student mental health, social-emotional, and behavioral needs. This recognition was shared and supported by a substantial number of parents and community members. Board members, even some who had voted against the establishment of an SBHC, recognized the need for interventions. The Board had ample financial resources in the form of Elementary and Secondary School Emergency Relief ["ESSER II"] and American Rescue Plan Elementary and Secondary School Emergency Relief ["ARP ESSER"] funds to increase its mental health resources. Nonetheless, and despite repeated opportunities to implement interventions, the Killingly Board inexplicably failed and refused to do so.

The enclosed investigation report sets forth in great detail the Killingly Board's repeated failure and refusal to implement reasonable interventions to address its students' clear mental health, social-emotional, and behavioral needs. Perhaps the most glaring example of this is reflected in the Killingly Board's reaction to a December 2021 report by the Southeastern Regional Action Council, or "SERAC," which was requested by the Killingly Public Schools Administration. This report was based upon its November 2021 survey results from 449 students. 12/2021 SERAC Report, p. 6. In its findings, SERAC reported the following "mental health indicators":

About 28% of youth report that they have had thoughts of hurting themselves and 28.6% report that in the past year they have felt sad or hopeless almost everyday for 2 weeks or more so that it stopped them from doing their usual activities . . . . Alarmingly, about 14.7% of youth report having seriously considered attempting suicide and 18.2% report having hurt themselves on purpose.

12/2021 SERAC Report, p. 9. SERAC explained that "seriously considered attempting suicide meant made a plan to do so." 12/2021 SERAC Report, p. 28.

SERAC's findings translated into approximately 66 students in seventh-to-twelfth grades having made suicide plans; approximately 82 students having hurt themselves on purpose, and approximately 128 students having stopped their engagement in their usual activities due to feeling sad or hopeless almost every day for at least two weeks. 12/2021 SERAC Report, p. 9. As troubling as these results were, they came as no surprise to the Killingly Administration, the district's Assistant Superintendent stating in a sworn affidavit that the SERAC report merely "confirmed the District's conclusion that our students have increased mental health support needs." Nash-Ditzel Affidavit, ¶24.

When the SERAC report findings were raised during Public Comment at the Killingly Board's March 16, 2022, meeting, its then Vice-Chair and now Board Chair dismissed them, adding that the 14.7% of students who had made a plan to take their own lives was not that significant of a number. 4/5/22 Complaint, p. 7. His predecessor as Board Chair was similarly dismissive, stating: "How do you know they were honest responses? We're dealing with kids. They could have

written anything. That’s what kids do.” NBC, Channel-30 Report. The fact that approximately 66 students admitted to seriously considering suicide is extremely alarming, but equally so is the fact that when confronted with these numbers, the Killingly Board leadership dismissed them out of hand, particularly given the statutory mandate that the school board provide “a safe school setting.” Conn. Gen. Stat. §10-220(a).

At the same March 16, 2022, meeting in which this discussion occurred, the Killingly Board voted overwhelmingly to reject the establishment of an SBHC at Killingly High School. Such an SBHC had been recommended in three of Killingly’s schools by the Working Group that had been established by the General Assembly in P.A. 21-35, “An Act Concerning Comprehensive Access to Mental, Behavioral and Physical Health Care in Response to the Pandemic,” and its establishment in the high school was strongly and repeatedly supported by Killingly’s own Superintendent of Schools. As noted, the establishment of an SBHC is not required under Connecticut law, and as also noted, it was not the singular focus of the CSDE’s investigation. Nonetheless, the Killingly Board’s rejection of the SBHC is a component of the Section 10-4b complaint, and when considered in conjunction with the Killingly Board’s failure and refusal to hire additional mental health staff or to implement *any other* meaningful interventions, it becomes germane to the determination as to whether Killingly failed to implement the educational interests of the state.

In addition to the failure to implement the educational interests of the state as they pertain to student mental health and, consequently, safety, Killingly’s inaction also adversely affected more traditional indicia of the state’s educational interests. In its Elementary and Secondary School Emergency Relief [“ESSER II”] and American Rescue Plan Elementary and Secondary School Emergency Relief [“ARP ESSER”] federal funding plans, Killingly wrote that it was seeking to “reduce the District percentage for Chronic absenteeism from 14.9 in 2015-16 to 9.6% in . . . 2023-24 by supporting specific Social Emotional Learning [“SEL”] programs, adding a School-based Health Center” (emphasis added). As noted, the Killingly Board subsequently refused to either establish an SBHC or implement alternatives, and between the 2019-20 and 2020-21 school years, the district’s chronic absenteeism rate more than doubled, increasing from 14.5% to 32.5%. Although this rate moderated in the 2021-22 school year, its chronic absenteeism rate was still 26.7%, 13.2% higher than in 2019-20. Similarly, student performance indices in English/Language Arts, Mathematics, and Science declined and were below the statewide average, and its number of in-school and out-of-school suspensions during the 2021-2022 school year were the highest of the past five school years.

Therefore, for the reasons set forth herein, and based upon the factual findings and more extensive analysis contained in the investigation report which is included with and incorporated into this Commissioner’s report, it is recommended that in accordance with Conn. Agencies Regs. §10-4b-8, the SBE find there is reasonable cause to believe that the Killingly Board has failed or is unable to make reasonable provisions to implement the educational interests of the state and, in accordance with such finding, order an inquiry pursuant to Conn. Agencies Regs. §10-4b-9(a), over which a duly designated hearing panel of the SBE shall preside.

## **Connecticut State Department of Education**

TO: Charlene M. Russell-Tucker, Commissioner of Education

FROM: Michael P. McKeon, Director of Legal and Governmental Affairs

DATE: October 24, 2022

SUBJECT: Investigation Report Regarding Killingly Board of Education Conn. Gen. Stat. §10-4b Complaint

### **Procedural History**

On April 5, 2022, 57 Killingly residents, acting collectively under the caption “Concerned Residents/Parents of Killingly Students” [“Complainants”], filed with the Connecticut State Department of Education [“CSDE”] a complaint against the Killingly Board of Education pursuant to Section 10-4b of the Connecticut General Statutes [“Complaint”]. The basis of the Complaint is that the Killingly Board of Education [“Killingly” or “the Board”] has allegedly

failed to fulfill the educational interests of the State of Connecticut by failing to provide the minimum services and supports necessary to deal with the social, emotional and mental health needs of the students at Killingly High School.

4/5/2022 Complaint, p. 1. The Complainants further claimed that the Killingly Board “has failed to avail itself of any . . . mechanism of meeting the social, emotional and mental health needs of all its students,” Id., p. 8, and “has refused to address a critical education need that has been well documented.” Id.

Although the primary focus of the Complaint was the Board’s March 16, 2022, vote to reject the placement of a School Based Health Center [“SBHC”] at Killingly High School, the Complainants also stated therein:

A school-based health center is certainly not the only way by which a local board of education can meet its obligations under §10-220. Hiring appropriate staff and adequate numbers could achieve the same result. It is clear, however, that the Killingly Board of Education has failed to avail itself of any alternative mechanism of meeting the social, emotional and mental health needs of all its students.

Id., p. 8. Similarly, in their subsequent May 16, 2022, submission, the Complainants

reiterated that an SBHC “is one of a number of possible ways to deal with the severe mental health crisis among students in Killingly.” 5/16/22 Complainants’ Reply, p. 4.<sup>1</sup>

On April 11, 2022, the Commissioner of Education notified the Killingly Board that the CSDE had determined that the Complainants’ April 5 submission constituted a “substantial complaint” as defined in Section 10-4b-1(c) of the Regulations of Connecticut State Agencies and thus ordered an investigation into the Complaint. The Commissioner’s April 11 correspondence also requested that the Killingly Board file a written response within ten business days, although at the Killingly Board’s request, the filing date was extended, and the Killingly Board submitted its response on May 3, 2022. Both the Complainants and the Killingly Board subsequently made additional filings, the last of which was dated May 19, 2022. These filings were lengthy, detailed, and included voluminous supporting documents as well as multiple hyperlinks to other sources, all of which were reviewed. In addition, the CSDE reviewed the Killingly website, both video recordings and the minutes of multiple Killingly Board meetings, both televised and print news articles, social media postings, additional documents that it requested of, or were voluntarily provided by, Killingly, the Complainants, and witnesses, data and related information within its possession pertinent to the statements in both parties’ submissions, and relevant reference materials.

The CSDE also convened an in-person meeting with representatives from Killingly on August 26, 2022, at the CSDE, at which meeting they were accompanied by the Board’s attorney. This meeting was requested by letter dated August 8, 2022, which set forth detailed questions raised by the parties’ respective submissions. CSDE officials who participated in the August 26, 2022, meeting were: John D. Frassinelli, Division Director School Health, Nutrition, and Family Services; Bryan Klimkiewicz, Special Education Division Director; and Michael P. McKeon, Director of Legal and Governmental Affairs. These same individuals subsequently interviewed at length, and in the presence of their lawyer, representatives of the Complainants, including a current Killingly Public Schools certified staff member, on September 6, 2022. Additional witness interviews were conducted in both August and September 2022. Further information was submitted and reviewed on multiple days during the first half of October 2022.

### **Legal Authority**

Section 10-4b of the Connecticut General Statutes provides in part:

Any resident of a local or regional school district, or parent or guardian of a student enrolled in the public schools of such school district who has been unable to resolve a complaint with the board of education of such local or regional school district may file with the State Board of Education a complaint in writing . . . alleging

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<sup>1</sup>My August 8, 2022, correspondence on behalf of the CSDE to the Killingly Board Chair also noted that the SBHC is not the singular focus of the CSDE’s investigation, but rather an element of the Complaint and subsequent investigation.



the failure or inability of the board of education . . . to implement the educational interests of the state in accordance with section 10-4a.

The “educational interests of the state” are “those defined in Section 10-4a of the General Statutes,” which encompass both the requirement that each child have an “equal opportunity to receive a suitable program of educational experiences” and “the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education.” Conn. Gen. Stat. §10-4a.

These mandates include Section 10-220 of the Connecticut General Statutes, which, in part, delineate the required obligations of local and regional boards of education. Section 10-220(a) provides in relevant part:

Each local or regional board of education shall . . . implement the educational interests of the state . . . and . . . shall provide an appropriate learning environment for all its students which includes . . . adequate . . . staffing . . . [and] a safe school setting.

Id. Section 10-220(a) further requires that local and regional boards of education “make such provisions as will enable each child of school age residing in the district to attend some public day school for the period required by law.” Id.

Section 10-4b-5(c)(2) of the Regulations of Connecticut State Agencies directs the Commissioner of Education – upon receipt of a Section 10-4b complaint – to “[o]rder an investigation if the complaint is found to be substantial.” The regulations define “substantial complaint” as “a complaint that sets forth basic facts which state a cause of action concerning an alleged violation of the educational interests of the state.” Section 10-4b-1(c). A finding that a complaint is “substantial” does not constitute a determination or conclusion that the allegations in the complaint are accurate; rather, it is merely a threshold determination as to whether the complaint should be dismissed on its face or whether it warrants further investigation.

Following the conclusion of the investigation, the individual whom the Commissioner of Education has designated to investigate must submit a written report to the Commissioner, who, in turn, shall submit to the State Board of Education [“SBE”] the results of the investigation. This submission essentially consists of: factual findings; a determination as to whether these facts establish either the implementation or the failure to implement the educational interests of the state; and a recommendation for action. Conn. Agencies Regs. §10-4b-7. Upon the receipt of the Commissioner’s report, the SBE must act upon the Commissioner’s recommendation, although it has the discretion to continue such action until no later than the second regularly scheduled meeting following the report’s submission if it was not received more than eight days prior to the initial SBE meeting. Conn. Agencies Regs. §10-4b-8.

When provided with the Commissioner’s report, the SBE is empowered to dismiss the Section 10-4b complaint if it determines that “there is no reasonable cause to believe that a board of education has failed or is unable to make reasonable provisions to implement

the educational interests of the state.” Conn. Agencies Regs. §10-4b-8. In the alternative, the SBE can: “Order an inquiry if the findings indicate that there is reasonable cause to believe that a board of education has failed or is unable to make reasonable provisions to implement the educational interests of the state.” Id. The term “inquiry” as used in the regulations means “hearing,” which at the SBE Chair’s discretion would be held before either the full SBE or a hearing panel consisting of three SBE members. Conn. Agencies Regs. §10-4b-9.

## **Factual Findings**

1. During the 2018-2019 school year, the Killingly Board contracted with Discovery Counseling Services, LLC to provide mental health services and counseling to students within the Killingly Public Schools. August 26, 2022 Meeting Between Killingly Representatives and CSDE [“CSDE Meeting”]. Under that contract, Meredith Richards, a mental health professional, worked with approximately 25 Killingly Public Schools students. Id. Although Killingly was unable to provide an exact date that her services concluded, at the very latest they ended when schools closed due to the COVID-19 pandemic. Id.

2. On April 10, 2019, during the period Ms. Richards was working with its students, Killingly promulgated four districtwide goals, the last of which, entitled “School Culture & Climate,” stated that the Killingly Public Schools “will provide **a safe, healthy and supportive environment for learning where students build resilience through the integration of social, emotional and academic skills.**” 4/10/19 Killingly Board Goals (emphasis added).

3. On November 18, 2020, Killingly voted to appoint Robert Angeli as its Superintendent of Schools, which position Mr. Angeli assumed early in 2021. 11/20/20 *Norwich Bulletin*. At the time of his arrival, Killingly’s Assistant Superintendent and building principals advised Mr. Angeli that there was a pressing need for social, emotional, and mental health supports in the schools. 8/26/22 CSDE Meeting.

4. Consequently, in Spring 2021, Mr. Angeli and other members of the Killingly Public Schools administration “began to investigate the possibility of implementing a School-Based Health Center [“SBHC”] within the District.” Affidavit of Superintendent Robert J. Angeli [“Angeli Affidavit”], ¶8. This resulted in Mr. Angeli requesting “that Generations Family Health Centers, Inc. [“Generations”] develop a proposal to operate a behavioral health SBHC at Killingly High School.” Id. The “Generations proposal was later memorialized in a document entitled: “Killingly Public Schools and Generations Family Health Center Implementation Plan for School-Based Health Center [“Implementation Plan”]. Id.

5. Under the Implementation Plan, the SBHC would “be located on the third floor . . . of Killingly High School. There will be two rooms utilized by the SBHC.” Implementation Plan, p. 5, ¶3(a). The space “already existed at Killingly High School,

and was already maintained by the school facilities staff.” Id., ¶4(a). The Killingly Public Schools and Generations agreed that the SBHC staff “will use their own office and patient care equipment and supplies, and [Killingly High School] has generously offered to provide access to electricity and WIFI since it was already in existence in the identified rooms.” Id., ¶4(c).

6. The Killingly Public Schools and Generations contemplated that the following concerns would “be addressed via the SBHC: depression, anxiety, substance use disorders, behavioral concerns either at school or home, trauma, transitions/changes at home from divorce, grief and loss, bullying, ADHD and many others.” Implementation Plan, p. 6, ¶5(k). Student appointments were available “either in person or through Telehealth,” Id., ¶5(j).

7. As is clear from the Implementation Plan, parent involvement was deemed integral to the behavioral health services. This is particularly evident from the discussion of how a “student may come to the attention of Generations at the SBHC.” Implementation Plan, p. 1. For example, if a Killingly High School [“KHS”] staff member initiated a referral, he or she **would be required to “discuss the details of such a referral with the student and the parent/guardian, and share the SBHC intake documents with the parents.”** Id., p. 1, ¶1(b)(emphasis added). If “the parent/guardian declines a referral to the SBHC, then the KHS staff person will support the parent/guardian with identifying a preferred community mental health provider.” Id.

8. The Implementation Plan further empowered parents or guardians to “directly make an appointment for their child to have an assessment for care.” Id., p. 2, ¶2(a). In such cases, parents or guardians were “asked to attend the appointment so they can be part of the assessment process.” Id. More specifically, the Implementation Plan provided with respect to student appointments:

For parent/guardian attendance the minimum requirement is to attend visits when treatment plans are being reviewed and signed. This is to support agreement on the course of care, but also to participate in supporting the work their child is doing in treatment and the therapist needs to know the parent/guardian’s assessment of progress in care.

Id.

9. If a community organization or healthcare provider, such as a pediatrician, contacted the SBHC, **the parent or guardian would “be contacted and informed of the referral” and would be “asked to attend the assessment appointment.”** Implementation Plan, p. 2, ¶3(a)(emphasis added). If, however, parents or guardians indicated:

that they had no knowledge of the referral being made by the community partner, the SBHC staff will ask the parent/guardian to contact the community partner for clarification about the referral, and will await further instruction from the

parent/guardian. ***No appointment will proceed without direct confirmation from the parent/guardian about the referral and need for appointment.***

Id., ¶3(b)(emphasis added). Similarly, if the student was already a patient at another site or department of Generations, the Generations “provider making the referral ***[would] confirm with the parent/guardian first before making such referral.***” Id., ¶4(a)(emphasis added).

10. Finally, if a student self-referred, Generations staff would “discuss the involvement of the student’s parent/guardian in the appointment.” Implementation Plan, p. 2, ¶5(a). If the student were to agree, then Generations would contact the parent, but if the student were not to agree, the student would “be encouraged to see the benefit of having the parent/guardian involved in the case.” Id., p. 3, ¶5(c). The Implementation Plan cited Connecticut regulations, which, according to the Plan, permit a therapist to provide treatment to a minor without parental consent, ***but only*** if certain express conditions exist, including:

- a. Notifying the parent or guardian would cause the minor to reject treatment;
- b. the treatment is clinically indicated; the failure to treat the minor “would be seriously detrimental to the minor’s well-being”;
- c. the minor has knowingly and voluntarily sought treatment;
- d. and in the provider’s opinion, the minor is mature enough to engage productively in the treatment.

Id., p. 3, ¶5(d).<sup>2</sup>

11. Following the creation of this Implementation Plan, “a proposed Contract was developed for consideration by the Board.” Id. Under the terms of the proposed contract, “Generations would operate a behavioral health clinic open to Students and their family members during a five-year period.” Angeli Affidavit, ¶9. Generations would have “full responsibility for the operation of the SBHC,” Id., ¶10, and the Board would “provide, free of charge, Generations with designated space on the third floor of Killingly High School . . . (including a reception area and therapy room), for the exclusive use of Generations.” Id., ¶11. Additionally, “the Board would be obligated to provide ‘at its expense, heating, cooling, electrical, lighting, water, local telephone and data, and custodial services’ for the SBHC.” Id., ¶12. Generations, however, would not charge Killingly “for any services provided at the SBHC, at any time.” Implementation Plan, p. 7, ¶1(c).

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<sup>2</sup>The actual authority for this is found in Conn. Gen. Stat. §19a-14c(b). Although the Implementation Plan went on to assert that Connecticut law only permitted six sessions of therapy without parental consent, Section 19a-14c(c)(1) was amended by Public Act 21-46, §10(c), eliminating the six-session cap.

12. According to Superintendent Angeli, given the Killingly Administration's recognition of the need for mental health supports, there was an "administrative assumption" that the Board would be open to such an intervention. 8/26/22 CSDE Meeting.

13. In conjunction with these discussions, on April 16, 2021, Killingly submitted its plan to the CSDE for a federal Elementary and Secondary School Emergency Relief ["ESSER II"] grant.<sup>3</sup> Included in its plan was a request for funding for "School Safety and Social-Emotional Well-being of the 'Whole Student' and of our School staff." In support of this request, Killingly wrote in relevant part:

There is ***an unprecedented level of stress*** on both students and staff members which must be addressed through social and emotional support . . . . ***One focus area should be on additional behavioral and mental health services delivered in-person or via remote/telehealth access and social and emotional support mechanisms***, so that these supports are available even for individuals who may have limited in-person access.

(emphasis added). Killingly further specified that it intended to use these funds to "***reduce the District percentage for Chronic absenteeism . . . by supporting specific SEL programs, adding a School-based Health Center*** and providing PPE and cleaning supplies to ensure the health and safety of our students and staff."

Id. (emphasis added). Killingly also asserted:

***We shall ensure students feel safe*** and supported by continuing the support of our established SEL programs in schools and by allocating funds for SEL supplies and training . . . . ***Furthermore, the addition of a School Based Health Center (SBHC) will allow students to be provided social and emotional support and also through continued emphasis on mental health safety.***

(emphasis added).

14. On May 10, 2021, Killingly received \$1,448,896 in ESSER II funding and an additional \$247,988 in ancillary ESSER II State Set-Aside funds, for a total of \$1,696,884. As of October 21, 2022, Killingly had drawn down \$900,000 of these combined funds, although the bulk of those expenditures had occurred only since mid-September 2022.

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<sup>3</sup>The amount of ESSER II funding to which each school district was entitled was predetermined by the federal government, based upon the respective districts' funding under Part A of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, commonly known as "Title I." Thus, districts were entitled to such federally prefixed amounts so long as they submitted plans that delineated eligible ESSER II and ARP ESSER expenditures, including for social-emotional initiatives

15. On August 16, 2021, Killingly submitted a plan to the CSDE for federal American Rescue Plan Elementary and Secondary School Emergency Relief [“ARP ESSER”] funding.<sup>4</sup> In setting forth its APR ESSER plan, Killingly wrote:

[M]eetings with the above stakeholders [i.e. “students, families, school and district administrators”] were held in the Spring and Summer of 2021 . . . . ***It was clear from all of these forums that SEL and learning loss were the most pressing needs. We discussed with stakeholders our increase in student SEL concerns such as anxiety, and substance abuse. We heard loud and clear from stakeholders, particularly students, that they were anxious about returning*** . . . . One of our assistant principals at KHS [Killingly High School] elicited feedback from a community health committee and these concerns were echoed by all. In direct response to the stakeholder feedback, we have allocated funds for additional social workers,<sup>5</sup> BCBA’s and SEL professional development and supplies.

(emphasis added). Killingly added: “*We must be prepared to use strategic wraparound social, emotional, and mental health supports to restore and successfully reengage our school communities.*” Id. (emphasis added). It also repeated verbatim from its April 16, 2021 ESSER II application its intention to support “specific SEL programs [and add] a School-based Health Center” in order to “reduce the District percentage for Chronic absenteeism.”<sup>6</sup>

16. On November 10, 2021, Killingly received \$3,256,304 in ARP ESSER federal funds. As of October 21, 2022, Killingly had drawn down \$320,000, or approximately 10% of that amount.

17. During the August 26, 2022, meeting at the CSDE, Superintendent Angeli stated that the social worker position that Killingly had been advertising had been filled the prior day, August 25. Approximately one week later, on September 2, 2022, Killingly revised its ARP ESSER plan, stating

Social worker for KMS [Killingly Memorial School] to support SEL

Revision 9-2-22 we were unable to fill this – we were able to hire a SEL para . . . will reallocate 52,601 to hire a nurse for KMS 1 year.

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<sup>4</sup>The amount of ARP ESSER funds allocated to each school district and the conditions for the provision of such funds were determined in the same manner as the ESSER II funds, discussed in footnote three.

<sup>5</sup>In a May 10, 2022, revision to its April 16, 2021 ESSER II application, Killingly wrote that “we were unable to fill [the social worker] position and utilize how we intended. We will reallocate funds to hire a special education teacher.”

<sup>6</sup>It is significant that in its May 3, 2022, response to the Complaint, Killingly never referenced either its ESSER II or ARP ESSER submissions, instead mentioning only its earlier ESSER I application, in which it sought “grant funding to establish 1.5 Board Certified Behavior Analyst . . . FTE positions and two Social Emotional Learning specialist positions at the elementary level.” Id., p. 5.

According to the district's website, as of October 14, 2022, Killingly had three social worker vacancies, 3.45 guidance counselor vacancies – one of which was to fill the position of Department Chair of Killingly High School's Guidance Department -- two behavior specialist positions, one social emotional learning specialist position, and four special education paraprofessional positions. Killingly Public Schools Website.<sup>7</sup> The open social worker positions include one at Killingly High School, one at Killingly Middle School, and a third simply identified as "Early Education." Id. One of the already vacant Guidance Counselor positions is at Killingly High School. Id. Consequently, the imminent November 4, 2022, departure -- after approximately fifteen years with the district -- of the Department Chair of the Killingly High School Guidance Department will leave two vacant school counselor positions at the high school. Id.; Witness Statement. These social worker and school counselor vacancies were all preexisting positions. Witness Statement.

18. These job postings mark a collective increase in Killingly's social worker and guidance counselor vacancies since as recently as September 23, 2022. Killingly Public Schools Website. Complainants' Interview.

19. Killingly has only one school psychologist on staff among its four schools. 8/26/22 CSDE Meeting. Because Killingly found it difficult to hire additional school psychologists, it simply stopped advertising for them. Id.

20. Killingly minimized the lack of school psychologists by asserting that their duties were essentially limited to administering psychoeducational evaluations and related tests for determining special education eligibility. 8/26/22 CSDE Meeting. See also 5/3/22 Killingly Response, p. 5. For example, in its May 3, 2022, response, Killingly wrote that a "school counselor who has been hired has more time to provide direct student support services than a school psychologist would have." Id., p. 5. A certified staff member who currently works with behaviorally challenged students within the Killingly Public Schools disputed this characterization, stating that counseling students with emotional needs was also part of the school psychologist position. Complainants' Interview.<sup>8</sup>

21. In discussing the respective positions, Killingly's representatives essentially equated the duties of their school counselors with those of their social workers. 8/26/22 CSDE Meeting. This comparison, however, is not borne out by Killingly's job descriptions for social workers and guidance counselors, which Killingly provided on September 9, 2022, in response to the CSDE's request.

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<sup>7</sup>The CSDE recognizes that the term "Guidance Counselor" has been widely superseded by the position title "School Counselor," but it is using Killingly's nomenclature, "Guidance Counselor," when referencing Killingly's web postings and job description.

<sup>8</sup>There is also the fact that, as noted, Killingly currently has more, not fewer, vacant school counselor positions, including as of November 4, 2022, two vacancies at the high school. Killingly Public Schools Website. Thus, given the Board's assertion in its May 3, 2022, response, there will be even fewer direct counseling resources for Killingly students.

22. Killingly lists the following primary “performance responsibility” for a school social worker:

Performs casework service with individual students to assist them in dealing with those personal, social, or emotional maladjustments related to their educational and social progress.

Killingly Public Schools Social Worker Job Description. Killingly school social workers also: “Supervise[] the referral of students to, and serves as liaison with such outside agencies as DCYS,<sup>9</sup> State Agencies and other human service providers.” Id.

23. Although Killingly’s K-6 Counselor job description<sup>10</sup> states that school counselors “[p]rovide crisis intervention in cases where the child is temporarily unable to function in class situations,” it goes on to state that the counselor “shall refer the matter to the school social worker if home intervention or service from another agency is deemed appropriate.” Killingly Public Schools K-6 Guidance Counselor Job Description. In fact, the overwhelming majority of the counselors’ responsibilities are working with special education students and performing other curriculum-related duties. Id.

24. The Killingly job description expressly limits the counselor’s ability to provide direct counseling **only** to those students who have been found eligible for special education and related services, stating that counselors: “Provide direct counseling services to Special Education students, consultation to their parents, in accordance with the P.P.T. recommendations.” Id. Of further note, the school counselor job description provides:

Counseling services for students shall be provided **only** for those students whose P.P.T. recommends this . . . .

Counselor will become involved in early intervention with non-special needs students **only** upon referral and/or approval of the building principal.

Id. (emphasis added).<sup>11</sup> Given this explicit restriction on school counselors’ ability to provide counseling to students in need, it is difficult to discern the purported commonalities between the social worker and school counselor positions.

25. In addition to their other performance responsibilities, Killingly school social workers serve “as case coordinator[s] for all students placed out of district.” Using social workers to serve in this capacity is highly unusual, as typically, districts have either an

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<sup>9</sup>“DCYS” was the acronym for the Department of Children and Youth Services, a Connecticut State agency that was renamed the Department of Children and Families [“DCF”] over twenty years ago. Its inclusion in the Social Worker job description suggests that the “performance responsibilities” have not been updated since then.

<sup>10</sup>Killingly did not provide a job description for school counselors who work in the seventh-through-twelfth grades.

<sup>11</sup>This is at odds with Killingly’s assertion that school counselors have “more time to provide direct student support services than a school psychologist would have.” 5/3/22 Killingly Response, p. 5.



Out-of-District Coordinator or a special education teacher oversee those students with disabilities who have been placed out of district. According to the CSDE's most recent "District Profile and Performance Report" ["DPPR"], during the 2020-2021 school year, Killingly had placed 74 students out of district. *Id.* Given the unfilled social worker positions, this would presumably result in each social worker having to assume greater out-of-district caseloads and invest significant time managing these cases.

26. In their May 3, 2022, response to the Complaint, Killingly represented that during the 2019-2020 school year, it had "placed a total of 54 students in out of district therapeutic special education schools." *Id.*, p. 9. According to the 2019-2020 DPPR Killingly submitted with its response, however, it had placed 54 students with disabilities out of district in "public schools in other districts," *and an additional 28 students with disabilities* in "private schools or other settings." 2019-2020 DPPR, p. 3. Killingly has offered no explanation for this patent inconsistency between its May 3 written response and the supporting exhibit it submitted with that response.

27. During the 2017-2018 school year, Killingly placed 72 students with disabilities in "public school in other districts" and 28 students in "private schools or other settings," for a total of 100 students with disabilities placed out of district. 2017-2018 DPPR, p. 3. Thus, the 2019-2020 school-year number of 72 such students marked a significant downward trend in students placed out-of-district.<sup>12</sup> During the 2020-2021 school year, those numbers slightly increased; Killingly placed 52 students with disabilities in public schools in other districts and 22 students with disabilities in "private schools or other settings." 2020-2021 DPPR, p. 3. The percentage of students with disabilities whom the district has out placed is above the State average.

28. Killingly explained that it had been required to maintain such a high number of students with disabilities "in out of district therapeutic special education schools due to a determination that their needs warranted support beyond the capabilities of the District to provide." 5/3/22 Killingly Response, p. 9 (citing Affidavit of Susan Nash-Ditzel). In its April 16, 2021, ESSER II submission, however, Killingly wrote: "We have had a spike in referrals to special education. Relatedly, outplacement facilities are at capacity; thus we are required to make the necessary accommodations for students to stay in district." 4/16/21 Killingly ESSER II Plan.<sup>13</sup> Despite this, and as noted in Factual Finding 19, Killingly has only one school psychologist for the entire district and has discontinued advertising for additional school psychologist positions.

29. As noted, in both its proposed April 16, 2021, ESSER II plan and its proposed August 16, 2021, ARP ESSER plan, Killingly sought funding to support specific SEL programs and add "a School-based Health Center" in order to reduce its chronic

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<sup>12</sup>Killingly, however, neglected to note whether this decrease was due to it having implemented additional in-district supports or due to students graduating, aging out, leaving school, or otherwise exiting special education.

<sup>13</sup>Dr. Nash-Ditzel's May 3, 2022, affidavit obviously post-dated Killingly's April 16, 2021, ESSER II plan, which would suggest that the district was having difficulties making "the necessary accommodations for students [with disabilities] to stay in district," presumably due to these students "warrant[ing] support beyond the capabilities of the District to provide." 5/3/22 Killingly Response, p. 9.

absenteeism, citing the 2015-2016 school year figure of 14.9%. It is unclear why in its 2021 applications Killingly cited absenteeism figures from *five years earlier*, particularly given that the chronic absenteeism rates in the three years subsequent to the 2015-2016 school year were lower, a fact that dramatically changed during the 2020-2021 and 2021-2022 school years. Over the course of those five years, Killingly's district-wide chronic absenteeism rates were as follows:

|           |                     |
|-----------|---------------------|
| 2017-2018 | 13.6%               |
| 2018-2019 | 13.2%               |
| 2019-2020 | 14.5%               |
| 2020-2021 | 32.5% <sup>14</sup> |
| 2021-2022 | 26.7%               |

Annual DPPRs. As the statistics indicate, during the 2020-2021 school year, when Killingly submitted its ESSER II plan, chronic absenteeism had more than doubled since the prior school year. Although the numbers somewhat moderated during the 2021-2022 school year, the 26.7% of Killingly school children deemed chronically absent remained significantly higher than the 13.2% and 14.5% figures in, respectively, the 2018-2019 and 2019-2020 school years.

Breaking down the chronic absenteeism rates by school:

|                               |           |       |
|-------------------------------|-----------|-------|
| Killingly High School         | 2020-2021 | 25.6% |
|                               | 2021-2022 | 33.0% |
| Killingly Intermediate School | 2020-2021 | 45.4% |
|                               | 2021-2022 | 24.9% |
| Killingly Memorial School     | 2020-2021 | 28.2% |
|                               | 2021-2022 | 19.3% |
| Killingly Central School      | 2020-2021 | 14.2% |
|                               | 2021-2022 | 24.4% |

Annual DPPRs. As these figures indicate, during the 2021-2022 school year, between approximately one-quarter and one-third of students in three of Killingly's schools were

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<sup>14</sup>A disaggregation of these numbers reveals that the increase in chronic absenteeism between the 2018-2019 and 2020-2021 school years was particularly acute among children who might be considered to be the most vulnerable, namely students with disabilities and students who were eligible for free or reduced-price meals. More specifically, the chronic absenteeism rates for students with disabilities almost doubled between the 2018-2019 and 2020-2021 school years, increasing from 23.6% to 45.2%. 2018-2019 DPPR, p.1; 2020-2021 DPPR, p. 1. During those same school years, there was an even greater increase in chronic absenteeism numbers for students who were eligible for free or reduced-price meals, from 19% to 46%. Id.; Id.

chronically absent, the exception being Killingly Memorial School, which had a nearly 20% chronic absenteeism rate.<sup>15</sup>

30. Killingly's 32.5% district-wide chronic absenteeism rate during the 2020-2021 school year was 13.5% higher than the statewide rate of 19%. In the 2021-2022 year, Killingly's rate was 3% higher than the 23.7% statewide average, a considerable narrowing of the prior year's differential. At the same time, Killingly represented in its ESSER II and ARP ESSER submissions that it was seeking to "reduce the District percentage for Chronic absenteeism . . . to 9.6% in . . . 2023-24 by supporting specific SEL programs, [and] adding a School-based Health Center, thereby establishing a causal link between these mental-health initiatives and school attendance. Given its 26.7% chronic absenteeism rate during the 2021-2022 school year, however, in order to achieve the goal it set for itself, Killingly would have to reduce its rate by 17.1% between the current 2022-2023 and 2023-2024 school years, a highly unlikely prospect.

31. In assessing Killingly students' average performance index in the areas of English/Language Arts ["ELA"], Math, and Science, the ELA scores decreased from 67.9 during the 2018-2019 school year to 61.9 during the 2021-2022 school year. 10/7/22 CSDE EdSight, Killingly School District The Math performance index over that same period decreased from 60.8 to 54, and the Science performance index decreased from 61.9 to 59. Id. The 2021-2022 scores were all below the statewide average. 10/7/22 CSDE EdSight.

32. In 2021, the General Assembly enacted Public Act ["P.A."] 21-35, entitled: "An Act Concerning Comprehensive Access to Mental, Behavioral and Physical Health Care in Response to the Pandemic." In part, P.A. 21-35 established a working group to examine the expansion of school-based-health-centers ["SBHC"]. As Killingly acknowledged in a May 3, 2022, submission to the CSDE, in February 2022, "the Connecticut SBHC Expansion Working Group issued its Final Report . . . . Killingly was one of the 21 towns/municipalities in Connecticut that the Working Group recommended for expansion of SBHC access."

33. Killingly sought to minimize this fact by asserting that when the "Working Group scored each of the proposed sites in Killingly at the bottom (tied for last) on the site recommendation list, indicating that . . . the Killingly sites were a relatively low priority for the Working Group." 5/3/2022 Killingly Response, p. 10. This, however, overlooks the fact that there are 169 "towns/municipalities" in Connecticut, and Killingly was one of only 21 – or 12% -- that were recommended for an SBHC. Additionally, and as noted by the Complainants in their April 5, 2022, Section 10-4b Complaint, Killingly was the only rural

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<sup>15</sup>As noted in Factual Finding 15, in discussing its intended use of ARP ESSER funds for social-emotional initiatives, Killingly wrote in its August 16, 2021, ARP ESSER plan: "We discussed with stakeholders our increase in student SEL concerns such as anxiety, and substance abuse. ***We heard loud and clear from stakeholders, particularly students, that they were anxious about returning***" (emphasis added). As noted, during that 2020-2021 school year, Killingly's chronic absenteeism rate had increased by 18% since the 2019-2020 school year to 32.5% and would remain high, at 26.7%, during the 2021-2022 school year. Chronic absenteeism at Killingly High School increased between the 2020-2021 and 2021-2022 school years from 25.6% to 33.0%

town that was recommended for an SBHC. More importantly, and as discussed, Killingly itself acknowledged in both its ESSER II and ARP ESSER grant applications the need for an SBHC.

34. Killingly further neglected to specify in its May 3, 2022, response that the Working Group had recommended not one, but **three** SBHCs for the Killingly Public Schools – one in Killingly High School, one in Killingly Middle School, and one in Killingly Intermediate School. 3/16/22 Killingly Board Minutes, p. 1. Although Superintendent Angeli noted this at the March 16, 2022, Board meeting, Id., there is no evidence that an SBHC in either Killingly Middle School or Killingly Intermediate School was ever proposed by the Killingly Administration or discussed by the Board.

35. In November 2021, the “Killingly Public Schools along with other community partners commissioned” the Southeastern Regional Action Council [“SERAC”] to administer an online survey to Killingly students in grades seven through twelve. Affidavit of Assistant Superintendent Susan Nash-Ditzel, Ed.D. [“Nash-Ditzel Affidavit”], ¶24; 12/2021 SERAC Report, p. 5. The survey included questions that were designed to elicit information regarding various areas of student experience, including student demographics, student use of tobacco, alcohol or other substances, effect of peer perspectives, and mental health indicators. SERAC Report. Prior to the survey’s administration, “parents were given the opportunity to examine it and to excuse their children participating by informing the school. Youth were also able to decline, on their own, to take the survey.” Id., p. 5.

36. Based upon student responses, SERAC issued its Final Report in December 2021. Of particular relevance to the current matter, SERAC reported the following with respect to “mental health indicators”:

About 28% of youth report that they have had thoughts of hurting themselves and 28.6% report that in the past year they have felt sad or hopeless almost everyday for 2 weeks or more so that it stopped them from doing their usual activities . . . . Alarming, about 14.7% of youth report having seriously considered attempting suicide and 18.2% report having hurt themselves on purpose.

12/2021 SERAC Report, p. 9. SERAC explained that “seriously considered attempting suicide meant ‘made a plan’” to do so. 12/2021 SERAC Report, p. 28.

37. The SERAC report’s findings with respect to Killingly students’ “mental health indicators” did not come as a surprise to the district’s Administration. To the contrary, Assistant Superintendent Nash-Ditzel stated in her sworn affidavit that the SERAC “survey confirmed the District’s conclusion that our students have increased mental health support needs.” Nash-Ditzel Affidavit, ¶24. The Killingly administration “shared this data with the Board and the Killingly community.” Id.

38. In the years prior to the November 2021 SERAC survey and the SBHC Working Group’s February 2022 recommendation, Killingly had implemented various staff

trainings. These included: the *Circle of Courage* program during the 2015-2016 and 2016-2017 school years for “lower grades” staff; Sandy Hook Promise *Know the Signs* program for high school staff; and the *RULER Program* for high school and intermediate school staffs. In its 2021 Annual Report, Sandy Hook Promise stated that it was founded “to protect all kids from shootings and violence in their schools, homes, and communities.” Id. The RULER program is “designed to improve the quality of classroom interactions through professional development and classroom curricula that infuse emotional literacy instruction into teaching-learning interactions.” “Improving Classroom Quality with The RULER Approach to Social and Emotional Learning: Proximal and Distal Outcomes.”

39. These programs primarily consisted of staff training rather than direct interventions with students. 5/3/22 Nash-Ditzell Affidavit. As such, and while in no way faulting or criticizing these programs in and of themselves, they were what are known as “Tier One” interventions as opposed to more direct, student-interactive therapeutic “Tier Three” interventions. Witness Interview. The distinction between tiered interventions has been explained as follows:

In Tier 1, all students receive the same level of instruction. They aren’t given any specialized treatment until they need additional positive behavioral intervention. Tier 2 students are placed in small groups for specific, supplemental instruction. Once students are sent to Tier 3, they get one-on-one high-quality behavior support.

5/28/2020 “Tier 1 Interventions and MTSS: What You Should Know,” Classcraft. Similarly, it has been described as follows:

Implementing behavior interventions is a strategy schools use to improve student behavior so that all students in a school can achieve social, emotional, and academic success. Behavior expectations are often included within school policies to help students and parents understand the school’s vision for student behavior. These behavioral standards establish the ways students should conduct themselves to help maintain a safe and respectful learning environment. A behavioral intervention is often put into place when there is a discrepancy between a school’s code of conduct and how the student actually behaves.

Positive Behavior Interventions and Supports (PBIS) are proactive behavioral supports schools can put in place to affect student outcomes. There are three tiers of support:

- Tier I: Strong school values and policies, as well as healthy classroom practices (all students)
- Tier II: Targeted support to groups of students that need alternative strategies to support their behavioral success (subset of students)
- Tier III: Individualized support (student-specific)

5/17/2022, “What is the Difference Between Tier 1, 2, and 3 Behavior Interventions?” PowerSchool.

40. The evidence clearly establishes that despite the existence of these programs, the Killingly Administration recognized the increased need for more robust and focused mental health interventions, a recognition that was bolstered by the troubling results of the November 2021 SERAC survey, which, again, was seen by the Administration as confirming that Killingly’s “students have increased mental health support needs.” Nash-Ditzel Affidavit, ¶24

41. As noted, neither Superintendent Angeli nor other Killingly administrators anticipated that the Board would oppose an SBHC. 8/26/22 CSDE Meeting. Consequently, at or around the time of the December 2021 SERAC report, the Killingly Administration was holding conversations with Generations regarding an “updated agreement” for installation of an SBHC. 1/12/22 Killingly Board Minutes, p. 2. At that point, the proposed agreement had “gone through many revisions, and ha[d] been reviewed by the Board attorney.” Id.

42. Generations participated virtually in the Board’s January 12, 2022, meeting, giving a presentation that delineated its services, noting that it could begin on or about March 1, 2022, on a three-days-a-week, part-time schedule. 1/12/22 Killingly Board Minutes, p. 2. Board members had questions “about the confidentiality policy and parent involvement,” in response to which “Generations shared how they seek parent involvement from the first visit.” Id. A number of Board members “expressed reservations regarding establishing the SBHC without parental/community input sessions.” Id. It is not unreasonable for a school board to seek community opinions on initiatives such as an SBHC, and the Board ultimately voted to “postpone the issue until at last one public input session can be held.” Id.

43. On February 7, 2022, there was a public session to discuss the possibility of placing an SBHC in Killingly High School. 2/9/22 Killingly Board Minutes, p. 3. Sixty-five people attended the meeting. Id. As summarized in the minutes of the February 9, 2022, Board meeting, Superintendent Angeli noted: “The discussion has been on-going for a year regarding the need for the clinic.” Id. The minutes also note:

The Superintendent strongly supports the need for this initiative. Short session of CT legislature is focusing on mental health exacerbated by the pandemic, and the mental health gaps which also existed before the pandemic. Three bills were introduced to address this issue. This is another reason to provide supports for our students.

Id. Nonetheless, despite the “public input session” having been held on February 7, the Board once again decided to postpone a vote on the SBHC. Id.

44. The Board did not take up the SBHC issue again until its March 16, 2022, meeting, although near the conclusion of the March 9 meeting, Superintendent Angeli reminded Board members that they had in their information packet a copy of both the Implementation Plan that had been agreed to between Generations and the Killingly Administration and the updated draft contract. 3/9/22 Killingly Board Minutes, p. 5. At the March 16, 2022, meeting, Superintendent Angeli noted that Board members had previously been provided with documents pertaining to the establishment of an SBHC, including “a comprehensive study showing Killingly is one of twenty-one towns that would benefit from a SBHC, specifically KHS, KIS, and KMS are recommended to have a SBHC.” 3/16/22 Killingly Board Minutes, p. 1. Superintendent Angeli also reiterated his support for the SBHC. Id.

45. At the March 16, 2022, meeting, a member of the public cited the SERAC report’s finding that 14.7% of the Killingly student respondents had made a plan to commit suicide. Then Vice-Chair and now Board Chair, Norm Ferron, stated that he believed the figure to be an exaggeration and added that in any event, 14.7% was not that big of a number. 4/5/22 Complaint, p. 7. See also 4/28/22 “Connecticut Town’s Wingnut School Board Boldly Protects Teens From Mental Health,” *Wonkette*. Mr. Ferron later stated that he wanted to know how the 14.7% number compared to students in other districts. 8/26/22 CSDE Meeting. He did not elaborate, however, on why this comparison would be relevant. Id.

46. At the March 16, 2022 meeting, Killingly’s then Board Chair, Janice Joly, responded to the SERAC report findings by stating: “How do you know they were honest responses? We’re dealing with kids. They could have written anything. That’s what kids do.” NBC, Channel-30 Report.

47. Following discussion at the March 16, 2022, Killingly Board meeting, Ms. Joly, “shared that she recognizes a need for a SBHC but other options should be explored beyond Generations.” 3/16/22 Killingly Board Minutes, p. 2. This was later echoed by Mr. Ferron, her successor as Killingly Board Chair, who noted that the Administration had only proposed one entity – Generations – leaving the Board with no other options to consider. 8/26/22 CSDE Meeting. Additionally, Board Vice-Chair Kelly Martin expressed concerns regarding online ratings Generations had received, at least implicitly suggesting that there had possibly been more acceptable alternatives. 8/26/22 CSDE Meeting.<sup>16</sup>

48. It is certainly reasonable for a school board to expect that its Administration will give it various options to consider when asked to enter into a contractual agreement with an outside entity. It enables the board to conduct its due diligence and seek to determine which, if any, of such options are best for the school district. In this case,

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<sup>16</sup>At the Killingly Board’s March 16, 2022, meeting, however, Ms. Martin had voted in favor of the SBHC, an inconsistency that she chose not to discuss at the August 26, 2022, CSDE Meeting. Furthermore, and paradoxically given her stated concerns about the efficacy of Generations, during the August 26 CSDE meeting Ms. Martin raised as a hypothetical the possibility of transporting students in the future to the Generations facility in Putnam. Id.

however, Killingly provided no evidence that following its rejection of the SBHC it requested or sought presentations from other potential SBHC operators or their equivalent. Similarly, there is no evidence that it sought to increase its staff of school psychologists, social workers, or school counselors.<sup>17</sup>

49. Following discussion, a motion was put forth at the Board's March 16, 2022, meeting to approve the SBHC, but the motion failed, three votes to six. Id.

50. At its April 13, 2022, meeting, the Board discussed alternatives to the SBHC. One Board member questioned whether the Board could contract with a provider for Zoom sessions rather than have an on-site provider. 4/13/22 Board Minutes, p. 4. Another Board member who had voted against the SBHC at the March 16, 2022, meeting "agree[d] something needs to be done, and shared information about Rachel's Challenge, a K-12 program focused on reducing school violence, bullying, and mental health." Id. The Board discussed "being open to a shorter-term contract, or a one-year pilot program." Id. When a motion was made to add to the agenda discussion of a possible one-year contract with an SBHC, however, the motion failed two-to-six. Id.

51. One of the concerns discussed at the April 13, 2022, meeting was "[t]he issue of parental rights." 4/13/22 Killingly Board Minutes, p. 4. As noted, the Implementation Plan -- a copy of which had been provided at the very latest to Board members prior to the March 9, 2022, Board meeting -- emphasized the importance of obtaining parental consent and detailed at length the steps that Generations would take to obtain it. Implementation Plan. See also 3/9/22 Killingly Board Minutes, p. 5. Nonetheless, the Board directed Superintendent Angeli "to gather conclusive information regarding the parental opt-in/opt-out of services." Id.<sup>18</sup>

52. At the Killingly Board's April 27, 2022, meeting, Superintendent Angeli advised the Board that the parent opt out of SBHC services pertained to medical services and that students could be seen for behavioral or mental health services without parental consent. Id., p. 3. He added, however, that as Generation funds the program by billing the parents' insurance, the intent and goal is to have parental involvement at the first meeting. Id. This comports with the Implementation Plan that Generations and the Killingly Administration had negotiated and agreed upon. Similarly, during its presentation at the January 12, 2022, Board meeting, "Generations shared how they seek parent involvement from the first visit." 1/12/22 Killingly Board Minutes, p. 2. A motion was made to add the SBHC back to the agenda, but it failed two-to-six. 4/27/22 Killingly Board

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<sup>17</sup>The Complainants assert that during the April 27, 2022, Board meeting, a proposal was made to create "ten new positions with 1-year contracts and \$5,000 sign-on bonuses." 5/16/22 Complainants' Reply, p. 14. The Board Chair and Vice Chair flatly rejected that this was ever a serious proposal, dismissing it as essentially a Board member thinking aloud. 8/26/22 CSDE Meeting.

<sup>18</sup>At the August 26, 2022, CSDE Meeting, the Board Chair and Vice-Chair continued to express concern about parental consent, more specifically the possibility of students seeing therapists that their parents did not know. 8/26/22 CSDE Meeting.



Minutes, p. 3.<sup>19</sup> It was then decided that Superintendent Angeli would “put together an outline of pros and cons of the previously presented options including Rachel’s Challenge and Telehealth.” Id. There is, however, no evidence that the Killingly Board subsequently consider any options other than Rachel’s Challenge.

53. On May 3, 2022, Assistant Superintendent of Schools Susan Nash-Ditzel represented: “It has been reported to me that the national youth mental health crisis has impacted Killingly, with increases in counseling requests, student discipline referrals,<sup>20</sup> and visits to the school nurse.” Nash-Ditzel Affidavit, ¶19. For example, as of May 3, 2022 – with over a month left in the 2021-2022 school year – Killingly’s school counseling staff had “handled at least 660 unplanned, or ‘responsive’ counseling sessions.” Id., ¶21.<sup>21</sup> Given this number, Killingly was required during the 2021-2022 school year to implement a kind of counseling triage, in which a “Counseling Priority Form” was implemented “to identify the students most in need so that they can receive priority access to counseling.” Id., ¶22.<sup>22</sup> Killingly did not clarify what happened to those students who were turned away due to not having been deemed to require “priority access.”

54. In addition to the significant number of unplanned counseling sessions with Killingly’s school counselors, visits to school nurses “increased from a total of 3,069 visits during the 2020-2021 school year to 3,581 through April 26 of the 2021-2022 school year.” Nash-Ditzel Affidavit, ¶23. Dr. Nash-Ditzel noted that “the school was not fully in person during the 2020-2021 school year and the 2021-2022 school year has been a major adjustment for students with return to a full in person school day.” Id. The fact that there were 3,069 nurse visits despite the 2020-2021 school year not having been “fully in person” underscores the high volume of such visits, a number which, as Dr. Nash-Ditzel stated in her sworn affidavit, was exceeded during the 2021-2022 school year by 512 visits despite the fact that as of April 26, students had approximately two more months of school.

55. At its August 10, 2022, meeting, the Killingly Board voted unanimously to hire five armed security guards for its five schools. 8/10/22 Killingly Board Minutes, p. 2. Mr. Ferron, Killingly’s Board Chair, subsequently asserted that the presence of armed guards constituted a social-emotional intervention because it would lessen student

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<sup>19</sup>A similar motion was made at the Board’s May 11, 2022, meeting; it also failed two-to-six. 5/11/22 Killingly Board Minutes, p. 2.

<sup>20</sup>During the 2021-2022 school year, the Killingly Public Schools reported 611 in-school suspensions and 179 out-of-school suspensions, the highest numbers of both forms of discipline over the past five school years. 10/7/22 CSDE EdSight, Sanction Counts, Killingly School District.

<sup>21</sup>As noted in Factual Finding 24, the Killingly K-6 Guidance Counselor job description expressly prohibited except in very limited, pre-approved situations counselors providing therapeutic supports to non-disabled students, which suggests that in light of these over 660 “unplanned . . . counseling sessions,” this provision was ignored.

<sup>22</sup>Given that the number of “unplanned” visits compelled counselors to initiate a prioritization list for “the students most in need” of therapeutic counseling, it is reasonable to assume that the academic-support component of these positions would also have been adversely affected, thereby negatively impacting students seeking course-related advice or assistance with post-secondary pursuits.

anxiety in the wake of Uvalde and similar school-based shootings. 8/26/22 CSDE Meeting. When asked if that decision was the result of the SERAC Report's findings, Killingly's representatives said it was not. Id.

56. At that same August 10, 2022, meeting, the Killingly Board voted to implement the entire program of *Rachel's Challenge* in the Killingly Public Schools. 8/10/22 Killingly Board Minutes, pp. 1-2.<sup>23</sup>

57. During the August 26, 2022, meeting at the CSDE, the Killingly Board Chair and Vice Chair stated that the establishment of an SBHC was no longer under consideration. 8/26/22 CSDE Meeting.

58. On August 26, 2022, the Killingly Board Chair and Vice Chair asserted that in the wake of the April 5, 2022, Section 10-4b complaint, the legal counsel that prepared Killingly's May 3, 2022, response and subsequent filings advised Killingly not to implement any other alternatives to the SBHC as that could be construed as an admission that Killingly had previously failed to implement the educational interests of the State. Id.

59. This was a significant statement; if true, it would constitute an admission by the Killingly Board that as of April 5, 2022, it had intentionally decided against taking any steps to address what its own Administration considered "an unprecedented level of stress on both students and staff members which must be addressed through social and emotional support" and despite the December 2021 SERAC report, which warned that 14.7% of the students who had responded had made a suicide plan. SERAC Report, p. 28.

60. At the same time, there is some question as to the veracity of the August 26, 2022, claim that Killingly's legal counsel had advised it not to pursue any mental health interventions following the April 5 filing of the Complaint.<sup>24</sup> When asked about this assertion, Killingly's legal counsel declined to comment given that it implicated attorney-client communications, which are privileged. Another witness who was privy to such conversations, however, disputed the Board Chair's and Vice-Chair's representations regarding its former counsel's advice. More importantly, Killingly itself appears to have expressly contradicted this assertion in its May 3, 2022, response to the Complaint.

61. Submitted on the Board's behalf by its legal counsel, Killingly's May 3, 2022, response to the April 5, 2022, Complaint argued that "the Complaint was premature" given what it characterized as "the Board's continuing focus on student safety and student

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<sup>23</sup>This vote came two days after the CSDE informed Mr. Ferron that it had additional questions pertaining to Killingly's response to the Complaint and asked representatives of the Board to meet with the CSDE, which meeting occurred on August 26, 2022. Although a witness who was privy to discussions among Board members subsequently asserted that the Board's vote to implement *Rachel's Challenge* was simply intended to pacify the CSDE's investigation – which at least one Board member allegedly characterized as "bogus" -- that claim cannot be substantiated.

<sup>24</sup>To avoid confusion, it should be noted that Killingly retained new legal counsel to represent it in this matter following the Board's May 3, 2022, submission, and that the Board leadership's August 26, 2022, statements do not pertain to her.

mental health considerations.” 5/3/2022 Response, p. 15. It further asserted that there were no “grounds to conclude that the Respondent has ‘taken final action adverse to the complaint’ or has ‘refused or failed to take any final action relating to the complaint within a reasonable period of time.’” Id. In other words, Killingly argued for dismissal of the Complaint because it was purportedly taking additional steps.

62. This was supported by the May 3, 2022, Affidavit of Robert J. Angeli, which Killingly submitted as an exhibit with its May 3 response. In his affidavit, Superintendent Angeli stated under oath: “ At its April 13 and April 27 meetings, the Board discussed alternatives to the SBHC proposal. The Board asked me to gather information about the various alternate proposals being considered.” Id., ¶15.

63. Thus, the Chair and Vice-Chair’s representations at the August 26, 2022, meeting – if taken as true -- would indicate that Killingly’s May 3, 2022, argument was knowingly contrary to what was actually occurring, which at the very least would suggest it was made in bad faith. It would also call into question the veracity of Superintendent Angeli’s sworn statement in his May 3, 2022, Affidavit. Superintendent Angeli’s affidavit, however, is corroborated by discussions that were held at both the April 13 and 27, 2022, Board meetings. See also 4/13/22 Killingly Board Minutes, p. 2; 4/27/22 Killingly Board Minutes, p. 3. Thus, if one were to conclude that the May 3 response, including Superintendent Angeli’s affidavit, accurately reflected the Board’s position, then one would be hard pressed not to conclude that the Board leadership’s August 26, 2022, statements to the CSDE regarding its attorneys’ advice – statements which, it must be noted, are totally without corroboration – were patently false. In either event, each alternative calls Killingly’s credibility into serious question.

64. The CSDE is implementing a behavioral health pilot initiative in select districts, each representing a wide range of demographics. This initiative begins with a district-level needs assessment to gain a better understanding of each district’s behavioral and mental health systems, examine the efficacy of existing efforts, and identify specific priority areas for improvement. At the conclusion of the August 26, 2022, in-person meeting with Killingly’s representatives, the CSDE offered the district the opportunity to participate in the pilot initiative. 8/26/2022.

65. In the week following the August 26, 2022, meeting, Superintendent Angeli advised the CSDE that Killingly was willing to participate. There is, however, no evidence that the Board has approved the district’s involvement in this program.<sup>25</sup>

66. In late September 2022, Killingly Middle School and Killingly High School held separate, approximately one-hour assemblies to present the Rachel’s Challenge program, which was approved by the Board at its August 10, 2022, meeting. 8/10/22

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<sup>25</sup>While it is not clear whether Board approval for Killingly’s participation in this initiative was necessary or whether the Killingly Administration was authorized to commit the district without formal Board authorization, the ongoing dichotomy between the Administration’s and the Board’s perspectives on the need for an SBHC or other meaningful interventions to address student mental health needs would suggest the Board was the arbiter in all such matters.

Killingly Board Minutes, pp. 1-2. Complainants' Statement. The program is named after one of the students murdered at Columbine High School and includes audio of the actual gunshots fired at students at Columbine. 9/30/2011 "COMMENTARY: Columbine Program May Not Be Best Way to Deliver Anti-Bullying Message," *The Patriot Ledger*. According to a Complainant who was present at the high school assembly, many students left the presentation crying and with heightened anxiety about school violence. Complainants' Statement.

67. Anecdotal reports posted on social media following the assemblies included: "Our staff and kids had no prep for what they would see," "it was highly inappropriate with no support staff available to help kids process what they just heard," "I had two kids hysterically crying after," and "it created more trauma for our students and faculty, many who were upset after." Complainants' Statement; Social Media Postings. Furthermore, the counseling office at Killingly High School posted a note on its door during the last week of September 2022, directing students to go to the office for assistance as they could only help those who were deemed to be emergency situations. Id.

## **Discussion**

As discussed at pages two-to-three of this report, the General Assembly has vested in the SBE the responsibility and authority to ensure that local and regional boards are implementing "the educational interests of the state in accordance with section 10-4a." Conn. Gen. Stat. §10-4b(a). In turn, Section 10-4a provides that "the educational interests of the state shall include, but not be limited to, the concern of the state that . . . each child shall have . . . equal opportunity to receive a suitable program of educational experiences . . . [and] the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education." Conn. Gen. Stat. §10-4a. These mandates include Section 10-220(a), which requires in relevant part that each "local or regional board of education shall . . . implement the educational interests of the state, as defined in section 10-4a," including the obligation to "provide . . . an appropriate learning environment for all its students which includes . . . a safe school setting." Conn. Gen. Stat. §10-220(a).

It cannot be denied that in the wake of the COVID-19 pandemic, students in school districts across Connecticut have experienced an increase in mental-health, behavioral, and social-emotional needs. It similarly cannot be denied that the mental and behavioral health of Connecticut's students has become an integral part of the State's educational interests. Since 2019, the General Assembly has passed no fewer than seven Public Acts that address aspects of student mental, behavioral, and social-emotional health:

P.A. 19-63: "An Act Concerning Guidelines for a Comprehensive School Counselor Program"

P.A. 21-35: "An Act Equalizing Comprehensive Access to Mental, Behavioral and Physical Health Care in Response to the Pandemic"

P.A. 21-46: “An Act Concerning Social Equity and the Health, Safety and Education of Children”

P.A. 21-95: “An Act Concerning Assorted Revisions and Additions to the Education Statutes”

P.A. 22-47: “An Act Concerning Children’s Mental Health”

P.A. 22-80: “An Act Concerning Childhood Mental and Physical Health Services in Schools”

P.A. 22-81: “An Act Expanding Preschool and Mental and Behavioral Services for Children”

These are, in many ways, a natural evolution of the legislatively mandated duty of local and regional boards of education to provide students with a “safe school setting.” Conn. Gen. Stat. §10-220(a). Killingly itself acknowledged the import of these Public Acts at its February 9, 2022, Board meeting, during which the Superintendent reiterated that he “strongly supports the need for [the SBHC],” adding: “Short session of CT legislature is focusing on mental health exacerbated by the pandemic, and the mental health gaps which also existed before the pandemic. Three bills were introduced to address this issue. This is another reason to provide supports for our students.” 2/9/22 Killingly Board Minutes, p. 3.

The Killingly Board itself had previously recognized the importance of school safety, and its inextricable entwinement with ensuring “a suitable program of educational experiences” under Section 10-4a. As noted, on April 10, 2019, the Board adopted the following goal:

KPS will provide a safe, healthy and supportive environment for learning where students build resilience through the integration of social, emotional and academic skills.

4/10/19 Killingly Board of Education Goals. Killingly underscored the importance of “a safe school setting” in its April 16, 2022, ESSER II plan, writing: “We shall ensure students feel **safe** and . . . will allow students to be provided social and emotional support and also . . . continued emphasis on mental health **safety**” (emphasis added). Similarly, in its August 16, 2022, ARP ESSER plan, it reiterated its Board Policy’s recognition of the close alignment between mental health and academics: “We heard loud and clear from stakeholders, particularly students, that they were anxious about returning . . . . We must be prepared to use strategic wraparound social, emotional, and mental health supports to restore and successfully reengage our school communities.” Id.

As the Complainants succinctly stated in their May 16, 2022, reply to the Board’s May 3 submission, however, “[g]eneralized statements of policy are not actions to address the

crisis,” *Id.*, p. 4, and despite its stated policies and representations – most notably its repeated acknowledgements of “the crisis” – the Board took no meaningful action.

In its defense to the April 5, 2022, Complaint, Killingly cites the widespread increase in mental health and behavioral challenges confronting schools, essentially claiming to be no different than other districts. It is true that this surge in students’ mental health and behavioral needs has resulted in substantial demands being placed on many districts, and it would perhaps be unfair to fault such districts should they be unable to fully remediate these needs despite their best efforts. What Killingly’s argument fails to recognize, however, is that the focus of the Complaint and the subsequent investigation is not that the Board was confronted with a significant increase in student mental health needs and ineffectively responded; rather, the crux of the Complaint is Killingly’s almost total *lack* of response to those needs. In short, the fault here lies not in the manner in which Killingly chose to respond to its students’ undisputed mental health needs; rather, the fault lies in the fact that it chose not to respond at all, at least not meaningfully.

There is a difference between working to ensure sufficient supports for students, however unsuccessful, and declining to prescribe *any* constructive interventions despite acknowledging that there is a clear and present need to do so. A lack of adequacy does not necessarily equate with the seemingly deliberate indifference demonstrated by the Killingly Board, and it is that indifference that distinguishes this from other school boards confronting these issues.

In Killingly, the district’s Administration recognized an urgent need to address the sharp increase in student mental health, social-emotional, and behavioral needs. This recognition was shared and supported by a substantial number of parents and community members as is, at least in part, reflected in the fact that 57 Killingly residents joined together to file the April 5, 2022, Complaint. Board members, even some who had voted against the establishment of an SBHC, recognized the need for interventions. The Board had ample financial resources in the form of ESSER II and ARP ESSER funds to increase its mental health resources. Nonetheless, and despite repeated opportunities to implement interventions, the Killingly Board repeatedly, systematically, and inexplicably failed and refused to do so.

Killingly has also argued that neither federal nor Connecticut law require that it establish an SBHC within its schools – in this case, within Killingly High School. They are correct; there is no such legal obligation, and perhaps for that reason Killingly would prefer to narrow the basis of the Section 10-4b Complaint and the scope of the consequent CSDE investigation to the Board’s handling of the SBHC. The focus of this investigation, however, has not been limited to the appropriateness of the Board’s actions with respect to the SBHC. The CSDE made this clear in its August 8, 2022, correspondence to the Killingly Board Chair. 8/8/22 McKeon Letter, p. 4 (“the SBHC is not the singular focus of the CSDE’s investigation, but rather an element of the complaint”). Granted, Killingly’s rejection of the SBHC serves as perhaps the most prominent exemplar of the Board’s indifference to the mental health needs of its students, *but it does not stand in isolation*.

To the contrary, the evidence clearly establishes that while the Killingly Board made reference to considering alternatives, they did not do so in any meaningful manner.

There have been at least **eleven** Killingly Board meetings since the April 5 Complaint. More importantly, there have been at least **eighteen** Board meetings since the December 2021 SERAC report, yet none of them have resulted in the adoption or implementation of any meaningful substantive interventions to address the documented mental health and behavioral needs of their students. Killingly Public Schools Website. At its September 14, 2022, meeting, the Board formed an Ad Hoc Committee for the alleged purpose of “finding alternatives to the SBHC.” 9/14/22 Killingly Board Minutes, p. 3. As of the date of this report, that committee has not met or taken any action. Witness Statement.

Since the initial discussions regarding the SBHC and continuing through the CSDE’s August 26, 2022, in-person meeting with Killingly’s representatives, the Board sought to justify its actions by citing concerns regarding parental consent. It cannot be reasonably disputed that parents are invested in their children’s well-being and that if a child is having mental health or social-emotional issues, the involvement of an informed and caring parent or guardian is in the child’s best interest. Frankly, that was one of the motivating factors for the April 5, 2022, Section 10-4b Complaint.<sup>26</sup> In this case, however, the Board’s use of parental consent as a basis for rejecting the SBHC lacks foundation. As the Implementation Plan that was agreed to between the Killingly Administration and Generations makes abundantly clear, parental consent was a touchstone of the proposed mental health services. The importance of obtaining parental consent and involvement in the students’ treatment was repeatedly, and expressly, referenced in the Plan. It was also iterated and reiterated to the Board by its own district Administration.

It is also instructive to consider the Board’s stated concern regarding parental consent within the context of Assistant Superintendent Nash-Ditzel’s sworn affidavit, specifically the fact that as of May 3, 2022 – with over a month remaining in the 2021-2022 school year – Killingly’s school counseling staff had “handled at least 660 unplanned, or ‘responsive’ counseling sessions.” Nash-Ditzel Affidavit, ¶21. In fact, the number of visits was so overwhelming, Killingly was compelled to devise a hierarchy among students seeking social-emotional counseling so that “students most in need” could “receive priority access to counseling.” *Id.*, ¶22. There is no evidence that the Board expressed concern that these students were receiving counseling without the prior consent of their parents. Frankly, there is no evidence that the Board had any concerns whatsoever that so many students were seeking counseling.

The Board’s argument regarding consent is also at odds with some of the hypothetical alternatives that Board members raised. For example, there were discussions of telehealth services, which was also raised by the Vice-Chair at the August 26, 2022, CSDE meeting. There was no explanation as to why a student meeting virtually with a mental health professional would implicate fewer concerns about parental consent than

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<sup>26</sup>A central irony of this matter is that although the Board’s primary objection is its emphasis on the need to ensure that parent voices are heard, the April 5, 2022, Complaint is the clearest example of such parent voices, yet those very vocal concerns have been paid little or no heed.

would the student meeting face-to-face with such a professional. At that same meeting, the Vice-Chair suggested the possibility of busing students to the Generations facility in Putnam. The Vice-Chair explained that the district would have to obtain parental or guardian consent in order to transport the student and thus, this consent to transport would provide a pretext for the Board to alert the parent as to why the student was being transported.

The obvious drawbacks to this approach are twofold. First, and as noted in footnote two of this report, Section 19a-14c(b) of the Connecticut General Statutes, as amended by Public Act 21-46, §10(c), permits students to consult with a therapist without parental consent so long as certain, statutorily enumerated conditions are met, a legislative enactment that this option could potentially thwart. Second, depending upon the Putnam facility's availability, students could be transported during the school day, thereby forcing them to miss substantial academic time.<sup>27</sup>

Furthermore, during the August 26, 2022, in-person meeting with the CSDE, Killingly's Board Chair expressed concern that if there were an SBHC on school grounds, students who availed themselves of its services would be bullied. In short, rejecting the SBHC was actually a means of *protecting* students.<sup>28</sup> Given that Killingly did not identify in its filings any issues pertaining to bullying of the over 600 students who sought counseling from the school counselors – and presumably social workers – it is difficult to understand the basis for the Board Chair's concern. Nonetheless, even were one to credit his perspective, it is reasonable to think that pulling students out of class, placing them on a bus, and transporting them to another town to obtain social-emotional supports would pose a far greater possibility of stigmatizing them. In any event, there is no evidence that the Board has taken any steps to seriously consider, much less implement, this alternative.

Killingly also argued that the Board would incur costs should it decide to house an SBHC in Killingly High School. According to the Implementation Plan between Generations and Killingly's Administration, the SBHC would "be located on the third floor . . . of Killingly High School. There will be two rooms utilized by the SBHC." Implementation Plan, p. 5, ¶3(a). The space ***"already existed at Killingly High School, and was already maintained by the school facilities staff."*** *Id.*, ¶4(a)(emphasis added). This was corroborated by Superintendent Angeli at the Board's February 9, 2022, Board meeting. 2/9/22 Board Meeting Recording. The Killingly Public Schools and Generations agreed that the SBHC staff "will use their own office and patient care equipment and supplies, and [Killingly High School] has generously offered to provide access to electricity and

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<sup>27</sup>As previously noted, during the same August 26, 2022, meeting at which the Vice-Chair suggested this possible option, she also expressed her reservations about Generations' efficacy, citing what she considered not positive reviews. Given that, it is difficult to believe that the Board might consider this a viable option.

<sup>28</sup>Rejecting a mental-health intervention due to a concern that it would encourage bullying raises questions about the efficacy of the Killingly High School safe-school, anti-bullying plan.



WIFI **since it was already in existence in the identified rooms.**" Implementation Plan, ¶4(c)(emphasis added).<sup>29</sup>

It is also difficult to reconcile Killingly's argument about the cost of the SBHC with the fact that on May 10, 2021, Killingly received \$1,448,896 in ESSER II funding and an additional \$247,988 in ancillary ESSER II State Set-Aside funds, and an additional \$3,256,304 in ARP ESSER federal funds on November 10, 2021, for a combined amount of \$4,953,188.<sup>30</sup> As of October 14, 2022, Killingly had drawn down \$1,220,000 of that amount, leaving \$3,733,188. As noted, one of Killingly's stated predicates for seeking these funds was addressing "mental health safety," Killingly having represented to the CSDE that **"We shall ensure students feel safe . . . . Furthermore, the addition of a School Based Health Center (SBHC) will allow students to be provided social and emotional support . . . through continued emphasis on mental health safety"** (emphasis added).<sup>31</sup> 4/16/21 ESSER II Plan. Contrary to its representations in its ESSER II and ARP ESSER plans, however, Killingly has to date chosen not to allocate any of the remaining \$3,733,188 toward ensuring that its "students feel safe," increasing "social and emotional support" or continuing an "emphasis on mental health safety." Id.

In speaking with the Complainants, they are clearly alarmed by the Board's failure to provide adequate student mental-health and behavioral supports within the Killingly Public Schools. The CSDE respects the sincerity of their concerns and in no way means to minimize them, but the Board's own admissions ultimately proved more compelling in reaching the determination that is set forth below. As detailed in the Factual Findings, Killingly has repeatedly and unambiguously acknowledged the need for mental health supports. For example, in their April 16, 2021, ESSER II submission, Killingly wrote in relevant part:

There is **an unprecedented level of stress** on both students and staff members **which must be addressed through social and emotional support . . . .** One focus area should be on additional behavioral and mental health services.

(emphasis added). Killingly also asserted: **"We shall ensure students feel safe** and supported by continuing the support of our established SEL programs . . . **and also through continued emphasis on mental health safety."** Id. (emphasis added).

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<sup>29</sup>As noted elsewhere in this report, Killingly did not explain or otherwise seek to reconcile the inconsistencies between the Board's May 3, 2022, response and the exhibits it submitted in support of that response, including but not limited to the issue of parental consent and the issue of costs to the Board. These inconsistencies -- coupled with the contradiction between Killingly's May 3 response and the Board leadership's August 26, 2022, claims regarding its legal counsel's purported advice -- adversely affected the Board's credibility.

<sup>30</sup>As discussed in footnotes three and four of this report, these amounts were predetermined by the federal government, although Killingly's receipt of them were based upon Killingly's submission of plans that proposed eligible ESSER II and ARP ESSER expenditures, including for social-emotional initiatives.

<sup>31</sup>Killingly also represented "that we have allocated funds for additional social workers, BCBAs and SEL professional development and supplies," 8/16/21 ARP ESSER Plan, yet as noted, the Board currently has multiple vacancies in pre-existing social worker and school counselor positions.

Similarly, when on August 16, 2021, Killingly submitted its ARP ESSER funding plan to the CSDE, it wrote:

We discussed with stakeholders our increase in student SEL concerns such as anxiety, and substances abuse. We heard loud and clear from stakeholders, particularly students, that they were anxious about returning . . . . ***We must be prepared to use strategic wraparound social, emotional, and mental health supports to restore and successfully reengage our school communities.***

(emphasis added). It also represented in both its April 16, 2021, ESSER II plan and its August 16, 2021, ARP ESSER plan that it would use the federal funds to support “specific SEL programs [and add] a School-based Health Center” in order to “reduce the District percentage for Chronic absenteeism.” Id.; Id.

Killingly’s Administration clearly recognized the ongoing need to implement some form of mental health supports for the district’s students. When Killingly’s representatives met with the CSDE on August 26, 2021, Superintendent Angeli stated that when he assumed his position at the outset of 2021, he was advised by Killingly’s Assistant Superintendent and the district’s building principals that there was a pressing need for social, emotional, and mental health supports in the schools. 8/26/22 CSDE Meeting. Consequently, in Spring 2021, Mr. Angeli and other members of the Killingly Public Schools administration “began to investigate the possibility of implementing a School-Based Health Center [“SBHC”] within the District.” Affidavit of Superintendent Robert J. Angeli [“Angeli Affidavit”], ¶8. According to Superintendent Angeli, the need for these mental health supports was apparently so pronounced that there was an “administrative assumption” that the Board would be open to such an intervention. 8/26/22 CSDE Meeting. As subsequent events demonstrated, that assumption was very much incorrect.<sup>32</sup>

As a continuation of his initial efforts to implement social, emotional, behavioral and mental health supports, Superintendent Angeli informed the Board regarding ongoing conversations with Generations, noting that the Board “had been presented with an updated agreement before the meeting as the document has gone through many revisions, and has been reviewed by the Board attorney.” 1/12/222 Killingly Board Minutes, p. 2. Generations then joined the meeting virtually to make a presentation, during which it identified a possible March 1, 2022, start date, beginning part-time with three days a week. Id. Board members expressed reservations about agreeing to an SBHC without first holding a “public input session,” and the Board voted to postpone any decision on the SBHC until after such session. Id.

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<sup>32</sup>Section 10-157(a) of the Connecticut General Statutes provides that a local or regional board of education such as Killingly “shall provide for the supervision of the schools under its control by a superintendent who shall serve as the chief executive officer of the board.” Nonetheless, it is the school board that is ultimately responsible for approving budgetary expenditures and programs, and a Superintendent cannot usurp the employing school board’s authority. The respective roles of the Superintendent and the Killingly Board – and the inherent limitations of the former’s position – were distinctly delineated in this matter.

At the Board's February 9, 2022, meeting, Superintendent Angeli reported the results of the February 7, 2022, public input session and reiterated that he "strongly supports the need for this initiative." 2/9/22 Killingly Board Minutes, p. 3. The Board's response was to once again postpone a vote on the SBHC. Superintendent Angeli reiterated his support for the SBHC at the Board's March 16, 2022, meeting; nonetheless, the Board voted against it. 3/16/22 Killingly Board Minutes, p. 1. The SBHC having been voted down, at the April 13, 2022, Board meeting, Superintendent Angeli advised that the effort to effectively address student mental health "needs to be a multi-pronged approach." 4/13/22 Killingly Board Minutes, p. 4. The Board, however, never voted to implement any such approach.

Even the Board's former Chair, Janice Joly, acknowledged at the March 16, 2022, meeting "that she recognizes a need for a SBHC." 3/16/22 Killingly Board Minutes, p. 2. Nonetheless, she voted against it. Id. Furthermore, at the April 13, 2022, meeting, a Board member who had also voted against the SBHC "agree[d] that something needs to be done." 4/13/2022 Killingly Board Minutes, p. 4. Still, the Board failed to act in any meaningful manner.

Perhaps the most glaring example of the Killingly Board's disinclination to provide mental health services despite knowing the threat to the safety of the district's students is reflected in the Board's reaction to that December 2021 SERAC report. In reporting on student "mental health indicators," SERAC wrote:

About 28% of youth report that they have had thoughts of hurting themselves and 28.6% report that in the past year they have felt sad or hopeless almost everyday for 2 weeks or more so that it stopped them from doing their usual activities . . . . Alarming, about 14.7% of youth report having seriously considered attempting suicide and 18.2% report having hurt themselves on purpose.

12/2021 SERAC Report, p. 9. SERAC explained that "seriously considered attempting suicide meant 'made a plan'" to do so. 12/2021 SERAC Report, p. 28. Given the alarming nature of these survey results, one might reasonably expect that they would have been considered revelatory. They were not. To the contrary, according to the Assistant Superintendent, the SERAC report merely "confirmed the District's conclusion that our students have increased mental health support needs." Nash-Ditzel Affidavit, ¶24.

When the SERAC report findings were raised during Public Comment at the Board's March 16, 2022, meeting, the then Board Chair dismissed them, stating: "How do you know they were honest responses? We're dealing with kids. They could have written anything. That's what kids do." NBC, Channel-30 Report. The Killingly Board's then Vice-Chair and now Board Chair was equally dismissive, adding that the 14.7% of students who had made a plan to take their own lives was not that significant of a number. 4/5/22 Complaint, p. 7; 4/28/22 "Connecticut Town's Wingnut School Board Boldly Protects Teens From Mental Health," *Wonkette*. It should be noted that of the students who received the survey, there were 449 results, 14.7% of which would equal approximately 66 students. SERAC Report, p. 6.

As previously discussed in this report, one of the fundamental, statutorily mandated obligations of local and regional boards of education is to provide students with a “safe school setting.” Conn. Gen. Stat. §10-220(a). Given this, the fact that 66 students within the seventh-to-twelfth grades had devised a plan to commit suicide should have alarmed the Board and sparked a concerted effort to ensure that the schools under their authority were, in fact, safe. The fact that, instead, the Board Chair and Vice-Chair would either consider 66 students to be an insignificant number or would dismiss the SERAC results out of hand is of extraordinary concern.<sup>33</sup> When meeting with the CSDE on August 26, 2022, the now Board Chair commented that he was only curious as to how that number compared to other school districts. It is difficult to fathom why that would be of any relevance or import. The possibility that another school district might have an equal or larger percentage of similarly situated students would not in any way alter the reality that 66 Killingly students had “seriously considered attempting suicide.” SERAC Report, p. 9.

Although the 14.7% of students who have made a suicide plan understandably commands the most attention, the fact that 28.6%, or approximately 128, of the students reported “that in the past year they have felt sad or hopeless almost every day for 2 weeks or more so that it stopped them from doing their usual activities,” is of equal concern, as is the fact that 18.2%, or approximately 82, of the students reported “having hurt themselves on purpose.” SERAC Report, p. 9. Yet, as noted, the Board chose to either dismiss or simply ignore these findings.<sup>34</sup> This patent indifference was diametrically at odds with the previously referenced April 10, 2019, Killingly Board Goals, specifically “School Culture & Climate,” in which the Board proclaimed that the Killingly Public Schools “will provide a **safe, healthy and supportive environment for learning where students build resilience through the integration of social, emotional and academic skills.**” *Id.* (emphasis added).

In addition to the failure to implement the educational interests of the State as they pertain to student mental health and, consequently, safety, Killingly’s inaction also adversely affected more traditional measures of the State’s educational interests. As previously discussed in its ESSER II and ARP ESSER plans, Killingly wrote that it was seeking to “reduce the District percentage for Chronic absenteeism from 14.9 in 2015-2016 to 9.6% in . . . 2023-24 by supporting specific SEL programs, adding a School-based Health Center.” Similarly, in its August 16, 2021, ARP ESSER plan, Killingly wrote in support of the social-emotional initiatives for which it intended to use some of these federal funds: “It was clear from all of these forums that SEL and learning loss were the most pressing needs. **We discussed with stakeholders our increase in student SEL concerns such**

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<sup>33</sup>Despite the fact that the SERAC Report was issued in December 2021, there is no evidence that the Board ever made it part of a meeting agenda or otherwise discussed it during a formal Board meeting. Even at the March 16, 2022, meeting it only came up because a resident raised it during public comment, suggesting that the Board’s indifference to the SERAC report’s results was not limited to the Board Chair and Vice-Chair.

<sup>34</sup>The CSDE recognizes that there were Board members who consistently voted to implement mental health supports such as the SBHC, but the Board is a separate legal entity than its individual members, and the focus of the Complaint and the subsequent investigation is on the Board, not on its members.

***as anxiety, and substance abuse. We heard loud and clear from stakeholders, particularly students, that they were anxious about returning . . . .” Id.***

In short, Killingly not only established a correlation between student mental health needs and school attendance, it identified that link as the “increase in student SEL concerns such as anxiety,” more specifically the fact that “students . . . were anxious about returning” to Killingly schools. 8/16/21 ARP ESSER Plan. Nonetheless, the Board refused to implement any meaningful social emotional supports, including but not limited to an SBHC, and the district’s chronic absenteeism rate more than doubled between the 2019-2020 and 2020-2021 school years, from 14.5% to 32.5%. Although this rate moderated in the 2021-2022 school year, its chronic absenteeism rate was still 26.7%, 13.2% higher than in 2019-2020. Similarly, over this same period, their performance indices in English/Language Arts, Mathematics, and Science declined, falling below statewide averages, and their rates of both in-school and out-of-school suspensions increased to the highest level in five years. 10/7/22 CSDE EdSight, Sanction Counts, Killingly School District.

This underscores the interdependence among mental health, school attendance, academic achievement, and discipline that, as noted, the Killingly Board recognized in its April 10, 2019, Board Goals as well as in its August 16, 2021 ARP ESSER plan, in which it wrote: “*We must be prepared to use strategic wraparound social, emotional, and mental health supports to restore and successfully reengage our school communities.*” Id. (emphasis added). Nonetheless, despite the alarming “mental health indicators” in the December 2021, SERAC report, and despite the significant increases in chronic absenteeism and declines in core academic areas, the Board repeatedly failed and refused to implement any meaningful intervention to address the mental health needs of its students and thereby strive to comply with their legal obligations to provide “an appropriate learning environment for all its students” as well as “a safe school setting.”

## **Determination**

As noted at the outset of this report, Section 10-4a of the Connecticut General Statutes provides that “the educational interests of the state shall include, but not be limited to, the concern of the state that . . . each child shall have . . . equal opportunity to receive a suitable program of educational experiences.” These educational interests also encompass “the mandates in the general statutes pertaining to education within the jurisdiction of the State Board of Education.” Id. These mandates include those that are set forth in Section 10-220(a), which requires local and regional boards of education to “implement the educational interests of the state” and to provide “an appropriate learning environment for all its students,” including “a safe school setting.” Conn. Gen. Stat. §10-220(a). Section 10-220(a) further mandates that local and regional boards of education “make such provisions as will enable each child of school age residing in the district to attend some public day school for the period required by law.”

The CSDE's investigation of the April 5, 2022, Section 10-4b complaint has determined that despite Killingly's awareness of the extent and gravity of their students' mental-health needs, the Killingly Board has failed and refused to implement any curative measures. In fact, the Board's inaction has been so systemic and so prolonged that one could reasonably consider it to constitute an intentional refusal to address its students' mental health needs. Consequently, and for the reasons set forth herein, the CSDE investigation finds that by failing and refusing to adopt any interventions to address the indisputable mental health crisis within the schools over which it has responsibility, the Killingly Board has failed "to implement the educational interests of the state."

### **Recommendation**

Based upon this determination, it is recommended that pursuant to Conn. Agencies Regs. §10-4b-7, the Commissioner of Education refer this matter to the State Board of Education with a recommendation that under Conn. Agencies Regs. §10-4b-8, the State Board find that there is reasonable cause to believe that the Killingly Board of Education has failed or is unable to make reasonable provisions to implement the educational interests of the state and as a consequence thereof order an inquiry.