IN THE SUPREME COURT, STATE OF WYOMING

2026 WY 99

APRIL TERM, A.D. 2026

September 17, 2026

THE STATE OF WYOMING, Appellant (Defendant), v. WYOMING EDUCATION ASSOCIATION, a Wyoming nonprofit membership corporation, Appellee (Plaintiff), and ALBANY COUNTY SCHOOL DISTRICT NUMBER ONE; CAMPBELL COUNTY SCHOOL DISTRICT NUMBER ONE; CARBON COUNTY SCHOOL DISTRICT NUMBER ONE; LARAMIE COUNTY SCHOOL DISTRICT NUMBER ONE; LINCOLN COUNTY SCHOOL DISTRICT NUMBER ONE; SWEETWATER COUNTY SCHOOL DISTRICT NUMBER ONE; SWEETWATER COUNTY SCHOOL DISTRICT NUMBER TWO; and UINTA COUNTY SCHOOL DISTRICT NUMBER ONE, Appellees (Intervening Plaintiffs).	S-25-0136

Appeal from the District Court of Laramie County
The Honorable Peter H. Froelicher, Judge

Representing Appellant:

Ryan Schelhaas, Chief Deputy Attorney General; Mark A. Klaassen, Deputy Attorney General; Sean Towles, Senior Assistant Attorney General. Timothy M. Stubson, Crowley Fleck, Casper, Wyoming; Mistee L. Elliott, Crowley Fleck, Sheridan, Wyoming. Argument by Mr. Klaassen.

Representing WEA:

Patrick E. Hacker, Gregory P. Hacker, Erin M. Kendall, Hacker, Hacker & Kendall, P.C., Cheyenne, Wyoming. Argument by Mr. Patrick Hacker.

Representing School Districts:

O'Kelley H. Pearson, Parker Poe Adams & Bernstein LLP, Atlanta, Georgia. Richard D. Bush and John A. Coppede, Coal Creek Law, LLC, Cheyenne, Wyoming. George Lemich and Kari Moneyhun, Lemich Law Center, Rock Springs, Wyoming. Tyler J. Garrett, Hathaway & Kunz, LLP, Cheyenne, Wyoming. Argument by Mr. Bush.

Before BOOMGAARDEN, C.J., and GRAY, FENN, and JAROSH, JJ, and EAMES D.J.

BOOMGAARDEN, C.J., delivers the opinion of the Court; GRAY, J., files a concurring in part and dissenting in part opinion in which EAMES, D.J., joins.

BOOMGAARDEN, Chief Justice.

[¶1] The Wyoming Constitution requires the legislature to provide a thorough and efficient education to every student in elementary and secondary school. Public education was originally funded by local property tax revenues, which varied widely throughout the state, thereby creating disparities in educational opportunities depending on the relative value of property within each school district. The disparities affected funding for both school operations and facilities. Efforts to purge the wealth-based disparities began in 1971 and focused on funding schools from statewide wealth to give all students, regardless of whether they lived in wealthier or poorer districts, an equal opportunity for a proper education.

[¶2] Through numerous lawsuits and legislative sessions, "Wyoming courts, legislators, educators, and parents . . . acted to eliminate wealth-based and educational opportunity disparities in Wyoming's school finance and capital construction systems." *Campbell Cnty. Sch. Dist. v. State* (*Campbell IV*), 2008 WY 2, ¶ 1, 181 P.3d 43, 47 (Wyo. 2008). With the cooperation and full commitment of all branches of Wyoming's government, the disparities were eventually eliminated. *Id*. In 2008, we declared the legislature had enacted statutes for funding school operations and facilities that complied with constitutional requirements. *Id*., ¶ 4, 181 P.3d at 48.

[¶3] Under the system we found constitutional, operational funding was determined through a legislative model that used the cost basis of an appropriate education (referred to as the basket of goods and services) to fund school districts throughout the state. Funding was then delivered to local school districts in a block grant, which allowed each district to decide how to allocate those funds to best serve the needs of its students. The legislature also created an administrative system for assessing school facilities to determine whether they met the needs of the students, and it made efforts to improve all school facilities to the point that only routine maintenance was required. *Campbell IV*, 2008 WY 2, ¶ 106, 181 P.3d at 76. Although the State's efforts had not yet accomplished all that needed to be done for Wyoming's school facilities, we concluded the legislature had enacted a constitutional statutory scheme for capital construction and was acting "in good faith in trying to meet the [Court's] mandate" by "aggressive[ly]" overseeing implementation of the laws to obtain appropriate results. *Id*., ¶¶ 101, 107, 181 P.3d at 73, 76.

[¶4] In 2022, fourteen years after we found the legislature's methods of funding school operations and facilities constitutional, the Wyoming Education Association (WEA) and several school districts (collectively Plaintiffs) brought this suit. Plaintiffs claimed the legislature was no longer fulfilling its constitutional duties to Wyoming students. They alleged the legislative model for funding school operations was not cost-based, was not adjusted for inflation, and did not include funding for innovations that should be part of the basket of goods and services, including elementary school counselors, student resource officers, and nutrition services. Plaintiffs also alleged the State's methods of overseeing and funding school facilities contravened our earlier rulings and the State's failure to adequately assess facilities for educational suitability and fund necessary building projects created inequalities between districts.

[¶5] The district court determined the legislature's operations funding model was not cost-based and had not been adjusted for inflation. It also decided elementary school counselors, student resource officers, nutrition services, and a technology device for each student (one-to-one technology) were innovations that must be funded as part of the basket of goods and services. Regarding facilities, the court found the State was not adequately addressing school capital construction needs or properly assessing the educational suitability of school facilities.

[¶6] The State appealed. It challenged most of the district court's ruling, but it did not contest the court's finding that the State must include funding for elementary school counselors in the funding model or the court's finding that the legislature was failing to properly address necessary capital construction.

[¶7] We affirm in part and reverse in part. We generally conclude:

<u>School Operations</u>

- We affirm the district court's decision that Plaintiffs proved by a preponderance of the evidence that the legislature violated students' rights to equal protection by failing to fund the estimated true cost of teacher salaries.
- We affirm the district court's decision that Plaintiffs proved by a preponderance of the evidence that the legislature violated students' rights to equal protection by failing to follow our precedent and its own statutes on external cost adjustments (ECAs), which require yearly evaluations of, and appropriate action to address, the effects of inflation on school funding.
- We reverse the district court's order requiring funding of a one-to-one technology ratio. The issue was not raised by the pleadings, and the record does not show it was tried by consent of the parties under W.R.C.P. 15(b)(2).
- We reverse the district court's decision requiring the legislature to include funding, as innovations, for nutrition services and school resource officers. Plaintiffs did not meet their burden of showing that under our precedent these innovations require statewide funding.

<u>School Facilities</u>

- We reverse the district court's order requiring statewide assessment of school facilities for educational suitability. The State has discretion to establish the mechanism to evaluate facilities and determine priorities for repair and replacement of school facilities, and the administrative process set out in the School Facilities Commission Rules, Chapter 3, section 8 is a constitutionally sound mechanism.

ISSUES

[¶8] The State presents issues pertaining to school operations and school facilities. We will, therefore, organize the statement of the issues into those two categories and, to some degree, restate the issues for orderly resolution of this appeal:

I. School Operations

A. Did the district court err in concluding Plaintiffs met their burden of showing the legislature had failed to fund teacher salaries in accordance with true costs?
B. Did the district court err in concluding Plaintiffs met their burden of showing the State had not complied with its obligation to annually adjust operational funding for inflation?
C. Did the district court err in requiring the State to show that proven disparities in funding between the school districts passed strict scrutiny?
D. Did the district court err in ordering the legislature to fund one-to-one technology when the issue was not pled or raised at trial?
E. Did the district court err in finding the legislature was required to fund innovations, including school resource officers and nutrition services?

II. School Facilities

A. Did the district court err in ordering the State to employ a statewide assessment to evaluate educational suitability?

HISTORY OF SCHOOL FINANCE LITIGATION

[¶9] The history of Wyoming school finance litigation provides important context for resolution of the issues in this case. We thus briefly summarize it here before outlining the facts relevant to our discussion of the present dispute.

[¶10] In 1971, we recognized Wyoming's system of funding public schools with local property (ad valorem) taxes resulted in dramatic disparities in the educational opportunities available to students living in poorer and wealthier districts, and those disparities violated the equal protection provisions of the Wyoming Constitution. *Sweetwater Cnty. Planning Comm. for Org. of Sch. Dists. v. Hinkle*, 491 P.2d 1234, 1236–37 (Wyo. 1971) (citing Wyo. Const. art. 1, § 28 ("No tax shall be imposed without the consent of the people or their authorized representatives.")); *see also* Wyo. Const. art. 1, § 34 ("All laws of a general nature shall have a uniform operation."). We held that to address these disparities, statewide wealth must fund all school districts and the legislature must divide funds derived from statewide ad valorem taxes on an equal basis between school districts. *Id*.

[¶11] In 1980, we held that the legislature had not taken appropriate action in response to *Hinkle*, and we declared the entire school finance system unconstitutional. *Washakie Cnty.*

Sch. Dist. No. One v. Herschler, 606 P.2d 310, 320, 335 (Wyo. 1980). While agreeing with *Hinkle* that the dramatic disparities in public school funding failed to afford equal protection to Wyoming students, *Washakie* dug deeper into state constitutional provisions that we held required the legislature to provide an appropriate public education. *Id*. at 319–21.[1] We held that "whatever system is adopted by the legislature," the level of funding for every school district must be a function of "the wealth of the state as a whole." *Washakie,* 606 P.2d at 336.

[¶12] In so ruling, we declared education was a fundamental right under the Wyoming Constitution and that any wealth-based classifications in school funding were suspect and subject to strict scrutiny. *Washakie,* 606 P.2d at 333–35; *see also State v. Campbell Cnty. Sch. Dist.* (*Campbell II*), 2001 WY 19, ¶ 5, 19 P.3d 518, 528 (Wyo. 2001), *reh'g granted,* 2001 WY 19, 32 P.3d 325 (Wyo. 2001). Strict scrutiny required the State to prove that it had a compelling interest in using a wealth-based classification and that the interest could not be served by any other convenient legal structure. *Washakie,* 606 P.2d at 335.

[¶13] Although *Washakie* focused on operational funding, the holding was equally applicable to capital construction. We observed that "the physical facilities with which to carry on the process of education" were "a part of the total educational package and tarred with the same brush of disparate tax resources." *Washakie,* 606 P.2d at 337. We held that state resources for the construction and support of school buildings had to be equally available for all districts "just as for other elements of the educational process." *Id.*

[¶14] In 1983, the legislature began working on a statutory system to fund school operations in accordance with constitutional requirements. *Campbell Cnty. Sch. Dist. v. State* (*Campbell I*), 907 P.2d 1238 (Wyo. 1995). It set up the School Foundation Program, which provided a "foundation guarantee" to each district. *Id*. at 1248; *see also* Wyo. Stat. Ann. § 21-13-306 (2025) (public school foundation program). To fund the "guarantee," the State recaptured funds from districts with above-average tax revenue and redistributed some portion of that excess to districts with below-average revenues through a process known as "entitlement." *Campbell I*, 907 P.2d at 1248; *see also* Wyo. Stat. Ann. § 21-13-102 (2025) (recapture of excess tax revenues); Wyo. Stat. Ann. § 21-13-313 (2025) (distribution of entitlement payments). The 1983 legislation was intended to be transitional

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[1] *See* Wyo. Const. art. 7, § 1 ("The Legislature shall provide for the establishment and maintenance of a ***complete and uniform system of public instruction***, embracing free elementary schools of every needed kind and grade[.]") (emphasis added); Wyo. Const. art. 7, § 9 ("The legislature shall make such further provision by taxation or otherwise, as with the income arising from the general school fund will create and maintain ***a thorough and efficient system of public schools, adequate to the proper instruction*** of all youth of the state, between the ages of six and twenty-one years, free of charge[.]") (emphasis added); *see also* Wyo. Const. art. 1, § 23 ("The right of the citizens to opportunities for education should have practical recognition. The legislature shall suitably encourage means and agencies calculated to advance the sciences and liberal arts."); Wyo. Const. art. 21, § 28 ("The legislature shall make laws for the establishment and maintenance of systems of public schools which shall be open to all the children of the state and free from sectarian control.").

while the legislature studied the cost of education. *Campbell II*, 2001 WY 19, ¶ 7, 19 P.3d at 528 (citing *Campbell I*, 907 P.2d at 1247). Ultimately, however, the legislature did not study costs and, instead, continued with the 1983 School Foundation Program. *Id*.

[¶15] Because the 1983 School Foundation Program did not cure the inequities identified in *Washakie,* various school districts brought suit in 1992. *Campbell I*, 907 P.2d at 1243. We concluded:

> 1) discrepancies in the funding and distribution formulas [used in the school funding statutes] were not based on differences in the cost of education and, therefore, violated the equal protection and education provisions of the Wyoming Constitution; 2) the strict scrutiny standard applied to a review of all components of the school financing system; and 3) lack of financial resources is not an acceptable reason for failure to provide a constitutionally sound education system.

Campbell II, 2001 WY 19, ¶ 8, 19 P.3d at 529 (summarizing our holding in *Campbell I*, 907 P.2d at 1279–80). We held the School Foundation Program unconstitutional and directed the legislature to "design the best educational system by identifying the 'proper' educational package" for Wyoming students, determine the cost of that educational package, and fund that package. *Campbell I*, 907 P.2d at 1279.

[¶16] We also held the statutes pertaining to school facilities funding unconstitutional because they continued to rely on local funding and wealth, resulting in disparate facility quality among districts. *Campbell I,* 907 P.2d at 1274–75. We said "[s]afe and efficient physical facilities . . . [were] a necessary element of the total educational process" and the legislature had "virtually ignored" our instruction in *Washakie* that all school districts were entitled to funding for school facilities from total state resources. *Id*. at 1275.

[¶17] The legislature immediately responded to *Campbell I*. It retained a well-known public school finance consultant, Management Analysis & Planning Associates, LLC (MAP), to develop a constitutionally compliant school funding model. *Campbell II*, 2001 WY 19, ¶ 11, 19 P.3d at 529.

> MAP's task was to develop a revenue distribution model which would assure adequate resources were distributed to provide a proper education for every Wyoming child based on the cost of education. It chose a block grant model to preserve as much local control as possible. The concept was that the model would produce the cost per average daily membership (ADM) and that cost would then be multiplied by an individual district's ADM to determine that district's allocation of funds.

> The first step was to identify the educational mission Wyoming had chosen, which came to be called the "basket of goods and services," that must be available to all Wyoming school children and which the legislature codified as a list of core knowledge and skill areas. Wyo. Stat. Ann. § 21–9–101(b) (LEXIS 1999). The second step was to identify the instructional components necessary to deliver the prescribed goods and services. In the third step, MAP was to determine the cost of the various components required, and the final step was the development of any adjustments which would be necessary for particular districts or students.

Id.

[¶18] Using that information, MAP "developed prototypical model schools capable of delivering the 'basket' of educational goods and services," which would be used "to calculate the per pupil cost of educating Wyoming students." *Campbell II*, 2001 WY 19, ¶ 12, 19 P.3d at 530. The most difficult part of MAP's task was to determine "the cost of providing the various components of the delivery system. It attempted to determine what providing the 'basket of goods and services' *should* cost a school district in Wyoming." *Id.*, ¶ 13, 19 P.3d at 530. The legislature accepted most, but not all, of MAP's recommendations in adopting its 1997 budget. *Id.*, ¶ 14, 19 P.3d at 530.

[¶19] The WEA and several school districts again filed suit challenging the constitutionality of the legislature's model for operations funding, claiming it was not cost-based. *Campbell II*, 2001 WY 19, ¶ 15, 19 P.3d at 530. The district court ruled that "the State ha[d] met its burden of proving that the revised school funding system [was] adequate to provide the basket of educational goods and services to Wyoming's students," but certain technical issues and adjustments required change to pass constitutional muster. *Id.*, ¶ 20, 19 P.3d at 531.

[¶20] On appeal by both sides, this Court ruled that "[t]he cost-based model approach chosen by the legislature which relie[d] upon past statewide average expenditures [was] capable of supporting a constitutional school finance system." *Campbell II*, 2001 WY 19, ¶ 2, 19 P.3d at 526. However, to meet constitutional requirements, we instructed the legislature to "conduct a review of all components of the model in 2001 and every five years thereafter to assure it remain[ed] an accurate reflection of the cost of education." *Id.* This process became known as "recalibration." Between recalibrations, the funding model had to be "adjusted for inflation each biennium, with 1996–97 as the base year, beginning in 2002–03, so long as a cost of education model using historic costs [was] relied upon for the basis of education funding." *Id*.

[¶21] As to capital construction, we reiterated that "[a]ll facilities must be safe and efficient," and instructed the legislature to "fund the facilities deemed required by the state for the delivery of the 'full basket' to Wyoming students in all locations throughout the state through either a statewide tax or other revenue raising mechanisms equally imposed on all taxpayers." *Campbell II*, 2001 WY 19, ¶ 2, 19 P.3d at 527. We set specific construction deadlines and funding amounts, and directed the State to develop a formula for determining and funding the costs of maintenance and operation of school buildings. *Id*. We also ordered the State to demonstrate compliance with the decision's mandate and required the district court to retain jurisdiction over the matter until such compliance was shown. *Id.,* ¶ 141, 19 P.3d at 566.

[¶22] The State filed a petition for rehearing. We granted that rehearing and issued *State v. Campbell Cnty. Sch. Dist.* (*Campbell III*)*,* 2001 WY 90, 32 P.3d 325 (Wyo. 2001), primarily to correct misinterpretations of our decision on capital construction. We clarified that the State's method of assessing and scoring school facilities was constitutional. *Id.,* ¶ 9, 32 P.3d at 328. However, the method for financing the identified construction needs was unconstitutional, and the legislature's failure to properly fund those needs "cause[d] serious damage to school districts' ability to deliver a constitutional education to the children of this state." *Id*., ¶ 2, 32 P.3d at 327.

[¶23] Another round of school finance litigation began in 2004. *Campbell IV*, 2008 WY 2, ¶ 5, 181 P.3d at 48. The WEA and Wyoming School Board Association, who we referred to as "the challengers," filed suit claiming the State had failed to comply with the *Campbell II* mandates for funding both operations and capital construction. *Id.* They alleged certain components of the operations funding formula were not cost-based. *Id*., ¶ 6, 181 P.3d at 48. Regarding facilities, the challengers claimed the funding formula "produced inadequate facilities incapable of delivering all educational programs and improperly shifted costs to school districts under the guise of local enhancements to be funded by local bonding." *Id.* The challengers claimed, and the State conceded, it had failed to comply with a deadline imposed in *Campbell II* for repairing or replacing facilities. *Id.* The district court found in favor of the challengers on some, but not all, issues, and both sides appealed. *Id.*, ¶¶ 7–9, 181 P.3d at 49.

[¶24] We held that with a few exceptions and adjustments, the legislature had enacted a statutory scheme to fund school operations and facilities from state wealth that was cost-based and gave all Wyoming students an equal opportunity to a thorough and efficient education. *Campbell IV*, 2008 WY 2, ¶¶ 3–4, 181 P.3d at 48. The operational funding system we found constitutional relied on the MAP model, which determined the cost basis of an appropriate education in each district and then provided funding through a block grant. *Id.,* ¶¶ 2–3, 181 P.3d at 48. Although the State had not yet brought all school facilities to a condition that required only routine maintenance, we observed that the legislature was acting in good faith and was "aggressive[ly]" overseeing implementation of laws to obtain appropriate results. *Id.,* ¶¶ 101, 107, 181 P.3d at 73, 76.

FACTS

I. Operations Funding

A. Overall Funding System

[¶25] After *Campbell IV,* the legislature continued to fund Wyoming school district operations through a cost-based model (the legislative model (LM)).[2] *See* Wyo. Stat. Ann. §§ 21-13-309(a)(v) (2025); 21-13-101(a)(xiv) (2025). The LM's goal is to allocate funding such that students throughout the state have equal access to what the legislature has defined as an adequate education (the basket of goods and services).[3] *Campbell II*, 2001 WY 19, ¶ 11, 19 P.3d at 529; s*ee also* Wyo. Stat. Ann. § 21-9-101 (2025) (setting out educational program requirements). The funding is referred to as the foundation program guarantee. *See* Wyo. Stat. Ann. § 21-13-306.

[¶26] The LM is a resource cost model. Under the model, the legislature starts "with the end first," by identifying the goal, outcome, or target. That goal generally is the delivery of the basket of goods but may include "some additional indicators of what might be considered a quality education." It then identifies the resources necessary to meet the goal, often referred to as the components of the LM. The base components/resources generally include things like professional labor (certified staff such as teachers and administrators); nonprofessional labor (classified staff such as bus drivers, administrative assistants, classroom aides, and nutrition program employees); educational supplies and materials; and energy costs. The LM identifies the number of resources necessary for a prototypical school to accomplish the goal and multiplies that number by reasonable estimates of the costs of those resources.

[¶27] Personnel salaries make up 80 to 85 percent of total school funding. As to funding for teacher salaries, the LM provides a base salary, which is the amount paid to a first-year teacher with a bachelor's degree. The LM base salary is then adjusted to account for individual teachers' experience, education, and responsibility. This adjusted salary is referred to as the LM weighted salary. The State uses the LM weighted salaries for all teachers in Wyoming to calculate the statewide average weighted salary.

[¶28] The LM applies several adjustments to the total base components to determine the final foundation program guarantee for each district. Examples of adjustments include

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[2] Wyoming statutes refer to the LM as the "[e]ducation resource block grant model." Wyo. Stat. Ann. § 21-13-101(a)(xiv).

[3] The legislature described the required basket of goods and services as the "common core of knowledge," which includes reading, language arts, social studies, mathematics, science, fine and performing arts, physical education, health and safety, humanities, career and technical education, world cultures and languages, government and civics (including the state and federal constitutions), and computer science. Wyo. Stat. Ann. § 21-9-101(b)(i).

External Cost Adjustments (ECAs) (statewide adjustments for increased costs/inflation since the last recalibration), Regional Cost Adjustments (RCAs) (adjustments to account for additional labor costs incurred by districts because of their geographic location), and reimbursable costs (including special education and transportation costs incurred by the district in the previous year).

[¶29] The foundation program guarantee is provided to the districts through block grant funding. Wyo. Stat. Ann. § 21-13-306 (public school foundation program); Wyo. Stat. Ann. § 21-13-309 (block grant). Each district has discretion to use its block grant funding as it sees fit and can reallocate funds for a particular LM component to other district needs. *See Campbell II*, 2001 WY 19, ¶ 11, 19 P.3d at 529.

B. Recalibrations

[¶30] As set out in *Campbell II* and incorporated into statute, the legislature must recalibrate the LM every five years "to determine if modifications are necessary to ensure it remains cost-based in light of changing conditions and modifications to law." Wyo. Stat. Ann. § 21-13-309(t). The legislature uses consultants with expertise in school finance to guide the recalibration. During recalibration, the consultants again consider the components of an appropriate education and estimate the costs of delivering those components.

[¶31] In 2005, while *Campbell IV* was pending, the legislature performed a recalibration.[4] The legislature did not use MAP for the 2005 recalibration; instead, it retained Lawrence O. Picus & Associates (Picus) to conduct the recalibration. The 2005 recalibration report described Picus's methodology as an "evidence-based approach to recalibrating the prototype schools." It stated the 2005 recalibration took an approach similar to the MAP model, "in that it identifie[d] resources for an expanded set of prototypical schools, but use[d] evidence from research and best practice as well as the professional judgment of education leaders to recalibrate the resource elements for Wyoming's prototypical schools." Like the MAP model, the evidence-based model (EB model) was intended to determine the necessary resources, estimate the costs of those resources, and provide recommendations for modifying the LM.[5] The legislature has continued to use the EB model as a reference since the 2005 recalibration.

[¶32] Using the EB model in 2005, Picus "recalibrate[d] the level of resources needed in

[4] *Campbell IV* states this recalibration took place in 2006. *Campbell IV*, 2008 WY 2, ¶ 17, 181 P.2d at 51. The record indicates work on the recalibration occurred in 2005 and the results were presented to the legislature near the end of that year, but the recalibrated model did not go into effect until the 2006–07 school year. Subsequent recalibrations refer to the 2005 recalibration, and we will follow suit.

[5] The LM is implemented by the Wyoming Department of Education (WDE) through an administrative device called the payment model, which incorporates all relevant data. *See Campbell IV*, 2008 WY 2, ¶ 28, 181 P.3d at 54.

the school prototypes used in the [LM] to deliver the state's academic 'basket' of subjects, with the goal of having Wyoming's students meet the state's established performance goals." While the EB model generally used the same components as the MAP model, it had a stated goal of improving student academic performance using new instructional concepts. Picus said its model was "derived from research and best practices that identif[ied] programs and strategies that boost student learning."

[¶33] To meet the new school improvement goals, the EB model provided funding for: 1) additional teachers; 2) staff to instruct classroom teachers (instructional facilitators or coaches); 3) tutors; and 4) after-school and summer instructional programs. The legislature adopted most, but not all, of the EB model's recommendations. The legislature chose to fund some components at the levels below those recommended by the EB model, but it chose to fund above recommendations in other areas. For example, the legislature did not fund as many instructional facilitators as recommended, but it provided funding for smaller class sizes and more specialist teachers at the middle school level than recommended by the EB model.[6]

[¶34] During the 2005 recalibration, LM teacher salaries were set at statewide average actual salaries, based on Picus's finding that the actual salaries being paid by districts were "adequate[.]" The starting base salary was $29,716, and the statewide weighted average teacher salary was $42,007. The recalibration "increased Wyoming's [national] ranking in average teacher salaries in 2004–2005 from approximately 38 to 32" and brought Wyoming in line with regional states. The 2005 recalibration resulted in a substantial increase in overall school funding, and, for the 2006–07 school year, the LM provided $69 million above the EB model recommendations.

[¶35] The legislature undertook another recalibration in 2010. The legislature determined it had overfunded schools in the 2005 model and through intervening ECAs, resulting in a 2010–11 LM which provided $76 million in funding over the EB model's recommendations. In its 2010 recalibration report, Picus stated:

> [D]uring our initial recalibration, and subsequent to that work, many of the parameters of the formula have been modified from our initial recommendations. In many instances, the [LM] now in use represents Legislative enhancements to our 2005 recommendations. In addition, the state funded an External Cost Adjustment (ECA) for most components of the model in 2007–08, 2008–09 and 2009–10. The index used for this adjustment (the Employment Cost Index – Education Services) exceeded the CPI-U [Consumer Price Index for Urban Consumers]. These enhancements have led to a situation where

[6] Instructional facilitators were funded in categorical grants outside of the LM.

> the [LM] funding exceeds our estimate of the resources needed to provide an adequate, cost- based, education program in Wyoming schools.

(footnote omitted).

[¶36] The legislature consulted various studies and determined the districts' use of resources generally did not align with model-based strategies. For example, "elementary schools [were] staffed at levels below [LM] resources, resulting in larger class sizes than resourced by the model. Additionally, the use of professional aides in lieu of model resourced certified teachers [was] prevalent, especially among the larger elementary schools." The legislature apparently believed the school districts were overfunded, in part, because school districts did not hire as many staff as they received funding for and, instead, used those additional funds to raise actual teacher salaries. The consultants indicated actual teacher salaries and those reflected in the LM exceeded what the labor market demanded.

[¶37] Despite this finding, the 2010 recalibration generally did not change the LM's overall goal (to improve student performance) or its components. Picus stated in the 2010 recalibration report that "changes to the overall structure and operation of the model [were] not needed at th[at] time." The 2010 recalibration report stated the legislature was moving "away from basing salaries upon historical salaries paid by school districts and into one in which the 'price' of salaries embedded in the [LM] is compared to appropriate labor markets." The legislature commissioned additional studies "to enhance the way the [m]odel was adjusted for inflation" and "to develop a more sophisticated external cost adjustment (ECA) process to enhance the accuracy of cost estimates of the [m]odel's elements."

[¶38] The legislature "also undertook several studies to create a better understanding of the labor market for school districts and the market position of model and actual school districts' salaries in Wyoming." "[T]he 2010 recalibration established a process for the Legislature to annually monitor salaries in years between recalibrations[.]" The monitoring process was intended "to help the legislature know whether or not there was inflationary pressure in the labor market in Wyoming" and to give the legislature information on how funding resources were being used by school districts and whether districts were able to deliver the basket of goods. It also tracked the overall LM funding levels in relation to the EB model cost estimates.

[¶39] Because the legislature believed the LM overfunded education by exceeding the EB cost-based estimates, it "adopted the approach of holding funding constant, allowing inflationary pressures on the cost-basis to cause a convergence with the funding level over time." In other words, instead of addressing the perceived overfunding issue by reducing LM funding in the 2010 recalibration, the legislature opted to leave LM funding even and let inflation gradually reduce the difference between the LM funding and EB model cost estimates, that is, wait for a "convergence" of overall LM and EB model funding amounts.

The legislature established “a series of benchmarks” that would look at total funding levels, monitor the labor market and economy, and establish a teacher salary comparator and teacher quality and effectiveness measures to determine when convergence was occurring.

[¶40] The legislature performed another recalibration in 2015. At that time, the LM funding exceeded the EB Model estimates by approximately $92 million. The consultants reported that the base LM salary after the 2010 recalibration was $37,017, and at the time of the 2015 recalibration it was $38,404, an increase of $1,387. With regard to teacher salaries, the select committee’s report stated:

> [T]he model salaries for teachers are at the top of regional salaries and allow school districts to recruit teachers from many surrounding states and maintain very low turnover rates. It was further concluded, the model teacher salaries allow school districts to provide highly competitive wages at a national level. The study also found teacher salaries are high relative to comparable professions[.]

[¶41] Based on monitoring reports, Picus concluded LM “salaries for teachers for [School Year] 2015–16 could be determined to be market based and those teacher salaries could also be used in the 2015 EB Model for the 2015 recalibration effort.” The consultants, therefore, recommended the legislature not raise LM salaries in the 2015 recalibration. However, Picus “recommended those salaries be subject to an appropriate, annual ECA as determined by Wyoming’s labor market monitoring process.”

[¶42] In 2017–18, the legislature, in an attempt to find a lower cost alternative to the LM and EB models, commissioned an additional recalibration report outside the usual five-year schedule. *See* Wyo. Stat. Ann. § 21-13-309(t). The legislature engaged a different consultant, Augenblick, Palaich & Associates (APA), to conduct the recalibration. APA recommended total school funding greater than both the LM and the EB model. At the time, the LM and the EB model had nearly converged, with the LM providing only $2 million more than the EB model, out of a total budget of $1.4 billion.

[¶43] APA studied teacher salaries and recommended “the state adjust model teacher salaries to reflect actual average teacher salaries paid in Wyoming districts.” It reported Wyoming actual teacher salaries were higher than neighboring states, but the advantage was beginning to shrink. Since 2013, teacher salaries had “lost ground in Wyoming relative to other full-time, employed college graduates.” When adjusted “for inflation and rising wages in non-teaching jobs, teacher salaries in Wyoming [had] fallen by up to 13 percent since 2012.” APA recommended average raises of $3,900 per teacher.

[¶44] The legislature did not accept APA’s recommendations. Instead, “after the 2017 recalibration, the Legislature amended the [LM] for school year 2017–18 to eliminate the

ECAs previously provided in school year 2016–17 for professional and non-professional staff." In 2018–19, the legislature did not provide an ECA, and total LM funding fell below the EB model by $1.3 million.

[¶45] The legislature had Picus perform the regularly scheduled recalibration in 2020. Total LM funding for the 2020–21 school year was $20 million below the EB model. In the years following the 2020 recalibration, total LM funding remained lower than the EB model.

[¶46] The 2020 recalibration report indicated the 2008 LM weighted average salary was $51,303, and ten years later, in 2018, the LM weighted average salary was $52,819, a difference of $1,516. In comparison, the weighted average actual salaries paid by school districts ranged from $54,541 in 2008 to $58,891 in 2018, a difference of $4,350. The difference between actual salaries and LM salaries in 2018 was $6,073. Picus stated the following about how schools were paying more in actual salaries than provided by the LM:

> While the difference between actual teacher counts and Legislative Model teacher resources might partially explain how districts can pay salaries that are higher than model funds, because the difference between the Legislative Model weighted average salary and district paid weighted average teacher salaries has grown, it appears that districts also take funds from other components of the budget to increase salaries and maintain the class sizes (even if they differ from the Legislative Model somewhat).

[¶47] In 2020-21, LM salaries fell below the average for adjacent states and North Dakota, which was the first time that had happened in the LM's history. Nevertheless, the legislature elected to leave LM teacher salaries unchanged in the 2020 recalibration.

[¶48] During the 2020 recalibration, the legislature also considered funding additional resources in the LM, including, as relevant here, mental health counselors for elementary schools, school resource officers (SRO), and nutrition services. Picus recommended additional funding in the LM for elementary school mental health counselors but did not recommend funding in the LM for SROs or nutrition programs. The legislature did not fund any of the proposed additional resources.

C. External Cost Adjustments

[¶49] Consistent with our direction in *Campbell II*, Wyo. Stat. Ann. § 21-13-309(o) requires that the legislature annually consider the effects of inflation to ensure funding under the LM remains an accurate representation of costs between recalibrations. *See*

Campbell IV, 2008 WY 2, ¶ 67, 181 P.3d at 64; Wyo. Stat. Ann. § 21-13-309(u). The ECA is a statewide adjustment that aims to maintain district purchasing power between recalibrations. To assist in the ECA process, the State has retained Dr. Lori Taylor, an expert in education and public finance issues. Dr. Taylor began advising Picus and the legislature during the 2010 recalibration and continues to provide recommendations on the annual ECA assessments.

[¶50] Dr. Taylor confirmed that the purpose of an ECA is "to adjust the level of funding for changes in the cost of providing educational services." To keep up with inflation, an ECA must be applied cumulatively every year inflation is present. During the 2010 recalibration, Dr. Taylor recommended monitoring cost pressures on four component groups: 1) teacher salaries; 2) classified employee salaries; 3) energy; and 4) supplies. The legislature adopted that process and began using it in 2012. Regarding school funding in 2010, Dr. Taylor noted that the LM funding exceeded the EB model estimate of costs. She believed past ECAs resulted in excess LM funding, and in her 2010 recommendation, she reported that the LM would "remain adequate and cost based in the near future without additional [ECAs]."

[¶51] That determination affected the ECA process in the years following the 2010 recalibration. Because of the perceived overfunding, the legislature declined to apply any ECAs from 2010–11 through 2013–14, choosing instead to let inflationary pressures bring the LM funding closer to convergence with the EB model. The legislature granted ECAs for salaries in 2014–15 and 2015–16, but they were time-limited and not carried forward into 2016–17; that is, they were not cumulative.[7]

[¶52] The legislature did not approve an ECA in 2018–19, and, for the first time, total LM funding fell below the EB model by $1.3 million. In 2019–20, the legislature adopted an ECA for all four component groups—professional salaries, nonprofessional salaries, energy, and educational materials. Unlike in prior years, the 2019–20 ECA carried forward to the next recalibration. That ECA brought the LM funding slightly above the EB model for the 2019–20 school year.

[¶53] The Legislative Service Office (LSO) reported the following concerning ECAs between 2020 and 2024.

- The ECAs enacted by the Legislature for school year 2020–21, were time-limited by the Legislature and not sustained (carried forward) to school year 2021–22.

[7] Wyo. Stat. Ann. § 21-13-309(o) requires that the ECA adjustment for inflation occur on a "cumulative basis each school year[.]" This requirement recognizes that unless deflationary pressures are present, time-limited ECAs neglect cumulative inflationary effects. Additionally, because time-limited ECAs do not permanently raise LM salaries, they complicate salary decisions by districts.

- The ECAs enacted by the Legislature for school year 2021–22 and after the 2020 recalibration, were time-limited by the Legislature, reflect one-half of the school year 2020–21 ECA, and not sustained (carried forward) to school year 2022–23.
- The ECAs enacted by the Legislature for school year 2022–23, were time-limited by the Legislature and not sustained (carried forward) to school year 2023–24. The ECAs for educational materials and energy reflect a cumulative percentage that accounts for the school year 2020–21 ECA and the annual percentage change from 2020–21.
- The ECAs enacted by the Legislature for school year 2023–24, are sustained (carried forward) and cumulative. The ECAs reflect a cumulative percentage that accounts for the school year 2022–23 ECA and the annual percentage change from 2021–22.

[¶54] As the LSO report reflects, the legislature did not adopt consistent and cumulative ECAs from 2018–22. During that same period, the EB Model, which the State asserts represented the true cost basis of education in Wyoming, would have provided more funding than the LM, specifically: $1.3 million more in 2018–19; $20.7 million more in 2020–21; $29.7 million more in 2021–22; and $53.7 million more in 2022–23.

II. School Facilities

[¶55] As it has since 2002, the School Facilities Commission oversees school capital construction. Wyo. Stat. Ann. §§ 21-15-113 through 21-15-116 (2025). The Commission adopts policy, guidelines, and standards for assessing buildings, identifying remedies to address inadequacies, and supervising capital construction and other building projects. Wyo. Stat. Ann. § 21-15-114(a) (2025). It is tasked with developing "uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools." Wyo. Stat. Ann. § 21-15-115(a) (2025). And it makes recommendations on construction projects to the governor and legislative Select Committee on School Facilities.

[¶56] The State Construction Department administratively implements the Commission's rules. Wyo. Stat. Ann. § 9-2-3004(b) (2025). The Department is mandated, by statute and rule, to annually assess school buildings for condition and capacity and establish separate schedules to prioritize remedies for buildings based on their condition and capacity. Wyo. Stat. Ann. § 21-15-117(a) (2025); SFC Rules Chap. 8, § 4 (2024).

[¶57] In addition to assessment of school building condition and capacity, Wyoming law previously required statewide assessment of the educational suitability of the buildings. *See* Wyo. Stat. Ann. § 21-15-117(a)(i) (2020) (requiring that assessment of school buildings include evaluation of educational suitability and technological readiness); 2021 Wyo. Sess. Laws 131 (repealing language related to educational suitability and technological readiness). Educational suitability generally means "the ability of a facility to support and deliver the educational program[.]"

[¶58] Consistent with the earlier law, the State's first facilities consultant, MGT of America Consulting Group, included educational suitability in its facility condition assessments. However, after the State stopped using MGT, the State Construction Department did not use consultants to assess or prioritize buildings on that basis. It instead developed an in-house suitability assessment tool but also ultimately abandoned that because of concerns with how the various factors would be weighted and with the tool's scoring system.

[¶59] Rather than performing statewide assessments, the School Facilities Commission eventually amended its rules to provide an administrative process for school districts to report educational suitability concerns to the State Construction Department. SFC Rules, Chap. 3, § 8. Under Chapter 3, section 8, the Department is required to make a recommendation to the Commission regarding each school district report it receives and the Commission then decides whether to move forward by ordering a most cost-effective remedy study.

III. 2022 Lawsuit

[¶60] In 2022, Plaintiffs brought a declaratory judgment action challenging the LM's constitutionality on grounds that it was not cost-based. They alleged the State was not funding the true cost of education because it failed to annually follow the ECA process. They further alleged the LM no longer reflected the cost basis of its various components, including personnel costs. They claimed that the failure to fund schools in a cost-based manner led to unconstitutional inequalities in funding. Plaintiffs also claimed the State was not providing the constitutionally mandated quality education because the LM did not include funding for elementary mental health counselors, school resource officers (SROs), and nutrition services.

[¶61] Regarding the State's school facility funding, Plaintiffs alleged the State was failing to properly assess school facilities for educational suitability and was not providing sufficient funding to remedy inadequate school facilities. Plaintiffs claimed the State's actions violated the fundamental right of education and caused disparities between school districts in violation of students' equal protection rights. They requested that the district court declare the State's system for funding school district operations and school facilities unconstitutional and order the State to correct the deficiencies.

[¶62] In pretrial proceedings, the State sought rulings on which side bore the burden of proof and what level of constitutional scrutiny would apply. The district court placed the burdens of production and persuasion on Plaintiffs to demonstrate disparity and/or constitutional harm by a preponderance of the evidence. The court ruled that if the Plaintiffs satisfied their burden, strict scrutiny would apply to all claims. The State and the School Districts filed motions for partial summary judgment, which the court denied.

[¶63] The district court held a nearly monthlong bench trial in June 2024. The court then issued its findings of fact, conclusions of law, and order, finding in favor of Plaintiffs on all issues. It declared:

- the State "failed to maintain a constitutionally compliant school finance system by not properly funding the actual costs of school districts to provide the basket of quality educational goods and services;"
- the State "failed to maintain a constitutionally compliant school finance system by not properly adjusting for the effects of inflation;"
- the State "failed to maintain a constitutionally compliant school finance system by not providing for salaries adequate for the school districts to recruit and retain personnel to deliver the basket of quality educational goods and services;"
- the State "failed to maintain a constitutionally compliant school finance system by not including funding for elementary level mental health counselors, SROs, nutritional programs, and computers for every student;"
- the State "failed to maintain a constitutionally compliant school facilities finance system by not adequately and evenly assessing school facilities for educational suitability;" and
- the State "failed to maintain a constitutionally compliant school facilities finance system by allowing unequal and inadequate school facilities to exist for too long of a period."

[¶64] The State appealed, but in its opening brief expressly declined to challenge the district court's conclusion that the legislature had allowed unequal and inadequate facilities to exist for too long. In addition, it did not contest the court's order requiring the legislature to fund elementary school mental health counselors.

STANDARD OF REVIEW

[¶65] We review the district court's findings after a bench trial for clear error. *Campbell IV*, 2008 WY 2, ¶ 10, 181 P.3d at 49; *see also Jones v. Young*, 2025 WY 130, ¶ 59, 580 P.3d 1026, 1040 (Wyo. 2025). "Factual findings are clearly erroneous when, although there is evidence to support them, the reviewing court is left with the definite and firm conviction upon review of the entire record that the district court made a mistake." *Jones*, 2025 WY 130, ¶ 59, 580 P.3d at 1040 (quoting *Morrison v. Hinson-Morrison*, 2024 WY 96, ¶ 18, 555 P.3d 944, 953 (Wyo. 2024)). "[W]e assume that the evidence of the prevailing party below is true and give that party every reasonable inference that can fairly be drawn from it." *Anderson v. Messinger*, 2026 WY 42, ¶ 28, 587 P.3d 519, 527 (Wyo. 2026) (quoting *Leeks Canyon Ranch, LLC v. Jackson Hole Hereford Ranch, LLC*, 2025 WY 63, ¶ 31, 569 P.3d 1120, 1130 (Wyo. 2025)).

[¶66] We review the district court's legal conclusions de novo. *Addison v. Albany Cnty.,* 2018 WY 148, ¶ 5, 432 P.3d 513, 515 (Wyo. 2018). Whether a statute is constitutional is likewise a question of law this Court considers de novo. *Sheesley v. State*, 2019 WY 32, ¶ 3, 437 P.3d 830, 833 (Wyo. 2019).

DISCUSSION

I. School Operations

[¶67] We will address personnel salaries and external cost adjustments separately and in detail below, but broadly speaking, the district court concluded Plaintiffs had met their burden of showing by a preponderance of the evidence that the LM was not cost-based and had not been properly adjusted for inflation, and that those deficiencies had caused disparities and constitutional harm. As we will discuss, the State has not shown or argued that the findings of fact underlying the court's conclusions were clearly erroneous, as demanded by our standard of review.[8]

A. Personnel Salaries

[¶68] Throughout the *Campbell* cases we reiterated that a cost-based funding model must reflect true costs to be constitutional. *Campbell IV*, 2008 WY 2, ¶ 12, 181 P.3d at 50; *Campbell II*, 2001 WY 19, ¶ 43, 19 P.3d at 536. The critical question in determining the constitutionality of a funding model is whether "the state's chosen method of funding represent[s], as close as reasonably possible, the cost of education." *Campbell IV*, ¶ 31, 181 P.3d at 55. Given that "the most expensive component of any education system is personnel, primarily classroom teachers," the legislature's "estimate of this component cost deserves the closest scrutiny." *Campbell II*, 2001 WY 19, ¶ 57, 19 P.3d at 540. "If it cannot be concluded that the estimate of teacher costs reflects the actual cost of the teachers necessary to deliver the basket, the system cannot be constitutional." *Id*.

[¶69] The district court found Plaintiffs had proved by a preponderance of the evidence that the LM's estimate of personnel costs no longer accurately reflected true costs and

[8] The dissenting opinion takes issue with the district court's findings of disparity and constitutional harm, but it likewise does not adhere to our clearly erroneous standard of review in doing so.

therefore created disparities between districts that ran afoul of the *Campbell* holdings.[9] In keeping with our standard of review, we must consider whether this finding is clearly erroneous, and in doing so, we view the evidence in the light most favorable to Plaintiffs as the prevailing parties. In this light, the record clearly supports the court's conclusion.

[¶70] The information available to the legislature showed concerns regarding the cost basis of salary funding as early as 2017 when the legislature retained Augenblick, Palaich and Associates to do an out-of-cycle recalibration. APA recommended "the state adjust [LM] teacher salaries to reflect actual average teacher salaries paid in Wyoming districts." It reported that since 2013, teacher salaries had "lost ground in Wyoming relative to other full-time employed college graduates." When adjusted "for inflation and rising wages in non-teaching jobs, teacher salaries in Wyoming [had] fallen by up to 13 percent since 2012." APA recommended average raises of $3,900 per teacher. The legislature rejected APA's recommendations and instead did the opposite. It "amended the statutory model for school year 2017–18 to eliminate the ECAs previously provided in school year 2016–17 for professional and non-professional staff."

[¶71] Picus's 2020 recalibration report also identified concerns. It stated: "With the inconsistent ECAs given in the previous five years, [the labor market consultant] found that both actual and [LM] salaries have lost their substantial market advantages over surrounding states[.]" "As of 2019/20, [LM] salaries in Wyoming [lay] well below the U.S. average and [were] in the middle of the range of salaries in surrounding states." Retention rates declined with the exit rates for teachers increasing since 2008–09. The number of students at the University of Wyoming choosing to pursue an education degree also dropped significantly from 2008 through 2018.

[¶72] A 2020 labor market report informed the legislature that LM teacher salaries had fallen in comparison to comparable workers to "about 75 percent of professional technical workers[.]" While it was understood that teacher salaries would be lower than comparable occupations because teachers work fewer weeks during the year, the consultant stated the "ratio of the [LM] salary to the wages of other professional workers now lies below the average for the U.S." As for neighboring states, "Nebraska, Montana, and Utah all have ratios that are higher than the model ratio; Idaho has a similar ratio; Colorado and South Dakota have ratios that are lower." The 2020 recalibration report also described increasing hiring difficulties and noted the eroding purchasing power of school districts in relation to staff salaries.

[¶73] Despite these concerns, the legislature did not change the model salaries in any

[9] The district court's ruling applied to all personnel salaries—both certified and non-certified, but the arguments on appeal pertain overwhelmingly to teacher salaries. As such, our discussion is limited to teacher salaries. However, the same principles discussed in the context of teacher salaries apply to all salaries within the LM.

meaningful way. The base salary in 2010 was $37,017, and twelve years later, in 2022, the base salary was $37,820. "[W]eighted average model salaries were essentially unchanged from $53,046 in 2010–11 to $53,506 in 2022–23."

[¶74] The labor market consultant's monitoring report to the legislature in 2023 expressed greater concern. Comparing Wyoming LM salaries to surrounding states, "teacher salaries [were] 3 percent below the average salary in the region." In 2022–23, the actual average salaries exceeded "[LM] average salaries by about 16 percent--the largest difference since the current funding model has been in place." An ECA enacted during the 2023 session, "raised 2023–24 model [weighted average] salaries" by about four percent to $55,763, but the model salary was still significantly below actual salaries. Perhaps most telling, Wyoming's "[a]verage weighted model salaries in 2022/23 were about $8,000 lower than the U.S. [actual] average and $4,000 less than the [actual] average in adjacent states and North Dakota." The consultant also stated the "exit rate of teachers jumped in the last two years. Exit rates for new and midcareer teachers are the highest rates recorded in Wyoming."

[¶75] At the same time, while teacher salaries remained relatively flat, comparable occupation salaries were rising sharply. The ratio of model teacher salaries to comparable occupations was down to 72 percent. The consultant warned that data estimates were likely to show a "substantial widening" between teaching wages and other occupations once the 2023 data [was] reported.[10]

[¶76] Testimony from employees of the School District Plaintiffs provided anecdotal confirmation that the LM salaries were not keeping pace with true costs. Several management-level district employees testified to the difficulties with hiring and retaining both certified and classified staff. They also cited the declining number and quality of applicants for teaching positions and their increasing reliance on provisionally certified teachers to fill positions.[11] They attributed these difficulties to their inability to provide more competitive salaries.

[¶77] In 2023, some employees of the School District Plaintiffs were appointed to Wyoming's Teacher Retention and Recruitment Task Force. The task force recommended increasing teacher salaries through ECAs to 85% of comparable professions. The recommendations were based on a climate survey of teachers where 78% of the respondents ranked higher salary as the highest priority to increase their desire to stay in

[10] The State argues the legislature appropriately responded to these pressures by "enacting personnel ECAs for 2024–25. 2024 Wyo. Sess. Laws ch. 118, § 205." The State does not, however, show that the ECA was sufficient to address the issues outlined in the 2023 consultant's report or identified earlier.

[11] Individuals hired as provisionally certified teachers are not licensed as teachers, or are licensed but not endorsed in a particular subject area, but the Wyoming Professional Teaching Standards Board has issued an exception authorization or other permit to allow them to teach without the training that would be required to be fully licensed and endorsed in a particular area.

their current roles.

[¶78] The district court found the above-cited testimony and reports to be credible evidence that the LM salaries did not reflect the true costs to districts of hiring and retaining personnel. The State has not challenged the court's factual findings or its credibility determinations as clearly erroneous. It instead contends the court's focus on the need for the LM to reflect the true cost of personnel salaries was improper because it "would seem to require the State to fund whatever salaries school districts are actually paying." It further asserts the 2005 recalibration and ECAs between 2005 and 2010 funded the overall LM above costs so there was no need to raise LM salaries. We address each argument in turn.

[¶79] The State is correct that in *Campbell IV*, 2008 WY 2, ¶ 75, 181 P.3d at 66, we expressly rejected "an expenditure-based system in which the legislature must fund whatever the districts request." We have nonetheless recognized, as the district court observed, that the actual salaries school districts pay is an important consideration in determining true labor costs. We observed in *Campbell II* that, by "force of logic," when actual salaries exceed funding model salaries, that indicated the funding model may not be cost-based. 2001 WY 19, ¶ 88, 19 P.3d at 549. Other factors to consider in assessing the cost basis of model salaries include what other states pay their teachers, both nationally and regionally, and what employees in professions with comparable education and skill requirements are paid. *Campbell IV*, 2008 WY 2, ¶ 75, 181 P.3d at 66; *Campbell II*, 2001 WY 19, ¶ 66, 19 P.3d at 543. The district court properly considered precisely this type of evidence along with the disparities between actual and LM salaries. Its focus on the true costs of the LM components was dictated by our precedent, and the record offers no support for the State's contention that the court imposed an expenditure-based funding requirement.

[¶80] We also reject the State's argument that because the 2005 recalibration and ECAs between 2005 and 2010 funded the overall LM above costs, it did not matter that the LM salaries did not reflect true costs. First, this argument is based on the flawed premise that the LM was overfunded. Second, it ignores our clear precedent that for a funding model to be considered cost-based, each component must accurately reflect the true cost of the component. If even one component is not cost-based, the model is not cost-based.

[¶81] The State is correct that the LM adopted in the 2005 recalibration was more generous than the MAP model would have been and provided funding greater than the EB model's recommendations. This was because it incorporated smaller class sizes (which was a policy choice carried forward from the MAP years) and more teachers in certain areas. However, the reason for the significant increase in funding was the legislature's policy choice to promote greater student achievement. The fact that the legislature made the choice to fund additional staff does not mean the LM was overfunded; it was in pursuit of greater academic performance, which the consultants and the legislature knew would cost more.

[¶82] During the 2005 recalibration, Picus and its labor market consultants did not indicate that the actual district salaries were above cost. In deciding to import the actual salaries into the LM, the consultants concluded "teacher salaries in Wyoming were adequate." They acknowledged teacher salaries had grown in comparison to other states and touted that it "increased Wyoming's ranking in average teacher salaries in 2004–05 from approximately 38 to 32" in the nation. This was a recognition that the new salaries would be more competitive (which seemed to be the objective of the consultants and the legislature), but not necessarily that they were above cost. Nevertheless, in 2010, the consultants and the legislature decided the 2005 recalibration and subsequent ECAs had resulted in teacher salaries above cost.

[¶83] Even if we were to accept the premise that the legislature "overfunded" personnel salaries between 2005 and 2010, the 2017 recalibration report from Augenblick, Palaich and Associates informed the legislature that as early as 2013 those salaries had flattened. As we discussed above, the district court's findings, which the State does not challenge, clearly show that whatever perceived overfunding of the LM may have existed in 2010, it did not persist.[12]

[¶84] The State nevertheless disputes the existence of a funding disparity because districts hire fewer personnel than provided in the LM and, statewide, not all personnel funding is used. It argues:

> A myopic focus on model salaries also misses the more important factor of overall personnel funding, where Wyoming substantially outpaces its peers. (Tr. 2402:25-2405:17; Ex. I9). The more relevant legal question is less about whether model salaries reflect actual salaries, and instead whether total personnel resources (the product of model salaries multiplied by the number of positions allocated in the legislative funding model) are sufficient to hire a qualified workforce capable of delivering the prescribed education program and sustain measures of quality. *Campbell IV*, ¶ 76, 181 P.3d at 66; *Campbell I*, 907 P.2d at 1279.

[¶85] This argument not only shows the State has in fact understood the LM salary component was no longer cost-based, it again ignores the fundamental teaching of the *Campbell* cases that each component of the funding model must be cost-based. *See*

[12] Despite its indication in the 2010 recalibration report that it would take action to reevaluate the LM once convergence with the cost-based EB Model occurred, the legislature did not do so in any meaningful way. The LM converged with, and fell below, the EB Model in 2018–19, and the deficit continued in 2020–21, 2021–22, 2022–23, and 2024–25.

Campbell IV, 2008 WY 2, ¶ 31, 181 P.3d at 55 (noting that the "primary constitutional issue" is whether "the state's chosen method of funding represent[s], as close as reasonably possible, the cost of education"). If one component of the model is not cost-based, the model is not cost-based, and unconstitutional disparities will exist.

[¶86] We need only consider the testimony of the State's expert, Richard Seder, PhD, to confirm this flaw in the State's argument.[13] Dr. Seder began working as a consultant on Wyoming school funding issues in 2001. He testified that a resource-cost funding model begins with the legislature's goal, that is, what it wants "to achieve, whether it's some type of an outcome or some type of thing that we can point to." He explained "from there we identify what components may be necessary to achieve that, the quantity of those components, and ultimately the prices of those components." He confirmed that both the number of positions and the cost of the positions must be correct for the model to be truly cost-based.

[¶87] The strategy of looking only at overall funding disregards the purpose of a cost-based model—to ensure that every district is being adequately and equitably funded. The legislature's recognition that districts were not hiring all the positions funded in the LM and instead deciding to let those extra funds make up for deficiencies in the model salaries demonstrates the LM did not reflect true costs. Relying on the "overage" of LM positions to cover the higher salaries of fewer personnel forces individual districts to determine which positions it will leave vacant to make up for the underfunded LM salaries. Those decisions will have greater impacts on some districts than others. This is the result cost-based funding is intended to avoid. Districts cannot be forced to disparately sacrifice resources to fund the necessary attributes of a quality education.

[¶88] The record supports the district court's conclusion that Plaintiffs demonstrated by a preponderance of the evidence that the LM salaries have not reflected the true costs of recruiting and retaining qualified teachers and that this failing has created funding disparities between districts. Moreover, as noted, the State does not contend the court's findings underlying this conclusion were clearly erroneous. It instead argues only that the LM's cost estimates do not have to be perfect. That is true—if the legislature is trying to estimate the true cost of the LM components. However, the record shows the legislature was not trying to fund the true cost of teacher salaries and was instead relying on a perceived overfunding of the LM. That approach does not comport with the constitutional demands of a cost-based funding model.

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[13] The district court found Dr. Seder was biased because he personally believed Wyoming has historically overfunded education and overpaid personnel and, therefore, gave his opinions less weight. We generally defer to the district court's findings on witness credibility. *Hyatt v. Hyatt,* 2023 WY 129, ¶ 50, 540 P.3d 873, 889 (Wyo. 2023). However, despite that ruling, the district court relied on Dr. Seder's testimony for facts about the history of educational funding in Wyoming, and we will follow suit.

B. External Cost Adjustments

[¶89] In *Campbell II*, we held the LM had to be "adjusted for inflation" at least "each biennium," "so long as a cost of education model using historic costs is relied upon for the basis of education funding." 2001 WY 19, ¶ 2, 19 P.3d at 526. The legislature adopted a statutory process to adjust for inflation in accordance with that directive. Under Wyo. Stat. Ann. § 21-13-309(o)'s ECA process, the legislature is required to adjust the LM "on a cumulative basis each school year" between recalibrations to "provide for the effects of inflation." The goal of the ECA process is to maintain the cost basis of the funding model and prevent school districts from losing purchasing power due to inflation. Wyo. Stat. Ann. § 21-13-309(u).

[¶90] The district court found Plaintiffs met their burden of showing by a preponderance of the evidence the legislature did not properly adhere to the ECA process to adjust the LM for the effects of inflation between recalibrations and because of that failure, it did not maintain a cost-based LM, which resulted in unconstitutional disparities. The State does not challenge the court's findings as clearly erroneous and instead argues the court erred by "effectively mandating automatic" ECAs and by requiring the legislature to use fixed price indexes rather than its discretionarily chosen monitoring process. It further claims the legislature was not required to follow the ECA process, first, because the LM no longer relied on historic expenditure data to set personnel costs, and, second, because application of an ECA is discretionary. Finally, the State maintains that ECAs were unnecessary during most of the last twenty years because overall school funding exceeded the reasonable costs of education as reflected in the EB model.

[¶91] The State is incorrect that the district court ordered mandatory automatic ECAs. The court ruled that our precedent requires the legislature to consider whether the LM must be adjusted for inflation between recalibrations, and that in accordance with statute that determination must be made annually. *See Campbell II*, 2001 WY 19, ¶ 90, 19 P.3d at 549; Wyo. Stat. Ann. § 21-13-309(o). The court also expressly recognized, however, that there may be years where no adjustment is required. It observed, "ECAs are adjustments to the level of funding in the [LM] between recalibrations and are ***potentially*** applied in the years between recalibrations." (emphasis added). The court plainly did not order mandatory ECAs.

[¶92] Likewise, the district court neither prohibited the use of monitoring to evaluate the need for ECAs nor required the use of a fixed price index. The court again adhered to our precedent and ruled that inflation adjustments made using the Wyoming Cost of Living Index are presumed adequate but that other methods are acceptable so long as they are "structured to assure quality of education remains adequate." *See Campbell II*, 2001 WY 19, ¶ 90, 19 P.3d at 549–50.

[¶93] The court found the State's monitoring inadequate not because it did not rely on a particular index but because the State presented no evidence that the existence or non-existence of cost pressures was an accurate method for determining whether inflation existed. The court further found the approach flawed because the State's ECA expert, Dr. Taylor, based her conclusions that salaries in 2010 and 2015 were above market and therefore required no adjustments for inflation on actual salaries the districts were paying, not on the LM's funding levels. The ECA process is intended to adjust the LM for the effects of inflation to ensure it continues to reflect the true cost of the model's various components; a focus on actual salaries that districts are paying does not inform that analysis and is misplaced. As the court observed, "Dr. Taylor could not state that the salaries used in the [LM] were sufficient to attract high-quality teachers and agreed those salaries were old."

[¶94] That the legislature decided to use a monitoring process instead of the WCLI to determine whether to enact an ECA was not necessarily improper, *Campbell IV*, 2008 WY 2, ¶¶ 69–71, 181 P.3d at 65, and there may be years where no inflationary pressures exist and no ECA will be required. The State must, however, start with a cost-based LM and then use appropriate tools to measure whether inflation of individual component costs requires an ECA. The district court found Plaintiffs met their burden of proving this did not happen, and the State has not shown or even argued that that finding was clearly erroneous.

[¶95] We also reject the State's argument that the legislature did not rely on historic costs to set the LM component costs and could therefore forgo the ECA process. First, the State does not explain how the LM is not based on historic costs. The original figures in the 2005 LM unquestionably relied on historic costs, including the use of actual teacher salaries to establish the initial model salaries. The current LM is a continuation of that 2005 LM; indeed, the salaries in the LM remained largely unchanged after 2005. Additionally, while our *Campbell* decisions stated that a model based on historic costs must be escalated for inflation, the statutory process requires consideration of ECAs between recalibrations regardless of the model type. *See Campbell IV*, 2008 WY 2, ¶ 69, 181 P.3d at 65; *Campbell II*, 2001 WY 19, ¶ 90, 19 P.3d at 549; Wyo. Stat. Ann. § 21-13-309(o).

[¶96] We also reject the State's argument that Wyo. Stat. Ann. § 21-13-309(o) makes application of ECAs discretionary. When interpreting statutes, we determine the legislature's intent from the plain and ordinary meaning of the words used, giving effect to every word, clause, and sentence. *Matter of Estate of Haack*, 2026 WY 17, ¶ 8, 583 P.3d 690, 694 (Wyo. 2026). We will not interpret a statute in a way that produces an absurd result. *Id.*, ¶ 15, 583 P.3d at 695. Likewise, "we will not interpret a statute 'to create an unconstitutional result if it can be avoided.'" *Bain v. City of Cheyenne*, 2025 WY 67, ¶ 18, 570 P.3d 725, 730 (Wyo. 2025) (quoting *Cir. Ct. of Eighth Judicial Dist. v. Lee Newspapers*, 2014 WY 101, ¶ 27, 332 P.3d 523, 532 (Wyo. 2014)).

[¶97] Subsection 309(o) provides in relevant part:

> To the extent specifically provided by the legislature, and between periods of model recalibration required under subsection (t) of this section, the amount computed for each district under subsection (m) of this section ***shall be adjusted to provide for the effects of inflation*** . . . . The adjustment under this subsection shall not be applied until the expiration of the school year immediately following the first school year of application of the recalibrated model, and ***shall be adjusted on a cumulative basis each school year thereafter and until the first school year of application of a subsequent model recalibration***. Following analysis of information reported under subsection (u) of this section, the joint appropriations interim committee shall submit a recommendation to the legislature and the governor not later than November 1 of each applicable year on an external cost adjustment for purposes of this subsection.

Wyo. Stat. Ann. § 21-13-309(o) (emphasis added).

[¶98] Despite the mandatory language that the LM shall be adjusted for inflation and that the adjustments shall be cumulative, the State contends application of ECAs is a discretionary function. In support of this argument, it points to the introductory language, "[t]o the extent specifically provided by the legislature."

[¶99] It is a fundamental rule of statutory interpretation that all portions of an act must be read together. *Haack*, 2026 WY 17, ¶ 12, 583 P.3d at 694. Subsection 309(u) requires reports and recommendations to the legislature to inform its "model adjustments under subsection (o)." Wyo. Stat. Ann. § 21-13-309(u). The purpose of the reports and recommendations is "[t]o ensure model components specified under the [LM] . . . remain resourced at cost-based levels between periods of model recalibration required under subsection (t)[.]" *Id*. If the legislature could in its discretion refuse an ECA when inflationary pressures were present, the model would not remain cost-based, contrary to the legislature's clearly expressed intent.

[¶100] We instead interpret the introductory language, "to the extent specifically provided by the legislature," to emphasize that although ECA recommendations are made to both the governor and the legislature, it is the legislature that acts on those recommendations. To interpret it otherwise, would produce the absurd result of a model that is not cost-based, despite the legislature's clear directive to the contrary. Moreover, because the interpretation would result in a model that is not cost-based, it would create the type of unconstitutional result we avoid when interpreting statutes. *Bain*, 2025 WY 67, ¶ 18, 570 P.3d at 730.

[¶101] We turn last to the State's argument that ECAs are not required when overall LM funding exceeds EB model funding. Much of our discussion relating to purported overfunding of personnel costs is relevant here. The constitutional touchstone is whether each individual component of the LM is cost-based, which requires review for inflationary pressures on each component, regardless of overall funding. The State's focus on overall funding ignores that disparities among the districts are likely to occur when the legislature does not ensure each component of the LM remains cost-based. Only funding based on accurate estimates of the costs to each district for the components of an adequate education as adjusted for inflation can ensure that each district has an equal opportunity to adequate funding. *See Campbell IV*, 2008 WY 2, ¶¶ 38, 69, 181 P.3d at 56, 65.

[¶102] The State's argument also fails because the legislature did not enact appropriate ECAs even when the LM funding fell below the cost-based EB model. The legislature's actions in 2022–23 are illustrative. The monitoring reports in 2022 clearly demonstrated "cost pressures" on teacher salaries. The consultants reported that LM teacher salaries were 3% below the average salary in the region. Actual teacher salaries had "remained flat over the past several years" while "[i]n adjacent states and the U.S. as a whole, the increase in teaching salaries ha[d] been larger, at 1–2 percent per year." After reviewing the monitoring reports, the Joint Education Committee recommended ECAs for personnel salaries, but the legislature did not adopt ECAs for salaries that year.

[¶103] The State responds that the legislature's 2023–24 ECAs were intended to account for inflation in earlier years; however, such retroactive ECAs do not address the funding problems districts actually face in years with inflation but no corresponding and timely adjustment in funding through the ECA process. The reason for ECAs between recalibrations is to address inflationary pressures in a timely manner. *See Campbell IV*, 2008 WY 2, ¶ 67, 181 P.3d at 64. The legislature's approach since the perceived overfunding of the LM model does not represent the disciplined approach to cost-based funding that is envisioned by our precedent or by Wyo. Stat. Ann. § 21-13-309(o).

[¶104] As with personnel salaries, the State has not shown or argued the district court's findings underlying its conclusion that Plaintiffs met their burden of proving the LM had not been properly adjusted for inflation were clearly erroneous. And, as we have discussed, neither the record nor the law supports the State's other arguments concerning the court's ruling on the ECAs.

C. Level of Constitutional Scrutiny

[¶105] When the legislature adopts a funding model that does not reflect the true costs of the various components, it

> must be closely examined before it can be said to pass

> constitutional muster. Such state action will not be entitled to the usual presumption of validity; rather, the state must establish its interference with that right is forced by some compelling state interest and its interference is the least onerous means of accomplishing that objective. *Miller v. City of Laramie,* 880 P.2d 594, 597 (Wyo. 1994).

Campbell I, 907 P.2d at 1266–67; *see also Campbell II*, 2001 WY 19, ¶¶ 44–45, 19 P.3d at 536 (citing *Campbell I*, 907 P.2d at 1266).

[¶106] The State makes no effort to justify the disparities created by the failure to maintain a cost-based funding model under this standard. Rather, it asserts Plaintiffs' claims related solely to adequacy of overall LM funding, and such claims do not implicate strict scrutiny. Framing the Plaintiffs' claims as relating only to "adequacy," the State contends the court should have placed the burden on Plaintiffs to show the challenged laws were unconstitutional beyond a reasonable doubt. It further contends that if the legislature acts reasonably and in good faith, the Court must defer to its decisions.

[¶107] We cannot fairly characterize the Plaintiffs' claims as challenging adequacy alone. Though the case before us does not present issues of disparity based on local funding, *see Campbell I*, 907 P.2d at 1266–67, Plaintiffs did claim disparities existed and students were harmed because the funding model did not reflect the true costs of the components necessary to educate students across the state. Our precedent holds this type of disparity, too, is unconstitutional. *See Campbell IV*, 2008 WY 2, ¶ 12, 181 P.3d at 50 (holding that to pass constitutional muster components of funding model must be cost-based); *Campbell II*, 2001 WY 19, ¶ 43, 19 P.3d at 536 (holding that disparities "due to political decisions or a failure to adequately measure differences in cost because of time constraints or gaps in the data . . . are no more acceptable than wealth differences.").

[¶108] Despite this clear precedent, the State, quoting *Campbell IV*, 2008 WY 2, ¶ 79, 181 P.3d at 67, contends that the funding should be deemed constitutional if the legislature has made a "good faith effort to preserve and protect our constitution's commitment to a sound public education system." It cites the language below from *Campbell IV* to support its argument.

> Some of the challengers seem to contend that strict scrutiny (used to determine if a classification denies equal protection of the law) should be applied to determine whether the modifications adopted by the state resulted in what the challengers deem to be inadequate funding for public education. This argument is not supported by any authority and misconstrues the strict scrutiny test.

Campbell IV, 2008 WY 2, ¶ 13, 181 P.3d at 50 (emphasis added).

[¶109] Viewed in context, this language does not support the State's argument against the application of strict scrutiny in this case. In *Campbell IV*, we recognized the funding model is "critical" and that each component must accurately reflect costs, which is why in *Campbell II* we ordered the State to revise its model to more accurately reflect costs. 2008 WY 2, ¶ 12, 181 P.3d at 50. Thus, the question in *Campbell IV* was whether the legislature had followed our express instructions to refine the funding model. The district court found that for the most part it had. Accordingly, we observed:

> Courts can, and should, protect against a failure of the state to fund a system capable of meeting state standards. . . . For the most part, the district court found that the adjustments provided adequate funding to achieve the state's educational requirements and those factual findings are subject to review under the "clearly erroneous" standard.

Campbell IV, 2008 WY 2, ¶¶ 13, 15, 181 P.3d at 50-51.

[¶110] In other words, based on the evidence, the district court in *Campbell IV* found that for the most part the State's funding of its model had not created disparities between the school districts. That being the case, strict scrutiny did not apply. In contrast, in this case, the district court found Plaintiffs had proven the LM was not cost-based and that disparities had resulted. Importantly, again, the State has not challenged any of the court's factual findings as clearly erroneous.

[¶111] The question in this case is like that in *Campbell II*—whether the LM reflects the cost basis of the components the legislature has identified as essential to provide an adequate education to Wyoming public school children. Under the critical holdings of *Campbell II*, if the LM does not employ a means of accurately estimating the costs of each component, it is not free from disparity and given the fundamental right to education and the constitutional promise of equal protection, it had to be judged by the highest level of constitutional review—strict scrutiny. *Campbell II*, 2001 WY 19, ¶ 45, 19 P.3d at 536.

[¶112] The majority and dissenting opinions read *Campbell IV* differently. The dissent contends that *Campbell IV* took the opportunity "to further refine the parameters of judicial involvement in the legislative field of education policy and funding," and restricted application of strict scrutiny to only those funding disparities caused by differences in local wealth. This would be a significant narrowing of our holding that disparities "due to political decisions or a failure to adequately measure differences in cost because of time constraints or gaps in the data . . . are no more acceptable than wealth differences." *Campbell II*, 2001 WY 19, ¶ 43, 19 P.3d at 536. Our precedent has been clear that "discrepancies in the funding and distribution formulas . . . not based on differences in the cost of education . . ., violate[] the equal protection and education provisions of the Wyoming Constitution." *Campbell II*, 2001 WY 19, ¶ 8, 19 P.3d at 529 (summarizing the holding in *Campbell I*, 907 P.2d at 1279–80). If *Campbell IV* intended to limit our prior holdings to the degree posited by the dissent, we would expect a discussion of why such a refinement was necessary, and *Campbell IV* contains no such discussion. *Cf. State v. Johnson*, 2026 WY 1, ¶¶ 21–22, 582 P.3d 380, 392–93 (Wyo. 2026) (overruling precedent based on stare decisis considerations of workability and reasoning).

[¶113] It is clear to the majority that the rejection of the challengers' invocation of strict scrutiny in *Campbell IV* was based on the posture of the case on review. The district court in *Campbell IV* found that for the most part, the State's funding model was cost-based and did not create disparities. The challengers' assertion of strict scrutiny on appeal was misplaced because the question on appeal was not whether any discrepancies created by the model were narrowly tailored to serve a governmental interest; the question was whether the district court's findings were clearly erroneous. Again, strict scrutiny applies only when the challenging party proves the funding model creates disparities between districts not based on differences in the cost of education. That was the case here, but not in *Campbell IV*.

[¶114] We also disagree with the dissenting opinion's reliance on the following quote from *Campbell IV* as a basis to narrow the application of strict scrutiny:

> Our school finance cases have unequivocally held that the Wyoming Constitution establishes education as a fundamental right. Accordingly, Art. 1, § 34, which guarantees equal protection under the law, prohibits wealth-based disparities in education funding. However, we have consistently recognized that exact or absolute equality is not required. Therefore, differences may exist in funding between school districts if those differences result from differences in the cost of providing education. Any state action resulting in a wealth-based disparity in public education funding will be subject to strict scrutiny to determine if it is necessary to achieve a compelling state interest. In addition, this test requires the state to establish that there is no less onerous alternative by which its objective may be achieved.

Campbell IV, 2008 WY 2, ¶ 11, 181 P.3d at 49 (citation modified).

[¶115] The dissenting opinion equates the term "wealth-based disparity" with disparities based on local funding. We read no such limitation into the term. Indeed, in the paragraph immediately following, *Campbell IV* emphasized the funding model is critical, and it held that if the model reflected true costs, "the system of funding school operations would be considered devoid of wealth-based disparities." 2008 WY 2, ¶ 12, 181 P.3d at 50. Conversely, of course, if the model does not reflect true costs, it will not be devoid of disparities.[14]

[¶116] The dissenting opinion's reliance on a later paragraph in *Campbell IV* is equally unavailing.

> It should be remembered that the strict scrutiny test applies when differences in funding are wealth-based. If the difference in funding between districts is based upon what the state has determined a particular component should cost, and not on wealth, then an equal protection issue is not raised. We observe that no one has suggested the differences in operation and maintenance funding between districts are not based upon the state's determination of what that component should cost. Consequently, applying the proper constitutional measure, one must conclude the differences in funding do not result in a denial of equal protection.

2008 WY 2, ¶ 38, 181 P.3d at 56.

[¶117] According to this quote, no one had suggested in *Campbell IV* that the differences in funding between districts were not based on the State's determination of what the components should cost. However, in this case, that is precisely what Plaintiffs alleged and what the district court found Plaintiffs proved. Moreover, nothing in this quote alters the Court's repeated and consistent rulings that any disparities in funding between districts not caused by differences in the cost of education must be justified under strict scrutiny. It was the law before *Campbell IV* and clearly the law after *Campbell IV* that disparities created by a funding model that is not cost-based will be subject to strict scrutiny. 2008 WY 2, ¶ 12, 181 P.3d at 50.

[¶118] We are not persuaded otherwise by the State's position that we must distinguish between a negative and a positive right to education. It asserts that "[t]he right to education encompasses both a 'negative right' to be free from state action that discriminates between similarly situated persons, and a 'positive right' to compel government spending[.]"

[14] The use of the term "wealth-based disparity" likely is a holdover from earlier cases where local funding was the source of the disparities between districts. In the context of the *Campbell* cases, however, the term meant something different because the disparities resulted from other causes. The term itself is of limited usefulness because, as the *Campbell* cases make clear, any disparities in funding between districts that are not based on differences in the cost of education, must be justified under strict scrutiny. *See*, *e.g.*, *Campbell II*, 2001 WY 19, ¶ 43, 19 P.3d at 536 (holding that disparities "due to political decisions or a failure to adequately measure differences in cost because of time constraints or gaps in the data . . . are no more acceptable than wealth differences.").

According to the State, the negative right to equal protection demands strict scrutiny, while the positive right to adequate funding requires deference to the legislature's reasonable, good faith efforts to provide sufficient funding for districts to deliver an adequate education to Wyoming students as determined by the legislature's standards. Failure to defer to the legislature on the adequacy of funding, says the State, violates the legislature's separate power to tax and appropriate funds. *See* Wyo. Const. art. 2, § 1 (powers of government are divided between the three branches and the branches shall not exercise powers belonging to the other branches); Wyo. Const. art. 3, § 35 (legislature's power of appropriation).

[¶119] We have long recognized the legislature's prerogative to determine the components of an adequate education for Wyoming children (basket of goods and services) and to allocate the funds that allow all districts to meet those state standards. *Campbell IV*, 2008 WY 2, ¶¶ 14–15, 181 P.3d at 50–51; *Campbell II*, 2001 WY 19, ¶ 11, 19 P.3d at 529. However, the State's argument again ignores the critical holding of our *Campbell* cases that the funding model must be cost-based to avoid unconstitutional disparities. After the legislature defines the components of an adequate education, it is the role of the courts to evaluate whether the LM meets the requirements of equal protection by using the true cost basis of its components. *Campbell IV*, 2008 WY 2, ¶ 12, 181 P.3d at 49–50 (discussing *Campbell II*).[15]

[¶120] The district court thus correctly ruled that if Plaintiffs established disparities by proving the LM's funding of its components was not cost-based, strict scrutiny would apply to their claims. Because the court found Plaintiffs met this burden, and because the State made no effort to meet its burden under strict scrutiny, the court likewise correctly ruled in Plaintiffs' favor on their claims related to personnel salaries and ECAs.

D. Innovation – One-to-One Ratio of Students to Technological Devices

[¶121] The LM provided funding for technological devices at a ratio of three students to one device. During the COVID 19 pandemic each student needed a device for online school, and school districts used federal funds to purchase the extra devices. The district court ruled that Plaintiffs proved the LM "should include funding for one-to-one computer to student ratio" as a "substantive innovation" necessary to provide a quality education to Wyoming students.

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[15] We are cognizant of our statements in *Campbell IV* that "perfection is not required or expected," provided the legislature makes a "good faith effort to preserve and protect our constitution's commitment to a sound public education system[.]" 2008 WY 2, ¶ 79, 181 P.3d at 67. But again, that test is applied *after* we have determined the funding model passes constitutional muster by striving to estimate the true costs of each component of an adequate education. If the funding model includes the components of a quality education and allocates funding intended to cover the true costs of those components, we recognize that "good faith differences of opinion" can exist "among experts, district personnel, and WDE officials concerning the adequacy of the state's public school funding[.]" *Id.,* ¶ 78, 181 P.3d at 67.

[¶122] The State asserts the district court erred in ordering funding of one-to-one technology because the issue was not pled by Plaintiffs. It claims it did not have sufficient notice of the issue or an opportunity to establish that funding was not necessary. Although Plaintiffs admit they did not request funding for one-to-one technology in their complaints, they contend the issue was tried by consent and the State had ample notice.

[¶123] W.R.C.P. 15(b)(2) governs issues tried by consent:

> (2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

[¶124] Plaintiffs did not move to amend their complaints to add the one-to-one technology claim, and the district court did not rule on such an amendment. Instead, the court's ruling implicitly treated the complaints as if they had been amended to conform to the evidence at trial. We review decisions whether to conform pleadings under Rule 15(b)(2) for an abuse of discretion. *Gould v. Ochsner,* 2015 WY 101, ¶ 39, 354 P.3d 965, 977 (Wyo. 2015). Our inquiry asks whether the trial court could have reasonably concluded as it did. *Id.* (quoting *Lavitt v. Stephens,* 2015 WY 57, ¶ 13, 347 P.3d 514, 518 (Wyo. 2015)).

[¶125] As Rule 15(b)(2) makes clear, an express motion and ruling to amend the pleadings is not required. Under the rule, a new issue may be tried "by express or implied consent of the parties." *Gould*, 2015 WY 101, ¶ 41, 354 P.3d at 977 (citing *Johnson v. Sikorski,* 2004 WY 137, ¶ 15, 100 P.3d 420, 424 (Wyo. 2004)). There is no claim the parties expressly consented to add one-to-one technology as an issue for trial; so, the question is whether the record demonstrates the parties impliedly consented to the issue.

[¶126] Implied consent is more difficult to establish than express consent and depends "on whether the parties recognized that an issue not presented by the pleadings entered the case at trial. If they do not, there is no consent and the amendment cannot be allowed." *J Bar H, Inc. v. Johnson*, 822 P.2d 849, 856 (Wyo. 1991) (quoting 6A C. Wright, A. Miller and M. Kane, *Federal Practice and Procedure: Civil 2d* § 1493 at 19–20 (1990)). Consent to amend the complaint may be implied when a party "knowingly acquiesces in the introduction of evidence relating to issues that are beyond the pleadings[.]" *J Bar H, Inc.*, 822 P.2d at 856 (quoting Miller & Kane, *supra*). "Thus, consent generally is found when evidence is introduced without objection[.]" *Id.* However, "[a]lthough implied consent may generally be found when evidence relating to issues beyond the pleadings is introduced without objection, 'implied consent cannot be based on the introduction of evidence that is relevant to an issue already in the case where there is no indication that the party presenting the evidence intended to raise a new issue.'" *Gould*, 2015 WY 101, ¶ 42, 354 P.3d at 977 (quoting *Green Country Food Mkt., Inc. v. Bottling Grp., LLC*, 371 F.3d 1275, 1280 (10th Cir. 2004)).

[¶127] Plaintiffs lodged an overall complaint that the State failed to fund the components of an adequate education based on cost, which forced school districts to cut back on various educational needs, including, for example, textbooks, equipment, activities, and technology. These complaints focused on the legislature's alleged failure to provide appropriate ECAs and cost-based funding for salaries. As to their allegations that the LM was missing components, Plaintiffs specifically requested that elementary school counselors, school resource officers (SROs), and nutrition programs be added to the LM, but they did not request one-to-one technology.

[¶128] The trial evidence did include testimony concerning the school districts' difficulties in meeting their technology needs. However, this testimony was not in the context of innovations the legislature had rejected. Additionally, in ruling on the State's Rule 50 motion for judgment as a matter of law, the court stated, "[T]here's some evidence that the one-to-one computers is inappropriate (sic), and so I think there has been a factual showing that the adequacy of the education being provided to the public school students is not up to constitutional muster." Again, however, this statement was not made in the context of innovations that should be added to the LM.

[¶129] Plaintiffs argue the State itself raised the issue by introducing into evidence the 2020 recalibration report, which included a discussion of whether one-to-one technology should be funded in the LM. Notably, however, five recalibration reports were admitted into evidence, each containing hundreds of pages, and they discussed many aspects of school funding that were not specifically at issue. The fact that one of those reports included a discussion of the issue was not sufficient to alert the State that the separate issue of one-to-one technology as an innovation was being tried, or to infer its consent to trial of the issue.

[¶130] Plaintiffs also claim Dr. Seder's testimony raised the issue. Dr. Seder testified that relatively low ratios of pupils to teachers and technological devices to students demonstrated the quality of Wyoming's educational system and the adequacy of the funding under the LM. He acknowledged that, due to the COVID 19 pandemic, there was movement toward one-to-one student to technology ratios and suggested the legislature examine that in the next recalibration in 2025. Dr. Seder's statements referred to a future recalibration and did not place the State on notice that one-to-one technology funding as an innovation was at issue.

[¶131] Finally, during closing argument, counsel for Plaintiffs stated, "We've identified three things that we contend are missing." Counsel then listed and discussed the same three components they pled: elementary school counselors, school resource officers, and nutrition programs. And after trial, the parties submitted their proposed findings of fact and conclusions of law, and Plaintiffs again did not identify one-to-one technology as a requested innovation.

[¶132] On this record, we cannot find that the State was on notice that one-to-one technology as an innovation was an issue being tried or that it impliedly consented to trial of the issue. The district court thus abused its discretion by addressing the issue and ordering the funding.

E. Innovations – School Resource Officers and Nutrition Program/School Lunch

[¶133] The State does not fund school resource officers (SROs) or nutrition programs in the LM. The school districts that currently provide these programs fund them from their general funds, grants, and assistance from other agencies and the federal government. The district court reviewed the evidence, including testimony from district officials regarding the value of providing funding for the SRO and nutrition programs and concluded they would be beneficial to the school districts. In ruling the programs are innovations that the legislature must fund as LM components for all school districts, the court concluded that funding the innovations was necessary to ensure Wyoming provides an education that is "both visionary and unsurpassed" and the "best we can do." *Campbell II*, 2001 WY 19, ¶ 51, 19 P.3d at 538.

[¶134] The State claims the district court failed to adhere to our precedent that it is the legislature's responsibility to define an adequate education and how to deliver that education to students. It contends the court improperly decided educational policy based on the subjective opinions of school district officials. We largely agree with the State.

[¶135] Our statements that Wyoming education should be "visionary," "unsurpassed," and "the best it can be," do not mean that all innovations are entitled to statewide funding. We have emphasized that despite these aspirations, "the constitution imposes on the *legislature* the obligation to determine the kind of education Wyoming's children will be afforded." *Campbell IV*, 2008 WY 2, ¶ 15, 181 P.3d at 51. The role of the courts is to "protect against a failure of the state to fund a system capable of meeting state standards." *Id*. If the legislature's decision does not cross constitutional boundaries, courts have no role in making those decisions.

[¶136] In *Campbell II*, 2001 WY 19, ¶ 12, 19 P.3d at 529–30, we favorably described the process the legislature's consultant, MAP, used to determine the components of an adequate education and the means of delivering the components in the original MAP model. To determine the components of the system for delivering an adequate education, "MAP relied upon professional literature, advice from professional associations, effective practices in other states, the professional judgment of groups of expert Wyoming educators randomly selected from various sized schools and school districts, and its own professional judgment." *Id.*; *see also* Wyo. Stat. Ann. § 21–9–101(b) (general outline of an adequate education).

[¶137] We have also recognized that educational philosophy and needs change constantly, requiring the legislature to look forward and "provide an education system of a character which provides Wyoming students with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually." *Campbell I*, 907 P.2d at 1259. In other words, "[t]he definition of a proper education is not static and necessarily will change." *Id*. at 1274.

[¶138] Local enhancements and innovation play a role in identifying the shifting educational needs of Wyoming students. Local enhancements are provided by school districts through funding other than the foundation program guarantee. *Campbell I*, 907 P.2d at 1274. We have acknowledged local enhancements *may* "result in substantive innovations which should be available to all school districts as part of a proper education." *Id.* An "innovation" is something "new, modern, improved, advanced and original." *Campbell IV*, 2008 WY 2, ¶ 129, 181 P.3d at 82. If a local enhancement becomes a substantive innovation the legislature determines is a necessary part of an adequate education, "all students are entitled to the benefit of that change as part of a cost-based, state-financed proper education." *Campbell I*, 907 P.2d at 1274. "In the past, we have seen many 'innovations' by local schools such as advanced placement classes, international baccalaureate classes, and full day kindergarten," become "part of a proper statewide education."[16] *Campbell IV*, 2008 WY 2, ¶ 129, 181 P.3d at 82.

[¶139] In summary, our caselaw establishes: 1) the legislature is constitutionally required to define an adequate education, determine the resources necessary to deliver that education, and provide sufficient funding; 2) local districts are encouraged to innovate; 3) as educational needs evolve, the legislature must evaluate whether innovations developed by local school districts have become components necessary to meet state educational standards; and 4) if the legislature determines an innovation is necessary to an adequate education, it must fund the innovation on a statewide basis. [17]

[¶140] The State requests that we adopt an objective test for determining whether an innovation is necessary to an adequate education and therefore must be funded, and it requests that the district court's ruling on SROs and nutritional programs be reversed and

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[16] Wyo. Stat. Ann. §§ 21-22-106 and -107 (2025) allow school districts to apply for state grants to fund "programs providing innovation in or improvement to public education through the creation of new, different and improved educational opportunities in elementary or secondary schools."

[17] The State may, and likely should, develop a process for districts to propose innovations for statewide funding. *See generally Campbell IV*, 2008 WY 2, ¶¶ 114–17, 181 P.3d at 78–79 (discussing the process for addressing differences between a school district's proposed design of a school facility and the School Facilities Commission's guidelines).

remanded for consideration under its proposed test. The State further argues for a level of constitutional scrutiny that would justify a court mandating new model components, or innovations, only when objective evidence proves beyond a reasonable doubt that the absence of funding is violating students' constitutional rights.

[¶141] To repeat, our role is to "protect against a failure of the state to fund a system capable of meeting state standards," not to mandate educational components or standards. The process we described favorably in *Campbell II* would seem sufficient to guide the legislature through an objective evaluation of when a proposed innovation must be funded. *See Campbell II*, 2001 WY 19, ¶ 12, 19 P.3d at 529–30. Moreover, determining the appropriate level of constitutional scrutiny depends upon the showing of a constitutional injury and the nature of the right and injury.

[¶142] To establish constitutional injury, Plaintiffs were required to demonstrate the proposed innovations warranted statewide funding because they were objectively necessary to meet legislatively or constitutionally prescribed educational standards. *Campbell II*, 2001 WY 19, ¶ 12, 19 P.3d at 529–30; *see also Campbell IV*, 2008 WY 2, ¶ 13, 181 P.3d at 50. As we explain below, the record demonstrates that Plaintiffs failed to prove a constitutional impact from the State's failure to fund SROs and nutrition programs. We therefore decline to address what level of constitutional scrutiny would apply if the required showing had been made.[18]

[¶143] The district court found SROs and nutrition programs necessary to the constitutionally mandated quality of education based largely on discrepancies between what school districts were offering, the desires of the districts, and a balancing of policy choices. For the reasons stated above, we must evaluate Plaintiffs' evidence against the objective criteria described in *Campbell II*—"professional literature, advice from professional associations, effective practices in other states, the professional judgment of groups of expert Wyoming educators randomly selected from various sized schools and school districts, and its own professional judgment,"—to determine whether Plaintiffs have shown it is more likely than not that SROs and nutrition programs are: 1) essential to deliver the prescribed education program or meet state standards, *Campbell I*, 907 P.2d at 1259–64; *Campbell IV*, 2008 WY 2, ¶¶ 48, 104, 181 P.3d at 59–60, 73–74; and 2) necessary to sustain defined measures of education quality, *Campbell IV*, ¶ 76, 181 P.3d at 66 (citing *Campbell I*, 907 P.2d at 1279). Applying the correct criteria, we conclude the Plaintiffs' evidence of constitutional impact is insufficient and the district court's findings cannot stand.

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[18] We note Plaintiffs' allegations could have been more artfully drawn to clearly specify the constitutional impact being claimed from the failure to fund innovations, whether that was purely inadequacy of funding, inadequacy of the education being funded, or disparities in funding.

1. School Resource Officers

[¶144] The 2015 recalibration report stated 28 of 48 school districts were using SROs in some capacity and there were 54 total SROs in the state. The report also indicated several of the districts split costs for SROs with local law enforcement, but others funded them exclusively from district resources. Surveys indicated a vast majority of districts desired SROs in their schools. At the time of the 2015 recalibration, the Joint Interim Education Committee was studying the SRO topic, and other committees and organizations in the state had studied the need for, and means of funding, SROs.

[¶145] Although research showed "student achievement suffers when students feel unsafe at school," the recalibration report stated there was "minimal research to specifically tie [an] SRO program to improved student learning." The report also noted that a "comprehensive school safety and security program is multi-faceted" and includes "1) intervention, 2) training, and 3) facilities." Facility improvements were not addressed in the report as they were "largely covered through Wyoming's school capital construction program." Ultimately, Picus recommended "the state cautiously wait until moving on a strategy to cost share SROs in school districts[.]" It noted deploying officers was a function of local law enforcement and suggested the resources "should be provided and funded largely by those agencies." The legislature did not fund SROs in the 2015 recalibration.

[¶146] The legislature revisited the SRO issue in the 2020 recalibration. Picus reported that nationwide 24.4% of public schools employed full-time SROs, with high schools and schools with more than 1,000 students being more likely to have SROs. The report stated that research on the impact of SROs "on student outcomes [was] extremely limited." That research indicated the presence of SROs in schools led to greater reporting of less violent student crimes to law enforcement, which led to lower graduation rates. Thus, the study indicated SROs in schools have a "slight detrimental impact on student performance." The report noted there were problems with determining how to allocate and fund SROs across districts and schools within districts. In the end, Picus did not recommend SRO funding for schools. It again stated that if SROs were funded by the legislature, it should be through law enforcement agencies.

[¶147] The evidence does not show SROs are essential to deliver the prescribed education program, meet state standards, or sustain defined measures of education quality. Overall, the evidence shows SROs may have a slight detrimental impact on education. The record contains no outside expert analysis or reliable studies demonstrating the need to fund and/or the effectiveness of funding SROs as a component of the LM. With less than a quarter of schools nationally employing SROs, no evidence supports that funding them would align Wyoming with peer states. Finally, the legislature has taken other actions to increase security in schools. It has enacted laws allowing school personnel to carry concealed weapons in schools under certain circumstances, Wyo. Stat. Ann. § 6-8-105(f)–(j) (2025), and it has also funded building improvements to improve security in school facilities. The record does not establish that failure to fund SROs results in constitutional injury.

2. Nutrition Programs

[¶148] Nearly all Wyoming schools offer some level of meal service to students, including lunch and, in some cases, breakfast. The legislature does not, however, provide funding to school districts for nutrition programs. School districts instead fund student meals using United States Department of Agriculture (USDA) subsidies (including free and reduced meals for lower-income children and commodities), other budget resources, and the revenue generated by students with means to pay for their meals. The USDA recommends a meal price, but many districts do not charge that price because they believe it is cost-prohibitive for some students and would result in less participation in the program.

[¶149] The district court concluded the constitution requires the State to provide funding for nutrition programs based largely on witness testimony indicating that well-nourished students learn better than hungry students. The State does not dispute that students need to be well fed to learn; however, it asserts the legislature is not constitutionally obligated to fund school meals.

[¶150] The legislature considered whether to fund nutrition programs in the 2015 recalibration. Picus recommended against it, opining that the programs should be self-supporting. Picus also noted there was "little data on the elasticity of the demand for school meals" if the price of the meals increased.

[¶151] Considering the criteria our precedent establishes as relevant to statewide funding of an innovation, we note the legislature was not provided quantitative evidence that State funding of nutrition programs is essential to deliver the prescribed education program or meet state standards or necessary to sustain defined measures of education quality. The witness testimony established a known truth that children who are well fed are better learners; however, that is not objective evidence that the State must fund nutrition programs. There was no showing that statewide funding of nutrition programs was supported by expert analysis and reliable studies demonstrating the need and/or effectiveness of such a program or that peer states provide such funding. Moreover, information indicates that the nutrition programs can be funded through the USDA and fully paid meals from students who do not qualify for free or reduced-price meals. The record does not objectively demonstrate failure to fund a nutrition program results in constitutional injury.

II. School Facilities

[¶152] The legislature must ensure all Wyoming students are educated in "safe and efficient" buildings. *Campbell II*, 2001 WY 19, ¶ 134, 19 P.3d at 562. "The *Campbell II* and *III* decisions determined that a proper education could not be adequately delivered to children who attended schools that had long been denied adequate maintenance and construction funding." *Campbell IV*, 2008 WY 2, ¶ 95, 181 P.3d at 71. "[D]eficient physical facilities deprive students of an equal educational opportunity and any financing system that allows such deficient facilities to exist is unconstitutional." *Campbell I*, 907 P.2d at 1275. In *Campbell II*, we instructed the legislature to "fund the facilities deemed required by the state for the delivery of the 'full basket' to Wyoming students in all locations throughout the state[.]" 2001 WY 19, ¶ 2, 19 P.3d at 527.

[¶153] Plaintiffs alleged two failings regarding school facilities. One, they claimed the legislature failed to adequately fund school capital construction and maintenance needs. The district court ruled in Plaintiffs' favor on this issue, concluding that the legislature had not maintained a constitutionally compliant school facilities finance system because it had allowed unequal and inadequate school facilities to exist for too long. Although the State asserts that it disagrees, it has not appealed that aspect of the court's ruling.

[¶154] Plaintiffs' second alleged failing concerned the State's use of an administrative process instead of a statewide assessment to identify educational suitability issues in school buildings.[19] The district court also ruled in Plaintiffs' favor on this issue. It found the State's administrative process did not meet constitutional requirements because it placed the burden of identifying educational suitability concerns on individual school districts and did not provide specific criteria to guide the State Construction Department and School Facilities Commission in addressing a district's suitability concerns.

[¶155] The State agrees educational suitability must be considered in ascertaining school capital construction needs, but it contends its administrative process provides a constitutionally sufficient means to do so. It argues the district court violated our precedent by requiring a particular method of evaluating school buildings, that is, a statewide assessment. We agree with the State that the administrative process is an acceptable approach to identifying suitability concerns.

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[19] Educational suitability is defined in various, but consistent, ways. In *Campbell II*, we said educational suitability "identifies the degree to which a facility is suitable for the education program being offered." 2001 WY 19, ¶ 133 n.51, 19 P.3d at 562 n.51. Educational suitability depends on how a district uses, or would like to use, its space. Thus, a Wyoming team that had worked to develop a statewide assessment for suitability defined the phrase in greater detail as "how well the school facility supports the ability to deliver a quality educational program being cognitive of the district's delivery of those programs." Assessment for educational suitability can include site attributes, such as access, safety, and accessibility; building attributes, such as space to support educational programs, layout, and security; outfitting of fixtures and equipment, such as technological, kitchen, lab, and security equipment; and operations, such as temperature, environmental quality, and lighting.

[¶156] In accordance with our precedent, the legislature has enacted a statutory scheme to address school facility needs. Under current law, the School Facilities Commission (through the State Construction Department) evaluates buildings for condition and capacity and makes funding recommendations based upon those assessments. Wyo. Stat. Ann. § 21-15-117(a); SFC Rules Chap. 3, § 9 and Chap. 8, § 4 (2024). As we noted earlier, the same statute originally also required educational suitability assessments, but the legislature repealed that requirement in 2021.

[¶157] The Commission has since adopted an administrative process to address educational suitability of school facilities. SFC Rules, Chap. 3, § 8. Under that process, the initial burden is on a district to notify the Department of Construction "in writing and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming." *Id*. The Department then makes a recommendation to the Commission regarding each Chapter 3, section 8 report, and the Commission decides whether to move forward by ordering a most cost-effective remedy study. *Id*. Notably, Chapter 3, section 8 does not provide a time frame within which the Department or Commission must act, provide procedures for the Department or Commission to explain their conclusions or develop a factual record, or provide means for a school district to obtain review of the Department's recommendation or the Commission's decision on a district's reported concerns.[20]

[20] The Commission's rule reads:

> **Section 8. Adequacy of Educational Space for Required Programs.** Educational buildings shall provide adequate educational space. Educational space shall be deemed adequate if a district is able to provide the educational programs required by Wyoming Statute § 21-1-101. If a district board of trustees makes a finding that the district is unable to provide the required programs because its educational space is inadequate, the district superintendent shall immediately notify the Department in writing and provide a detailed report explaining how the current space is not adequate for the delivery of the required educational programming. The report shall include elements necessary to evaluate the impact that the identified deficiency poses to the provision of the required educational program, including but not limited to objective and measurable impacts on students and expected actions necessary to mitigate that impact such as aggregate student performance data, specific known deficits with respect to the Commission's Uniform Adequacy Standards, any known national standards relevant to the claimed deficiency, and any known comparables with school buildings and facilities located elsewhere in the district or State. In the event the Department receives such a report, it shall make recommendations to the Commission evaluating the deficiency and suggesting remedies to alleviate the situation. The Department may satisfy its obligation under this section by utilizing the Facility Condition Assessment of existing school buildings and facilities and the most recent school capacity information available to the Department in developing its

[¶158] We have not held that statewide assessment of buildings for educational suitability is required. In *Campbell II* and *Campbell III*, we approved the statewide assessments the State was then employing, but we clarified in *Campbell III* that future studies by the State "could utilize different methodologies to measure capital construction needs." 2001 WY 90, ¶ 15, 32 P.3d at 329. In *Campbell IV*, we reminded the legislature of its duty to provide school facilities that can deliver an adequate education but reiterated it "may utilize different methodologies to measure adequacy." 2008 WY 2, ¶¶ 103, 106, 181 P.3d at 73, 76. Thus, provided the State considers educational suitability in a manner that is anchored to the adequacy of school facilities and does not create inequality among school districts, it may choose its method of assessment.

[¶159] The district court recognized this but nonetheless concluded that the Chapter 3, section 8 process was constitutionally flawed because it placed too great a burden on school districts and lacked criteria to guide the decisions of the State Construction Department and the School Facilities Commission. It found the process overly burdensome because: 1) districts must assess their own facilities and bear that cost; 2) the school board must direct the district superintendent to notify the Department and prepare a detailed report explaining the inadequacy; and 3) the superintendent must submit that report to the Department.

[¶160] We disagree that Chapter 3, section 8, places an undue burden on school districts. School districts already have comprehensive facility plans. Wyo. Stat. Ann. § 21-15-116(a) provides:

> [L]ong range comprehensive school building and facility plans for each school district shall be developed by the department in coordination with the applicable district, which address district wide building and facility needs. The facility plan shall identify building and facility needs aligned with the statewide adequacy standards, actions to remediate building and facility needs including new construction, demolition as provided in this subsection, renovation, capital renewal and major building and facility repair and replacement expenditures, and any local enhancements to buildings and facilities beyond statewide adequacy standards.

> recommendation to the Commission. Based upon the district's report and the Department's recommendations, the Commission shall determine whether a remedy is necessary. If the Commission determines a remedy is necessary, it shall direct the Department to perform a most cost-effective remedy study in accordance with Chapter 8 § 5(b)(iii) of these Rules.

SFC Rules, Chap. 3, § 8.

[¶161] These long-range plans identify educational suitability needs by comparing how buildings align with "the statewide adequacy standards," which are also central to a Chapter 3, section 8 request. The adequacy standards, which are also set out in Chapter 3 of the Commission rules, address the "ability of the building to deliver the education program." *See also* Wyo. Stat. Ann. § 21-15-115(a) ("The Commission shall by rule and regulation establish and maintain uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.").[21] They outline requirements for safety, building sites, building performance, special needs students, building accessibility, instructional spaces in different levels of schools, infrastructure, fixtures, site security, and technology. SFC Rule Chap. 3. Educational suitability is, by definition, subjective because it depends on how a district plans to use its space to deliver an educational program. Moreover, as witnesses for both sides recognized, the needs or desires of districts on how to use individual spaces change over time and with different personnel. Individual school districts are aware of their educational needs and how their buildings are or are not meeting those needs based on their experience of using the buildings and their involvement in the long-range planning process, which specifically addresses suitability considerations. Chapter 3, section 8 allows districts to identify educational suitability concerns based on their specific needs, which seems appropriate given its inherently subjective nature. We thus find nothing unduly burdensome in the Chapter 3, section 8 reporting obligation.

[¶162] We likewise do not share the district court's concern that Chapter 3, section 8, lacks criteria to guide the State Construction Department or State Facilities Commission in their consideration of district requests. Under the rule, the Department and Commission must consider the specific attributes of the space a district claims to be unsuitable "for delivery of the required educational programming." They also must consider

> the impact that the identified deficiency poses on the provision of the educational program including but not limited to objective and measurable impacts on students and expected actions necessary to mitigate that impact such as aggregate student performance data, specific known deficits with respect to the Commission's Uniform Adequacy Standards, any known national standards relevant to the claimed deficiency, and any known comparables with school buildings and facilities located elsewhere in the district or State.

SFC Rule Chap. 3, § 8.

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[21] The district court and Plaintiffs characterize the Commission's adequacy standards as overly general. However, the Commission is required to review the standards every four years, and during such review, it seeks input from school districts. Wyo. Stat. Ann. § 21-15-115(c). Moreover, although Plaintiffs are critical of the standards, they are adopted through rule-making processes and, according to the State Construction Department director, there have never been any formal or informal challenges by a school district.

[¶163] For these reasons, we conclude Chapter 3, section 8's administrative process is generally acceptable. A caveat is that the process be used in an even-handed manner, but the record contains no indication that Chapter 3, section 8 has to date been applied otherwise.[22] *See Campbell II*, 2001 WY 19, ¶ 100, 19 P.3d at 553 ("[D]isparate treatment of schools based upon arbitrary standards cannot be justified.").

[¶164] In summary, we disagree with the district court's conclusion that statewide assessment of school buildings for educational suitability is required. Properly applied, an administrative process like Chapter 3, section 8 provides an adequate means of identifying and acting on educational suitability concerns.

CONCLUSION

[¶165] The district court correctly ruled that the legislature failed to maintain a constitutional system for financing public school operations because it did not fund teacher salaries or make inflation adjustments to the LM at levels approximating the true costs of education. The legislature's failure to ensure it was funding the cost basis of each component of the LM created disparity between school districts in a manner that violated equal protection and did not fulfill students' fundamental right to an adequate public school education.

[¶166] The district court erred by requiring the legislature to fund one-to-one technology, nutrition programs, and school resource officer programs. Plaintiffs did not properly plead one-to-one technology as an innovation, and it was not tried by consent under W.R.C.P. 15(b). Applying our precedent, the record does not demonstrate that the nutrition and school resource officer programs qualified as innovations that require statewide funding. Applying our precedent, the record does not demonstrate that the failure to fund nutrition and school resource officer programs resulted in constitutional injury.

[¶167] The district court also erred by ordering the State to conduct statewide assessment of school facilities for educational suitability. The administrative process adopted by the School Facilities Commission provides an acceptable means to identify and address concerns with the educational suitability of a school building.

[¶168] The district court retained jurisdiction over this case pending State compliance with its orders. Because we affirm in part and reverse in part the district court's decision, we take this opportunity to review the order retaining jurisdiction. In its briefing, the State

[22] At the time of the trial in 2024, school districts had submitted applications for six buildings to be assessed for suitability under the Chapter 3, § 8 process, including three high schools, one elementary school, and two bus barns. The School Facilities Commission referred five of the six buildings for most cost-effective remedy studies.

points to actions the legislature has taken to address the cost basis of the LM. As in *Campbell IV*, we assume the legislature will act in good faith to fulfill its constitutional obligations as outlined in this opinion and our prior precedent by making required changes to the LM and engaging in the statutorily mandated process for considering ECAs. Consequently, it is unnecessary for any court to retain jurisdiction over this matter. As in the past, if stakeholders believe the legislature has not enacted school funding laws that comply with constitutional and statutory dictates, we are certain they will bring legal action to obtain judicial review.

[¶169] Affirmed in part and reversed in part.

GRAY, Justice, concurring in part and dissenting in part, in which **EAMES, District Judge**, joins.

[¶170] In 1980, this Court struck down Wyoming's school finance system because it relied on local property taxes to fund public education, creating wealth-based funding disparities between the school districts. *See Washakie Cnty. Sch. Dist. No. One v. Herschler*, 606 P.2d 310, 315, 324, 328 n.19 (Wyo. 1980). Applying strict scrutiny because education is a fundamental right and wealth is a suspect class, we concluded that such wealth-based funding disparities violated equal protection. *Id.* at 315, 332–34. We did not dictate a solution to the legislature but required that the level of spending on public education be a function of the wealth of the state as a whole rather than the wealth of individual districts. *Id.* at 336. We also did not demand that each school district receive the exact same funding per pupil, as we recognized there will be funding differences based on the cost of education in each district (also referred to as cost differentials or simply education costs or costs). *Id.* at 315 n.3, 336.

[¶171] Fifteen years later, this Court reviewed the legislature's response to *Washakie*, which the challengers attacked as producing wealth-based and other funding disparities between school districts. *See Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1246–47 (Wyo. 1995) (*Campbell I*), *as clarified on denial of reh'g* (Dec. 6, 1995). We held the legislature's revised funding formula continued to create wealth-based disparity and strict scrutiny applied to all funding disparities, not just wealth-based funding disparities. *Id.* at 1247, 1249–54, 1266, 1268–70, 1275–78. We struck down those disparities not justified by cost differentials. *Id.* at 1249–54, 1268–70, 1276–78. We also required the legislature to identify the proper educational package to which each Wyoming student is entitled—commonly referred to as the "basket of goods and services"—determine its cost, and fund it adequately. *Id.* at 1279. We did not prescribe how the legislature must accomplish this, nor did we attempt to define the basket ourselves, other than to note several "aspects" of a proper education based on trial testimony. *Id.* (summarizing trial testimony that a quality education would include small schools, small class sizes, low student/teacher ratios, an integrated and uniform curriculum, ample provision for at-risk and special-needs students, meaningful standards, and timely assessment of student progress).

[¶172] The legislature did as instructed. Nonetheless, the school finance system continued to create funding disparities between the school districts. *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 19, ¶ 48, 19 P.3d 518, 537 (Wyo. 2001) (*Campbell II*), *on reh'g*, 2001 WY 90, 32 P.3d 325 (Wyo. 2001). In *Campbell II*, applying equal protection, this Court reviewed those disparities under strict scrutiny because education is a fundamental right. *Id.* ¶ 42, 19 P.3d at 535. If a component of the school finance system created a funding disparity not based on cost differentials, we declared that component unconstitutional and required the legislature to revise it to eliminate that disparity. *See, e.g.*, *id.* ¶¶ 68–70, 77, 80–81, 86, 95–98, 100, 19 P.3d at 543–44, 546–48, 551–53.

[¶173] The legislature again adjusted the school finance system and those efforts were challenged. In *Campbell IV*, we took the opportunity to clarify our prior cases and to further refine the parameters of judicial involvement in the legislative field of education policy and funding. We explicitly rejected the attempt to elevate an inadequate funding claim to the level of an unconstitutional disparity claim implicating equal protection. *Campbell Cnty. Sch. Dist. v. State*, 2008 WY 2, ¶¶ 11–15, 73–79, 181 P.3d 43, 49–51, 65–67 (Wyo. 2008) (*Campbell IV*). We held strict scrutiny applied to funding disparities and not to claims that the legislature's funding model fails to accurately reflect costs <u>or</u> to claims the legislature is not adequately funding public education. *Id.* ¶¶ 11, 13, 181 P.3d at 49–50. We emphasized that the central purpose of a cost-based funding model is to ensure the school finance system is devoid of wealth-based funding disparity. *Id.* ¶ 12, 181 P.3d at 49–50. We advised that "judicial involvement in the legislature's appropriation decisions [should be] an absolute last resort" and "[h]aving this Court function as an account overseer serves no purpose and inappropriately injects the judiciary into executive and legislative branch functions." *Id.* ¶¶ 92–93, 181 P.3d at 71.

[¶174] In sum, from *Washakie* through *Campbell II*, school-finance challenges have rested on allegations and evidence of funding disparities between school districts, and it is those disparities that invoked strict scrutiny. *Washakie*, 606 P.2d at 314, 328 n.19 (complaint and statistical evidence described financial disparity between districts); *Campbell I*, 907 P.2d at 1247, 1249–54, 1268–70, 1275–78 (challengers alleged and evidence showed legislative changes to school finance system had increased and exacerbated the disparity identified in *Washakie*); *Campbell II*, ¶ 48, 19 P.3d at 537 (MAP model resulted in funding disparities of similar magnitude as those created by the old wealth-based funding system). In *Campbell IV*, this Court expressly rejected the challengers' attempts to convince it to apply disparity analysis to claims of inadequacy, making clear that strict scrutiny is driven by wealth-based funding disparity. *Campbell IV*, ¶ 13, 181 P.3d at 50.

[¶175] Notwithstanding our school finance precedent, the Majority holds that strict scrutiny applies to Plaintiffs' claims of funding inadequacy and that the legislature's failure to fund the true costs of teacher salaries or to properly adjust for inflation through External Cost Adjustments (ECAs) violated students' rights to equal protection. It also suggests that unconstitutional disparity automatically exists if the legislature's funding model (LM) or its components do not accurately reflect true costs.

[¶176] The Majority determines the district court erred in requiring the legislature to include a technology device for every student (one-to-one technology), nutrition programs, and school resource officers (SROs) in the education basket and to fund them, but then goes on to require the legislature to consider certain criteria when determining whether a particular innovation must be offered and funded on a statewide basis. The Majority then pronounces that if the legislature decides not to fund an innovation statewide, the Court will review the legislature's decision against the very criteria the Majority establishes here.

[¶177] Finally, the Majority reverses the district court's order requiring a statewide assessment of school facilities for educational suitability and concluding the administrative process outlined in Chapter 3, section 8 of the School Facilities Commission Rules is constitutionally inadequate.

[¶178] I concur in part and dissent in part.

[¶179] I concur with the Majority that the district court erred in requiring the legislature to provide statewide funding for one-to-one technology, nutrition programs, and SROs; in requiring a statewide assessment of school facilities for educational suitability; and in finding the Chapter 3, section 8 process constitutionally unsound.

[¶180] I respectfully dissent in all other respects. In particular, I disagree with the Majority's application of strict scrutiny to Plaintiffs' claims the legislature is inadequately funding teacher salaries and failing to properly adjust for inflation; its suggestion that strict scrutiny applies and/or unconstitutional funding disparity automatically exists when a funding model or any of its components do not accurately reflect true costs; and its conclusion that the legislature violated students' rights to equal protection by failing to adequately fund the estimated true costs of teacher salaries and to properly adjust for the effects of inflation. I also disagree with the Majority's creation of a new test that requires the legislature to consider certain criteria when determining whether a particular innovation must be offered and funded on a statewide basis and its extension of that test to judicial review, essentially binding the Court to application of these new criteria when reviewing the legislature's policy decision not to fund an innovation. I would reverse the district court's decision in its entirety.

I. School Operations

[¶181] The district court determined Plaintiffs bore the initial burden of proving by a preponderance of the evidence that the legislature's actions caused harm to the fundamental right to education and/or created disparities in the education provided to Wyoming students. If Plaintiffs satisfied that burden, the district court ruled strict scrutiny would apply. After the bench trial, the district court found Plaintiffs had met their burden under the preponderance of the evidence standard. The court concluded, among other things, that

> Plaintiffs proved by a preponderance of the evidence that the State's actions and inactions of failing to properly adjust for inflation, failing to assure school district personnel salaries are funded based upon cost, [and] failing to maintain a cost-based funding model . . . have each caused harm to the fundamental right to education [and disparity in the education being provided to Wyoming's students].

Having found that Plaintiffs met their burden, the district court applied strict scrutiny, requiring the State to demonstrate its actions and inactions were necessary to achieve a compelling state interest and they were the least onerous means to achieve that interest. The district court found the State had failed to satisfy this test and declared the LM unconstitutional as it was no longer cost-based, its salaries were not a reasonably accurate estimate of the cost of personnel, and it had not properly accounted for inflation.

[¶182] The Majority holds the district court correctly applied strict scrutiny to Plaintiffs' school operations claims. It first reviews for clear error the district court's findings that (1) LM salaries have not reflected the true costs of personnel, namely, teachers, and (2) the legislature did not properly adjust for the effects of inflation through ECAs. It also claims to review for clear error the district court's finding that these legislative failures resulted in funding disparities between the school districts. The district court, however, made no such finding.[23] After determining the district court's factual findings are not clearly erroneous, the Majority holds strict scrutiny applies because the LM does not reflect the true costs of its various components. Because the State did not attempt to justify the "disparities" created by the legislature's failure to fund the true costs of teacher salaries or to properly adjust for inflation through ECAs under the strict scrutiny standard, the Majority concludes the legislature violated students' rights to equal protection. Most troubling, however, is that the Majority suggests **the failure of the LM and its components to accurately reflect costs automatically creates unconstitutional disparities in violation of equal protection without any showing of the disparity required by *Campbell I* and made clear in *Campbell IV***.

[¶183] I respectfully disagree that the legislature's funding of teacher salaries and adjustments for inflation violated students' equal protection rights. To explain my disagreement, I first address the Majority's application of strict scrutiny to Plaintiffs' claims and its suggestion that unconstitutional disparity exists if the LM or its components

[23] The Majority states: "The dissenting opinion takes issue with the district court's findings of disparity and constitutional harm, but it likewise does not adhere to our clearly erroneous standard of review." The district court did not find funding disparities between the school districts. It found the legislature's actions resulted in "disparities in the education being provided to Wyoming students." With respect to school operations, this finding rested solely on the testimony of Teresa Chaulk, the Superintendent of Lincoln County School District #1 (Lincoln 1). She described "inequities" between large school districts and Lincoln 1 at the secondary level arising from the requirement that Lincoln 1 offer the full basket of goods and services mandated by the Wyoming Department of Education—for example, providing a calculus class for only five students when larger districts might have 20–25 students. She also noted scheduling constraints, a more limited selection of electives, and difficulty offering advanced courses needed for the Hathaway college scholarship. The Majority does not rely on or review the district court's education-disparity finding and instead claims the district court found funding disparities between districts. Because the district court made no finding of funding disparity, there is nothing to review for clear error. I also note that Ms. Chaulk's testimony does not establish disparity in the education being provided to Wyoming students. It shows that Lincoln 1, like larger school districts, delivers the required basket of goods and services and, as the district court recognized, electives are outside the education basket.

do not accurately reflect costs. The application of strict scrutiny and the presumption of disparity are contrary to both our school finance precedent and to long-settled principles of equal protection, which require a plaintiff to prove actual funding disparity (or other unequal treatment of similarly situated persons) before strict scrutiny is triggered. Plaintiffs did not allege or establish any funding disparity. Second, I address the appropriate test when a plaintiff claims, as in this case, that the legislature is inadequately funding public education. Under that test, funding is inadequate only if it prevents school districts from providing their students a good or service included in the education basket, or if it causes a significant, systemic decline in students' ability to meet state standards. Finally, I apply both that test and the Majority's approach to the district court's factual findings. Those findings do not support a determination that the legislature's funding of teacher salaries and adjustments for inflation violate students' equal protection rights or are inadequate.

A. Strict Scrutiny Does Not Apply & Unconstitutional Disparity Is Not Presumed

[¶184] I disagree that strict scrutiny applies in this case and with any suggestion that per se unconstitutional disparity exists whenever the LM or any of its components fail to accurately reflect true costs. The Majority's analysis is contrary to our school finance precedent and settled principles of equal protection. A full explanation necessitates first revisiting our school finance precedent, beginning with *Washakie*.

1. Evolution of Our School Finance Precedent

a. *Washakie* (1980)

[¶185] The challenge in *Washakie* rested on per-pupil funding disparities between high-wealth and low-wealth school districts produced by reliance on local property taxes to fund education. *Washakie*, 606 P.2d at 323–24, 328–32 n.19. We struck down the system under the equal protection provisions of the Wyoming Constitution. *Id.* at 315. We held education is a fundamental right under the Wyoming Constitution. *Id.* at 315, 332–33. **Importantly, we did not apply strict scrutiny merely because education is a fundamental right.** *Id.* at 333–34. **Instead, strict scrutiny was triggered because the school finance system created funding disparities between the school districts based on "wealth or lack of it."** *Id.* at 334. Because wealth is a suspect class—particularly when it affects access to a fundamental right—we applied strict scrutiny. *Id.* at 332–34. ("When a fundamental interest is affected or if a classification is inherently suspect, then the classification must be subjected to strict scrutiny[.]"). We rejected the argument that funding disparities did not affect the quality of education and held "until equality of financing is achieved, there is no practicable method of achieving equality of quality." *Id.* We <u>did not</u> dictate a particular remedy to the legislature or suggest "that each school district receive exactly the same number of dollars per pupil as every other school district." *Id.* at 336–37. Indeed, we recognized that "[m]ore money may be needed in one school district to achieve quality education than in another because of, e.g., transportation costs, building maintenance costs, construction costs, logistic considerations, number of pupils with special problems, et cetera." *Id.* at 315 n.3. We simply "express[ed] the constitutional standard and h[e]ld that whatever system is adopted by the legislature, it must not create a level of spending which is a function of wealth other than the wealth of the state as a whole." *Id.* at 336 ("We do not purport to exhaustedly list the factors or methodology that should be employed. We only proscribe any system which makes the quality of a child's education a function of district wealth.").

b. *Campbell I* (1995)

[¶186] The legislature, in response to Washakie, created a school finance system that raised revenue through, among other mechanisms, an optional mill levy; distributed funds to the school districts according to a complex statutory formula; and included a revenue recapture provision requiring wealthy districts to rebate excess local revenue to the state for redistribution to the other school districts. *Campbell I*, 907 P.2d at 1246–49. In *Campbell I*, the challengers alleged and the evidence **showed the school finance system created wealth-based funding disparity and funding disparity not based on cost differentials between the school districts**. Id. at 1247, 1249–54, 1268–70, 1275–78. We applied strict scrutiny to the school finance system and declared the system unconstitutional. Id. at 1244, 1266–67. In doing so, we extended *Washakie* and held that all funding disparities created by the school finance system—whether or not based on wealth—were subject to strict scrutiny review. *Id*. at 1266 ("The triggering issue in *Washakie* was wealth-based disparities; however, we now extend that decision beyond a wealth-based disparity to other types of causes of disparities."). We made clear that **all funding disparities** other than those justified by educational cost-differentials were unconstitutional. *Id*. at 1269, 1276. We also interpreted Washakie as guaranteeing an equal opportunity for a quality education and **presumed funding disparities not justified by cost differentials** would result in disparate educational opportunity. *Id*. at 1263, 1276–77. We struck down the optional mill levy because the revenue it raised depended on local district wealth rather than the wealth of the state as a whole. *Id*. at 1270. We similarly found the statutory formula and recapture mechanism unconstitutional because they produced non-cost-based funding disparities. *Id*. at 1268–69, 1276–78. We directed the legislature to identify the "proper" educational package to which each Wyoming student was entitled, determine the cost to fund that package, and fund those costs. *Id*. at 1279.

c. *Campbell II* (February 2001)

[¶187] *Campbell II* likewise focused on demonstrated funding disparities resulting from a new legislatively created funding model. The legislature followed *Campbell I's* directive. It defined a "proper education," also referred to as the "basket of goods and services." *Campbell II*, ¶ 11, 19 P.3d at 529 (citing Wyo. Stat. Ann. § 21-9-101). It retained Management Analysis & Planning Associates, L.L.C. (MAP), a well-known consulting firm with expertise in public school finance, to assist in developing a school finance system to ensure each school district received enough money to fund the cost of the basket of goods and services to its students. *Id.* To determine costs, MAP used statewide averages of past district expenditures and professional judgment. *Id*. ¶ 47, 19 P.3d at 537. It then adjusted those costs to reflect regional differences in student populations and cost of living. *Id*. The legislature did not fund the MAP model but instead budgeted for fewer teachers and larger classroom sizes than recommended by the MAP model. *Id*. ¶¶ 14, 17, 19 P.3d at 530–31. "Surprisingly, . . . ***the [MAP] model . . . resulted in a similar magnitude of funding disparities as existed with the old wealth-based system***." *Id*. ¶ 48, 19 P.3d at 537 (emphasis added) ("Prior to the new legislation, schools experienced an $8,133 per student difference between the highest and lowest funded districts. Today, the same districts (Sheridan County School District No. 3 which is the highest district and Park County School District No. 6 which is the lowest district) experience even a larger disparity of $10,016.").

[¶188] In *Campbell II*, several school districts and the Wyoming Education Association (WEA) filed suit challenging the constitutionality of the legislature's actions. *Id.* ¶ 15, 19 P.3d at 530–31. **We decided strict scrutiny applied to the funding disparities created by the MAP model** "[b]ecause education is a fundamental right and our citizens are entitled to equal protection under our state constitution[.]" *Id.* ¶ 42, 19 P.3d at 535. We concluded "the cost-based model approach chosen by the legislature [was] capable of supporting a constitutional school finance system" and it was appropriate for the legislature to use past statewide average expenditures to estimate the cost of education. *Id.* ¶¶ 48, 50, 19 P.3d at 537–38. However, that conclusion did not

> logically foreclose a simultaneous conclusion that individual adjustments [to the model] resulted in unacceptable disparities in funding not based upon cost. The existence of acceptable disparities based upon costs in a constitutional system does not mean, as the state suggests, all disparities are then cost-based. While perhaps no longer dependent on wealth differences alone, disparities . . . due to political decisions or a failure to adequately measure differences in cost because of time constraints or gaps in the data . . . are no more acceptable than wealth differences.

Id. ¶ 43, 19 P.3d at 536. The Court then reviewed the individual components of the MAP model to determine **whether the funding disparities were justified by differences in the cost** of delivering the educational package the legislature itself had defined. *See, e.g.*, *id.* ¶¶ 68–70, 77, 80–81, 86, 95–98, 100, 19 P.3d at 543–44, 546–48, 551–53, 555. When a component was arbitrary or untethered from cost, the Court struck it down and required the legislature to revise it. *Id.*

[¶189] We also held that so long as the state chose to rely upon a cost-of-education model, the model needed to be reviewed in 2001 and every five years thereafter (recalibration) to assure it remains an accurate reflection of the cost of education. *Id.* ¶¶ 2, 66, 89, 19 P.3d at 526–27, 543, 549. Adjustment was required only where the evidence showed a need. *Id.* ¶ 66, 19 P.3d at 543 ("[*i*]*f, during the course of* [*recalibration*]*, evidence becomes available* which indicates class sizes should be adjusted in order to provide Wyoming children with the best education available, the legislature shall act accordingly" (emphasis added)); *see also id.* ¶¶ 2, 89, 19 P.3d at 526–27, 549. Separately, as long as the state relied on actual historic costs, we concluded the model must be adjusted for inflation or deflation at a minimum every two years. *Id.* ¶¶ 2, 67, 89, 19 P.3d at 526–27, 543, 549. But even on that point the Court tied the obligation to actual evidence and common sense. *Id.* ¶ 89, 19 P.3d at 549 ("Because the numbers contained within the model and codified in the statute are based on actual 1996–97 costs, an inflation adjustment is overdue. Four years have passed, and only a 1.3 percent adjustment has occurred which does not reflect the actual inflation during those four years. Based on the state's own evidence in this record and common sense, we cannot condone that result.").

d. *Campbell III* (October 2001)

[¶190] *Campbell III* addressed capital construction and arose from the state's petition for rehearing filed after *Campbell II*'s discussion of the constitutionality of the state's method of funding capital construction. *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 90, ¶ 2, 32 P.3d 325, 327 (Wyo. 2001) (*Campbell III*). We held that while capital construction is funded separately from school operations, "[i]t is a part of the total educational package and tarred with the same brush . . . ." *Washakie*, 606 P.2d at 337. Pertinent here, *Campbell III* stated the importance of adequately funding capital construction is to ensure "school districts' ability to deliver a constitutional education to the children of this state." *Campbell III*, ¶¶ 2, 10, 32 P.3d at 327–28 ("There is no serious dispute from any party that inadequate funding impedes school districts' ability to deliver a constitutional education to our children.").

e. *Campbell IV* (2008)

[¶191] In response to *Campbell II*, the legislature adjusted the MAP model to better reflect costs, corrected errors, and performed a recalibration of the model. *Campbell IV*, ¶¶ 17, 36, 47, 50, 52–53, 55, 68, 181 P.3d at 51, 56, 59–61, 64–65. In *Campbell IV*, we confronted claims that sought to shift the focus of constitutionality/equal protection from disparity to adequacy. We held that the state had largely complied with *Campbell II* and upheld the funding system, with one minor exception. *Id.* ¶ 4, 181 P.3d at 48. In doing so, we clarified and harmonized our prior precedent, and made explicit that strict scrutiny is limited to wealth-based funding disparities:

> Our school finance cases have unequivocally held that the

> Wyoming [C]onstitution establishes education as a fundamental right. Accordingly, Art. 1, § 34, which guarantees equal protection under the law, prohibits wealth-based disparities in education funding. *Sweetwater County Planning Committee for Organization of School Districts v. Hinkle*, 491 P.2d 1234, 1236–37 (Wyo. 1971); *Washakie*, 606 P.2d at 332; *Campbell I*, 907 P.2d at 1245; and *Campbell II*, ¶ 5, 19 P.3d at 528. However, we have consistently recognized that "exact or absolute equality is not required." Therefore, differences may exist in funding between school districts if those differences result from differences in the cost of providing education. *Washakie*, 606 P.2d at 336. ***Any state action resulting in a wealth-based disparity in public education funding will be subject to "strict scrutiny to determine if it is necessary to achieve a compelling state interest."*** *Id.* at 333. In addition, this test requires "the state [to] establish that there is no less onerous alternative by which its objective may be achieved." *Id.* (citing *Horton v. Meskill*, 172 Conn. 615, 376 A.2d 359 (1977)).

Id. ¶ 11, 181 P.3d at 49 (emphasis added). Lest there be any doubt, we reiterated later in the opinion:

> ***It should be remembered that the strict scrutiny test applies when differences in funding are wealth-based. If the difference in funding between districts is based upon what the state has determined a particular component should cost, and not on wealth, then an equal protection issue is not raised.*** We observe[d] that no one ha[d] suggested the differences in operation and maintenance funding between districts are not based upon the state's determination of what that component should cost. Consequently, applying the proper constitutional measure, one must conclude the differences in funding do not result in a denial of equal protection.

Id. ¶ 38, 181 P.3d at 56 (emphasis added).

[¶192] In addition to clarifying that strict scrutiny applies only when the school finance system causes wealth-based funding disparities, **we held strict scrutiny <u>does not</u> apply to the determination of whether the funding model and recalibrations of the model "*reflected costs as closely as could reasonably be expected*."** *Id.* ¶ 13, 181 P.3d at 50 (emphasis added). Rather, because the district court held a bench trial, "[w]e simply review[ed] the district court's factual findings using the clearly erroneous standard." *Id.* **We also expressly <u>rejected</u> the application of strict scrutiny to claims that the legislature has not adequately funded public education:**

> Some of the challengers seem to contend that strict scrutiny (used to determine if a classification denies equal protection of the law) should be applied to determine whether the modifications adopted by the state resulted in what the challengers deem to be inadequate funding for public education. ***This argument is not supported by any authority and misconstrues the strict scrutiny test.***

Id. (emphasis added). Finally, we cautioned that "judicial involvement in the legislature's appropriation decisions [should be] an absolute last resort" and "[h]aving this Court function as an account overseer serves no purpose and inappropriately injects the judiciary into executive and legislative branch functions." *Id.* ¶¶ 92–93, 181 P.3d at 71.

2. Analysis—Application of Strict Scrutiny & Presumption of Unconstitutional Disparity Contravenes Our School Finance Precedent and Equal Protection Principles

[¶193] Having reviewed our school finance precedent, I now apply it and equal protection principles to the case before us. Under *Campbell IV*, strict scrutiny applies only to funding disparities between school districts caused by local wealth, i.e., wealth-based disparity. *Campbell IV*, ¶¶ 11, 38, 181 P.3d at 49, 56. **As the Majority acknowledges, Plaintiffs are not claiming wealth-based disparity. Rather, they claim the legislature's failure to fund the true cost of teacher salaries and to properly adjust for inflation has left public education "underfunded," "inadequate[ly]" funded, and "derisory fund[ed]."** *Campbell IV* is clear—strict scrutiny does not apply to such claims. *Id.* ¶ 13, 181 P.3d at 50.

[¶194] The Majority recognizes that under *Campbell IV* strict scrutiny does not apply to inadequate funding claims. It also does not seriously dispute that Plaintiffs are alleging the legislature is inadequately funding the costs of education. Rather, relying on *Campbell I*, *Campbell II*, and purportedly on *Campbell IV*, the Majority takes the position that strict scrutiny applies when the legislature's funding model does not reflect the true costs of its various components.[24] It then goes further and suggests that when the legislature's funding model or any of its components do not accurately reflect true costs, the model automatically creates unconstitutional disparity. *Campbell I* and *Campbell II* do not support either proposition.

[24] I use the term purportedly because, as explained below, I believe the Majority misinterprets *Campbell IV*.

[¶195] In *Campbell I*, once the plaintiffs proved actual funding or spending disparities not justified by cost differentials, we presumed those disparities produced unequal educational opportunity and did not require the plaintiffs to separately prove educational harm. *Campbell I*, 907 P.2d at 1276–77 ("Where the evidence establishes funding and spending disparities unjustified by educational cost differentials, the challengers are not burdened with proving disparity of educational quality or educational opportunity; those disparities are presumed"; "*Washakie* presumes funding disparity results in educational opportunity disparity."). **We <u>did not</u> adopt the reverse presumption**—that a funding model which merely fails to accurately reflect costs automatically creates an unconstitutional funding disparity. The evidence in *Campbell I* showed the school finance system—which raised revenue in part through an optional mill levy and distributed that revenue to the school districts pursuant to a complex formula with a recapture feature—caused funding disparities between the school districts. *Id.* at 1247, 1249–54, 1268–70, 1275–78. *See also Campbell II*, ¶ 8, 19 P.3d at 528 ("[F]ailing to achieve a legislative solution to the *continued inequities in funding*, the school districts again came to this court [in *Campbell I*]." (emphasis added)). Consistent with equal protection principles, it was only after those disparities were shown—and because education is a fundamental right—that we applied strict scrutiny. *Campbell I*, 907 P.2d at 1276–77. Because we had expanded *Washakie* to prohibit all funding disparities except those based on costs, we examined the funding disparities to determine if they were justified by cost differentials. *Id.* at 1266, 1269, 1276. We concluded the finance system was unconstitutional because it created wealth-based funding disparity or funding disparity not based on costs. *Id.* at 1266, 1269, 1276–78.

[¶196] In *Campbell II*, the MAP model resulted in funding disparities between the school districts. *Campbell II*, ¶ 48, 19 P.3d at 537. Applying equal protection, this Court determined strict scrutiny applied to those disparities because education is a fundamental right. *Id.* ¶ 42, 19 P.3d at 535. We then reviewed the individual components of the MAP model to determine **whether the funding disparities were justified by differences in the cost of** delivering the educational package the legislature itself had defined. *See, e.g.*, *id.* ¶¶ 68–70, 77, 80–81, 86, 95–98, 100, 19 P.3d at 543–44, 546–48, 551–53. When a component was arbitrary or untethered from cost, we struck it down. *Id.* Critically, we did not hold that every imperfect estimate of cost automatically creates an unconstitutional funding disparity, or that the failure of a model to capture true costs is itself a constitutional violation independent of any showing of disparity. Our review correctly began with demonstrated funding disparity and struck down only those components of the school finance system which created funding disparity not based on costs. Illustrative of that point, when addressing the statutory seniority adjustment for teacher salaries, we agreed with the school districts that the adjustment did not reflect the actual cost for the district. *Id.* ¶ 31, 19 P.3d at 533. We, nevertheless, found no constitutional violation because "the trial court concluded that every district was treated the same and subjected to the same fiscal controls." *Id.*

[¶197] In both *Campbell I* and *Campbell II*, the challengers alleged—and the evidence established—funding disparities between the school districts. **Because those proven funding disparities implicated a fundamental right, we applied strict scrutiny.** We then reviewed each component of the finance system to determine whether funding disparities between districts were caused by something other than cost differentials, as we had extended *Washakie* to hold any funding disparity not based on cost was unconstitutional. In this case, Plaintiffs did not allege or prove funding disparity.[25] Despite the Majority's claim to the contrary, the district court made no finding of funding disparity. There is, in fact, no funding disparities between the school districts from any cause. As explained more fully below, the LM's teacher base salary and teacher weighted salary, which Plaintiffs challenge as not accurately reflecting costs, are the same for all districts, and the legislature's adjustments/non-adjustments for inflation applied to all the districts. Simply put, without a funding disparity, neither *Campbell I* nor *Campbell II* supply a basis for applying strict scrutiny or for examining whether a nonexistent disparity is based on costs.

[¶198] The notion that a funding model which does not accurately reflect true costs creates per se funding disparities defies logic, as demonstrated by the facts of this case. According to the district court and the Majority, the legislature failed to fund the actual costs/true costs of teacher salaries and to properly account for the effects of inflation on those costs. Under the Majority's reasoning, these failures should result in funding disparities between the school districts. Yet, as explained above, the district court never found that these failures caused funding disparities among the districts, and the evidence shows none existed. *See also supra* n.23. The legislature's alleged failure to fund the actual costs/true costs of teacher salaries and to properly adjust for inflation applied equally to every school district.

[¶199] The same flaw undermines the Majority's equal protection analysis. The Majority suggests equal protection requires application of strict scrutiny because education is a fundamental right. It then declares that because "[t]he State makes no effort to justify the disparities created by the failure to maintain a cost-based funding model under [the strict scrutiny] standard,"[26] the legislature's funding of teacher salaries and its adjustments for inflation violate students' rights to equal protection. The Majority is correct that strict scrutiny applies when a plaintiff alleges an equal protection violation involving a suspect class or a fundamental right. *Hicks v. State*, 2025 WY 113, ¶ 137, 578 P.3d 366, 400 (Wyo. 2025) (citing *Hardison v. State*, 2022 WY 45, ¶ 6, 507 P.3d 36, 39 (Wyo. 2022)). But

[25] The only "funding disparity" Plaintiffs alleged was the difference between LM salaries and the actual cost of personnel which districts must pay to attract and retain employees. This is not a funding disparity between school districts that triggers strict scrutiny to protect the right to equal protection. It is simply an inadequate funding claim that applies to all students. The Majority likewise suggests that because some school districts left teacher positions vacant and redirected those funds to supplement LM salaries, "[t]hose decisions will have greater impacts on some districts than others." That observation, too, describes an alleged inadequacy in the funding of teacher salaries, not a funding disparity between districts.

[26] The State understandably made no effort to justify nonexistent funding disparities between districts.

before any level of scrutiny is selected, a plaintiff must "**[*a*]*s a threshold matter, . . . identify a legislative classification* [*or government action*] *and show that classification* [*or action*] *treats similarly situated persons unequally. If not, there is no equal protection violation, and the claim must be dismissed.***" *Hicks*, ¶ 138, 578 P.3d at 400 (emphasis added) (citations omitted). The Majority assumes disparity from the allegation that the LM is not cost-based, thereby turning equal protection analysis on its head and relieving Plaintiffs from this threshold burden. Plaintiffs neither showed nor can show that the legislature is funding school districts unequally—the LM's teacher base salary and weighted salary are identical for every district, and the inflation adjustments (or non-adjustments) applied uniformly to all the districts.[27] There is no equal protection violation.

[¶200] Even assuming, arguendo, that *Campbell I* and *Campbell II* could be read to support the Majority's application of strict scrutiny to Plaintiffs' claims or its contention that a funding model (or its components) which fails to reflect true costs creates a per se unconstitutional funding disparity, the Majority disregards the important clarifications and limitations established in *Campbell IV*. *Campbell IV* did not expressly overrule *Campbell I* and *Campbell II*. *Campbell IV*, however, made clear that the central purpose of a cost-based school finance system is to **prevent wealth-based and non-cost-differential funding disparities**, not to constitutionalize every cost-estimation dispute or to guarantee a specific level of funding for every component of the education basket. *Campbell IV*, ¶ 12, 181 P.3d at 49–50 ("If the state complied with that mandate by revising those components to better reflect true costs and conducting the recalibration appropriately, the system of funding school operations would be considered devoid of wealth-based disparities, to adequately provide the education the state required, and thus, be constitutional.").

[¶201] The opposite, however, is not true. The mere fact that a school finance system does not precisely reflect the costs of education does not per se create wealth-based or non-cost-based disparity or invoke strict scrutiny. Rather, wealth-based or non-cost-based disparity must be shown. *See Campbell IV*, ¶ 38, 181 P.3d at 56 ("It should be remembered that the strict scrutiny test applies *when differences in funding* are wealth-based. *If the difference in funding* between districts is based upon what the state has determined a particular component should cost, and not on wealth, then an equal protection issue is not raised."

[27] Richard Seder, Ph.D., the State's consultant in school finance, testified the disparities in the education being provided between school districts were due to the significant discretion given to school districts in how they spend their LM funding. Dr. Seder is the same Mr. Seder whom the *Campbell IV* district court found to be credible, stating, "No other witnesses who presented testimony in the trial ha[ve] displayed Seder's over-arching ability in this field." *Campbell IV*, ¶ 28, 181 P.3d at 54. Here, the district court gave Dr. Seder's opinion "very little weight" because he "has not been inside a Wyoming public school for over ten years," he has never taught K–12 students, and he has never worked as a public school administrator. The same, of course, can be said of the district court and this Court. In any event, Dr. Seder was speaking to the cause of disparities in the education being provided to Wyoming students, not to the cause of any funding disparities. As stated above, there was no evidence of funding disparities.

(emphasis added)); *Washakie*, 606 P.2d at 324 ("Even superficial reflection upon the system outlined above [which relied primarily on local property taxes to fund public education] reveals that it will inherently create disparity. Nonetheless, that disparity must be demonstrated."). *See also Campbell II*, ¶ 45, 19 P.3d at 536 ("The [school finance system] is not entitled to a presumption of constitutionality and withstands the test of strict scrutiny only if, *when a disparity in funding is proven*, [the State] can prove that a compelling state interest justifies the disparity and the methods chosen to protect that state interest result in the least possible limitation upon the constitutional right in question." (emphasis added)). Plaintiffs have neither alleged nor demonstrated that the legislature's operational funding decisions produced any wealth-based or non-cost-differential disparity among school districts, or any type of funding disparity whatsoever.

[¶202] The Majority claims *Campbell IV* is distinguishable from this case based on its different procedural posture. It contends that in *Campbell IV*, we recognized the funding model is "critical" and that each component must accurately reflect costs and that is why the Court in *Campbell II* ordered the State to revise its model to more accurately reflect costs. According to the Majority, the question in *Campbell IV* was simply whether the legislature had followed our express instructions to refine the funding model. Because the district court in *Campbell IV* found the legislature had, for the most part, refined the model to more accurately reflect costs and the legislative funding model had not created disparities between school districts, strict scrutiny did not apply. As a result, this Court reviewed the district court's factual findings for clear error. In contrast, the Majority asserts that in this case the district court found Plaintiffs had proved that the LM was not cost-based and that disparities in funding between school districts had resulted. The Majority then concludes "[t]he question in this case is like that in *Campbell II*—whether the LM reflects the cost basis of the components the legislature has identified as essential to provide an adequate education to Wyoming public school children." According to the Majority:

> Under the critical holdings of *Campbell II*, if the LM does not employ a means of accurately estimating the costs of each component, it is not free from disparity and given the fundamental right to education and the constitutional promise of equal protection, it had to be judged by the highest level of constitutional review—strict scrutiny.

[¶203] The differing procedural postures are immaterial to *Campbell IV*'s holding—strict scrutiny applies only to funding disparities and does not apply to claims the legislature has not adequately funded the costs of education. Again, Plaintiffs did not allege or prove, and the district court did not find, any funding disparities.

[¶204] More fundamentally, the Majority misreads *Campbell II* and improperly puts "the cart before the horse." *Campbell II* began with demonstrated funding disparities between the school districts. Because those disparities existed and education is a fundamental right, the Court held strict scrutiny applied. Only then did it examine the individual components of the MAP model to determine whether the funding disparities the components produced were justified by the costs of delivering the educational package as defined by the legislature. If a component's disparity was not cost-justified, it was struck down. *Campbell II* did not, as the Majority does here, first ask whether the legislature's funding model accurately estimated the cost of each component and if not, from that alone, conclude strict scrutiny applied. Nor did it decide any imperfect cost estimate automatically created an unconstitutional disparity. The existence of a disparity was the necessary predicate; cost justification was the measure of whether that disparity could stand.

[¶205] Finally, the Majority attempts to avoid *Campbell IV*'s holding that strict scrutiny applies only to wealth-based funding disparities by claiming "wealth-based disparity" as used in *Campbell IV* refers to any and all types of non-cost-based disparities. The Majority's attempt to broaden the term wealth-based disparity beyond its clear meaning cannot be reconciled with the language or the citations in *Campbell IV*.[28] In any event, there is no funding disparity in this case from any cause. Which brings us full circle—Plaintiffs never alleged the legislature's funding of teacher salaries and adjustments for inflation created funding disparities between the school districts. Their claim has always been that the legislature is not adequately funding public education, in particular teacher

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[28] The Majority explains:

> [*Campbell IV*]'s use of the term "wealth-based disparity" likely is a holdover from earlier cases where local funding was the source of the disparities between districts. In the context of the *Campbell* cases, however, the term meant something different because the disparities resulted from other causes. The term itself is of limited usefulness because, as the *Campbell* cases make clear, any disparities in funding between school districts that are not based on differences in the cost of education, must be justified under strict scrutiny. *See, e.g.*, *Campbell II*, 2001 WY 19, ¶ 43, 19 P.3d at 536 (holding that disparities "due to political decisions or a failure to adequately measure differences in cost because of time constraints or gaps in the data . . . are no more acceptable than wealth differences").

Campbell IV's use of "wealth-based disparity" meant funding disparities caused by reliance on local property taxes (i.e., local wealth) to fund public education. When holding that equal protection "prohibits wealth-based disparities in education funding," *Campbell IV* cited *Sweetwater Cnty. Plan. Comm. for Org. of Sch. Dists. v. Hinkle*, 491 P.2d 1234, 1236–37 (Wyo. 1971), and *Washakie*, 606 P.2d at 332, both which addressed funding disparities between school districts caused by reliance on local property taxes to fund education. *Campbell IV*, ¶ 11, 181 P.3d at 49. It also cited *Campbell I*'s and *Campbell II*'s discussions of *Washakie* and/or *Hinkle*. *Campbell IV*, ¶ 11, 181 P.3d at 49 (citing *Campbell I*, 907 P.2d at 1245 and *Campbell II*, ¶ 5, 19 P.3d at 528). It was the proven existence of funding disparities based on local wealth in *Washakie* that triggered strict scrutiny. While *Campbell I* and *Campbell II* expanded the prohibition to all proven funding disparities not justified by cost, *Campbell IV* returned the decisive constitutional trigger to the evil *Washakie* identified—wealth-based disparity. *Campbell IV*, ¶¶ 11, 13, 38, 181 P.3d at 49–50, 56.

salaries and the costs of inflation. *Campbell IV* could not be more clear: **strict scrutiny does not apply to inadequate funding claims**. *Id.* ¶ 13, 181 P.3d at 50.

[¶206] In sum, while the *Campbell* decisions undoubtedly reflect a long and complicated history, they do not alter the well-established principles of equal protection or strict scrutiny. *Campbell IV* undertook to clarify that strict scrutiny applies only to claims of funding disparities between the school districts; whereas claims of inadequate funding, that apply equally to all school districts, are outside equal protection guarantees and therefore outside any sort of strict scrutiny analysis. It also reminded us that this Court is not, and cannot be, the permanent auditor of the school-finance system—"[h]aving this Court function as an accounting overseer serves no purpose and inappropriately injects the judiciary into executive and legislative branch functions." *Campbell IV*, ¶¶ 92–93, 181 P.3d at 71. The Majority resurrects the confusion, stitches together fragments of *Campbell I* and *Campbell II*, and animates them with a reading those decisions cannot sustain. Strict scrutiny does not apply and there is no presumption of unconstitutional disparity in the case at hand.

B. The Applicable Standard of Review

[¶207] We have recently confirmed what has long been true—strict scrutiny does not necessarily apply simply because a fundamental right is involved. *Degenfelder v. Wyo. Educ. Ass'n*, 2026 WY 54, ¶ 40, 589 P.3d 346, 357 (Wyo. 2026) ("[W]e have declined to apply strict scrutiny to every legislative measure that may affect education." (citing *Campbell IV*, ¶ 13, 181 P.3d at 50)); *State v. Johnson*, 2026 WY 1, ¶ 14, 582 P.3d 380, 390 (Wyo. 2026) ("When a statute impacts a fundamental right, we carefully assess the nature of the right considering the express constitutional language from which it is derived to determine whether strict scrutiny or some other test for constitutionality should apply."); *Washakie*, 606 P.2d at 333 (applying strict scrutiny because the school finance system created classifications based on wealth, which is considered suspect when applied to fundamental interests like education). The constitutional test may be contained in the constitution or derived from case law. *See, e.g.*, *Johnson*, ¶ 54, 582 P.3d at 400–01 ("There are instances, however, when we do not apply strict scrutiny to statutes which purportedly infringe on fundamental constitutional rights because the express language of the constitution suggests a more appropriate test."); *Boyer v. State*, 2025 WY 93, ¶ 12, 574 P.3d 161, 165 (Wyo. 2025) (stating "the standard governing our analysis under article 1, section 4 of the Wyoming Constitution is whether the traffic stop is 'reasonable under all of the circumstances'" (quoting *O'Boyle v. State*, 2005 WY 83, ¶¶ 30–31, 49, 117 P.3d 401, 410, 415 (Wyo. 2005))); *Cotney v. State*, 2022 WY 17, ¶ 19, 503 P.3d 58, 66 (Wyo. 2022) (applying the four-factor test established by *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182 33 L.Ed.2d 101 (1972), to decide whether an accused's fundamental right to a speedy trial was violated). As explained above, because our school finance and equal protection precedent tell us strict scrutiny does not apply in this case, we must determine the standard of review applicable when a plaintiff claims the legislature is inadequately funding public education.[29] The answer is found in *Campbell IV*.

[¶208] In *Campbell IV*, we stated the judiciary's role in school finance cases is to "protect against a failure of the state to fund a [public education] system ***capable of meeting state standards***." *Campbell IV*, ¶ 15, 181 P.3d at 51 (emphasis added). We also concluded that the determination of whether the state's capital construction system was constitutional "involves factual findings concerning whether the ***funding is adequate to allow school districts to provide the education deemed appropriate by the legislature*** . . . ." *Id.* ¶ 16, 181 P.3d at 51 (emphasis added). *See also Campbell III*, ¶¶ 2, 10, 32 P.3d at 327–28. In rejecting "an expenditure-based system in which the legislature must fund whatever the districts request," we stated:

> Since *Campbell I*, we have always recognized that the legislature must set the educational standards and provide an amount of funding equal to what it determines is necessary to meet those standards. Whether that funding is adequate has been measured by what other states have done in terms of salaries and other expenditures, and by other measures such as levels of teacher accreditation, class size, student test scores, and opinions of experts in the field.

Campbell IV, ¶ 75, 181 P.3d at 66. When recognizing there will always be some level of continuing conflict between the school districts and the state "concerning the adequacy of educational funding," we emphasized the legislature's role to determine a "proper" education and to fund it:

> In every school finance case, this Court has consistently recognized the constitutional directive that ***it is the legislature's duty and prerogative to determine the appropriate standards for our public schools and to assure sufficient funding is provided to allow the districts to achieve those standards***. ***While perfection is not required or expected, a good faith effort to preserve and protect our constitution's commitment to a sound public education is.***

Campbell IV, ¶¶ 76, 79, 181 P.3d at 66–67 (emphasis added).

[29] Courts in other jurisdictions, and even a former jurist on this Court, have concluded that education funding cases are non-justiciable under the separation of powers and political question doctrines. *See, e.g.*, *Shea v. State*, 510 P.3d 148, 155 (Nev. 2022); *Abbeville Cnty. Sch. Dist. v. State*, 767 S.E.2d 157, 185 (S.C. 2014) (Kittredge, J., dissenting); *Campbell III*, ¶¶ 68, 70, 32 P.3d at 344–45 (Voigt, J., dissenting). Our precedent has consistently rejected this view, most recently in *Campbell IV*. There, we held that "[c]ourts can, and should, protect against a failure of the state to fund a system capable of meeting state standards." *Campbell IV*, ¶ 15, 181 P.3d at 51.

[¶209] *Campbell IV* makes clear that the legislature must provide sufficient funding to enable school districts to deliver the education the legislature has deemed appropriate (the basket of goods and services) and to meet the state standards established by the Wyoming Department of Education. To be inadequate, the level of funding must prevent the school districts from providing their students a good or service in the education basket or cause a significant, systemic decline in students' ability to meet state standards, such as a substantial, systemic decline in graduation rates or test scores. In short, the level of funding must cause concrete harm to students, not to the school districts or to teachers. The adequacy of funding as it relates to the school districts' ability to provide their students with the education basket and to students' ability to meet state standards is a factual finding, reviewed for clear error after a bench trial. *Campbell IV*, ¶¶ 10, 13, 181 P.3d at 49–50.

C. Application of the Standard to Plaintiffs' Claims

[¶210] The district court did not apply the correct standard. It applied strict scrutiny. In doing so, it did not specifically find the legislature's funding of teacher salaries or its failure to properly adjust for inflation through ECAs prevented the school districts from delivering any particular good or service in the education basket or caused a significant, systemic decline in students' ability to meet state standards (such as a substantial, systemic decline in graduation rates or test scores). It did, however, make extensive factual findings and expressly determined that the legislature had failed to fund the actual costs of teacher salaries and to properly adjust for inflation and that these shortcomings caused harm to the fundamental right to education and created disparities in the education provided to Wyoming students. The Majority accepts the district court's findings. For purposes of this appeal, I, too, accept the district court's findings. Even accepting them as true, Plaintiffs failed to show the legislature's funding of public education, in particular teacher salaries and inflation, were inadequate. Before addressing that issue, I first address the district court's and Majority's determination that the legislature violated students' rights to equal protection by not funding the actual cost/true cost of teacher salaries and failing to properly adjust for inflation.

1. Teacher Salaries and ECAs—the Majority Approach

[¶211] The Majority concludes that the district court did not clearly err in determining the legislature's funding of teacher salaries did not accurately reflect the true costs of recruiting and retaining teachers. In reaching this conclusion, the Majority, like the district court, relies on evidence in the record showing that the legislature's funding of teacher salaries is lower than (1) the actual salaries paid by the school districts, (2) the average teacher salaries nationwide and in surrounding states, and (3) the salaries paid to workers in comparable occupations. It also relies on evidence the legislature did not meaningfully increase teacher salaries from 2010 to 2022 despite experts warning about the declining competitiveness of Wyoming teacher salaries nationally and regionally, evidence showing a drop in the number of University of Wyoming students pursuing education degrees, a 2023 task force recommendation to raise salaries, and anecdotal testimony from district witnesses about recruitment and retention difficulties. Applying strict scrutiny and finding the State failed to justify the "disparities" caused by the failure to maintain a cost-based funding model, in particular, the failure to fund teacher salaries at cost, the Majority upholds the district court's determination that the legislature's funding of teacher salaries is unconstitutional.

[¶212] With respect to ECAs, the Majority concludes the district court did not clearly err when it found the legislature failed to properly adjust the LM for inflation between recalibrations and this failure caused the LM to not be cost-based and resulted in unconstitutional disparities. While acknowledging that the legislature's use of a monitoring process is not necessarily improper and that some years may require no ECA, the Majority holds that the legislature must start with a cost-based LM and then use appropriate tools to decide whether an adjustment is required. It finds the legislature failed to do so and instead improperly determined no ECA was required when overall LM funding exceeded the cost estimates of the Lawrence O. Picus & Associates (Picus) evidence-based model (EB model). Ultimately, the Majority concludes that the legislature's post-2010 approach—when it perceived that the LM was overfunding education—does not reflect the disciplined, cost-based approach to funding required by our precedent or by Wyo. Stat. Ann. § 21-13-309(o).

[¶213] There are several problems with this analysis.

[¶214] First, both the Majority and the district court treat the failure of individual components of the LM to reflect actual costs/true costs as itself unconstitutional, without any showing of disparity, let alone wealth-based disparity. As explained above, while they differed on what types of funding disparities were unconstitutional, *Campbell I*, *Campbell II*, and *Campbell IV* make clear that the importance of having a funding model which reflects the costs of each component is **to ensure the system is free of funding disparities other than those based on cost-differentials**. In other words, the constitutional goal is the elimination of non-cost-based funding disparities (namely, wealth-based disparity) between the school districts. A cost-based model is the tool to achieve that end, but not the end itself. Funding disparity must be shown.

[¶215] Plaintiffs did not allege funding disparity from any cause, nor did they or could they show such disparity. The district court found, and the evidence shows, that during the 2005 recalibration, the actual teacher salaries being paid by Wyoming school districts were incorporated into the LM, which resulted in an approximate $10,000 per year increase in LM teacher salaries. The LM salaries also reflected a 2005 legislative appropriation of $25 million in bonuses for all school district personnel. Teacher salaries were not reset during the 2010 recalibration. At that time, the legislature stopped relying on a particular index (such as the Wyoming Cost of Living Index (WCLI)) to account for the effects of inflation and instead began using a monitoring process based on expert reports regarding "cost pressures." It also began comparing LM funding to cost estimates in the EB model. Because the LM's funding exceeded the EB model's cost estimates by approximately $76 million in 2010–2011, the legislature's consultant concluded the LM could remain adequate and cost-based without additional ECAs in the near term. Although it could have reduced funding in the 2010 recalibration to account for this overfunding, the legislature chose to hold funding constant rather than reduce it, allowing inflationary pressures on the costs estimated by the EB model to gradually converge with the LM over time. That choice is consistent with our recognition that the model must be recalibrated and account for inflation or deflation and that the legislature retains discretion in how to make the necessary adjustments. *See Campbell II*, ¶¶ 2, 66–67, 89, 19 P.3d at 526–27, 543, 549; *Campbell IV*, ¶ 69, 181 P.3d at 65. Between the 2010 and 2015 recalibrations, the LM exceeded the funding recommended by the EB model by over $371 million. The legislature enacted no ECAs for teacher salaries except in school year 2014–15. Between the 2015 and 2020 recalibrations, the legislature provided ECAs in all but two years (2017–18 and 2018–19), even though the LM still exceeded the EB model by over $137 million. It was not until 2018–19 that LM funding fell below the EB model—and then by $1.3 million, a fraction of the $1.485 billion in total LM funding. During the 2020 recalibration, teacher salaries were not reset. The legislature did, however, enact an ECA for teacher salaries in 2021–22. Although no ECA was provided in 2022–23, one was enacted for 2023–24 to address the prior year's inflation. The above legislative funding decisions regarding teacher salaries and ECAs did not cause funding disparity between the school districts because they applied equally to every school district.

[¶216] Second, the district court and the Majority conclude the legislature failed to fund the actual cost/true cost of teacher salaries. Yet, neither defines those terms or supplies a figure for the actual cost or true cost of teacher salaries. They simply compare LM salaries to what districts pay, to regional and national averages, and to other professions, and then credit anecdotal hiring and retention difficulties. The fact that the LM salaries are lower than the actual salaries paid by school districts is not dispositive. We have explicitly rejected "an expenditure-based system in which the legislature must fund whatever the districts request." *Campbell IV*, ¶ 75, 181 P.3d at 66. Contrary to the Majority's position, *Campbell II* and *Campbell IV* do not support looking to what other national and regional states pay their teachers or to the salaries of comparable professionals in deciding whether LM teacher salaries accurately reflect costs. Neither *Campbell II* nor *Campbell IV* looks to what employees in comparable professions are paid. *Campbell IV*, ¶ 75, 181 P.3d at 66; *Campbell II*, ¶ 66, 19 P.3d at 543. *Campbell IV* referred to "what other states have done in terms of salaries and other expenditures" in determining whether the legislature's funding is adequate, not whether it represents costs. *Campbell IV*, ¶ 75, 181 P.3d at 66. *See also id.* ¶ 21, 181 P.3d at 52 (noting that the average teacher salary upheld in *Campbell II* ranked Wyoming 42nd nationally, that the ranking had improved to 36th by 2002–03, and that salaries had increased 24.6% over three years; the Court treated those efforts, among others, as supporting the adequacy of the system). While *Campbell II* addressed "the aggressive recruitment of Wyoming teachers by other states offering considerably higher salaries and benefits," it did so to support its requirement that the funding model be recalibrated every five years, not to determine whether the legislature's funding of teacher salaries accurately reflected costs. *Campbell II*, ¶ 66, 19 P.3d at 543.

[¶217] Crucially, neither the district court nor the Majority determines whether the comparators themselves reflect the cost of delivering the educational package the legislature has defined. Nor do they attempt to establish a correlation—let alone causation—between the LM salary figures and the retention and recruitment challenges the districts described, as opposed to the well-documented national and state teacher shortages.

[¶218] Third, the Majority acknowledges that this Court does not require or expect "perfection" but only "a good faith effort to preserve and protect our constitution's commitment to a sound public education system[.]" *Campbell IV*, ¶ 79, 181 P.3d at 67. It claims, however, that test applies only "*after* we have determined the funding model passes constitutional muster by striving to estimate the true costs of each component of an adequate education." The Majority takes this *Campbell IV* language out of context. In *Campbell IV*, the school districts argued that the funds they received were inadequate and that they were entitled to whatever amounts they chose to spend to meet state standards. *Campbell IV*, ¶ 74, 181 P.3d at 66. We rejected "an expenditure-based system in which the legislature must fund whatever the districts request." *Id.* ¶ 75, 181 P.3d at 66. We further made clear that we do not expect perfection from the legislature when it sets educational standards and provides funding to meet them. *Id.* ¶ 79, 181 P.3d at 67. Critically, *Campbell IV* was speaking to adequacy, not costs.

[¶219] With respect to "costs," the question is whether "the state's chosen method of funding represent[s], as close as ***reasonably*** possible, the cost of education." *Campbell IV*, ¶ 31, 181 P.3d at 55 (emphasis added). In deciding that question, however, we must be cognizant that the *Campbell* decisions do not give the judiciary the authority to define costs. Indeed, it is ill-equipped to do so. Instead, the *Campbell* cases recognize that the task lies with the legislature, which may rely on professionally developed estimates and proxies. *Campbell IV*, ¶ 18, 181 P.3d at 52 (*Campbell II* "did not dictate any particular recalibration process"); *id.* ¶ 31, 181 P.3d at 55 ("This Court did not [in *Campbell II*] and should not dictate the method the state must use to determine the cost of education."); *Campbell II*, ¶ 48, 19 P.3d at 537 ("However, we cannot say reliance on professionally developed estimates, based upon sound evidence including average past expenditures, results in an unconstitutional system. In addition, even the challengers do not argue the use of a model as a proxy for the cost of education is, in and of itself, improper."); *id.* ¶ 55, 19 P.3d at 539 ("This court has no desire, nor is it our constitutional responsibility, to pass judgment on each line item of the funding model. Those are legislative choices for which the legislators are accountable to their respective constituencies."); *Campbell I*, 907 P.2d at 1279 (requiring the legislature to conduct "[a] cost of education study and analysis" and to use its results to achieve an education system with financial parity).

[¶220] Since *Campbell I*, the legislature has retained experts in the field of public school finance—MAP and now Picus—to guide its cost estimates. It is beyond dispute that between 2005 and 2018, the legislature funded education above the costs estimated by Picus' EB model. It was not until 2018–19 that LM funding fell below the EB model—and then by $1.3 million, a fraction of the $1.485 billion in total LM funding. As this Court observed in *Campbell IV*, "one must question whether [differences] of [that] magnitude . . . have any measurable impact on the statewide quality of education." *Campbell IV*, ¶ 31, 181 P.3d at 55. Overall, since 2010 the legislature has provided substantially more funding (over $350 million) than the EB model recommended. By finding the legislature failed to fund the actual costs/true costs of teacher salaries and to properly adjust for inflation, the district court and Majority improperly substitute their own views of cost for the determination made by the legislature in consultation with its experts.

[¶221] Fourth, while we required inflation adjustment at least every two years "to assure education funding continues to adequately support the actual cost of education," so long as the state relies on historic costs, *Campbell IV*, ¶ 69, 181 P.3d at 65 (citing *Campbell II*, ¶ 90, 19 P.3d at 550), we also held "the legislature has the discretion to determine how to make the necessary adjustments" for inflation. *Campbell IV*, ¶ 69, 181 P.3d at 65. Adjustment is required when evidence and common sense indicate a need; it is not automatic. *Campbell II*, ¶ 89, 19 P.3d at 549; *Campbell IV*, ¶¶ 68–69, 181 P.3d at 64–65. The evidence showed that in the 19 years between 2005 and 2024, the legislature adopted ECAs in all but seven years. In those seven years, the LM funding exceeded the EB model's cost estimates except in years 2018–19 and 2022–23. However, in 2018–19, the LM funding fell below the EB model by a mere $1.3 million, and the larger ECA adopted in 2023–24 accounted for inflation in 2022–23. The Majority's position—that the legislature could not rely on LM funding exceeding the EB model's cost estimates to determine no ECA was needed because each component of the LM must be cost-based—is not supported by our school finance precedent. As explained above, we have approved of the legislature's use of professionally developed models to determine costs. The legislature could reasonably determine no ECA was necessary when the LM funding exceeded the costs recommended by the EB model.

[¶222] Finally, the Majority interprets Wyo. Stat. Ann. § 21-13-309(o) as **requiring** the legislature to enact an ECA whenever inflationary pressures are present. The statute states:

> ***To the extent specifically provided by the legislature***, and between periods of model recalibration required under subsection (t) of this section, the amount computed for each district under subsection (m) of this section shall be adjusted to provide for the effects of inflation . . . . The adjustment under this subsection shall not be applied until the expiration of the school year immediately following the first school year of application of the recalibrated model, and shall be adjusted on

> a cumulative basis each school year thereafter and until the first school year of application of a subsequent model recalibration. Following analysis of information reported under subsection (u) of this section, the joint appropriations interim committee shall submit a recommendation to the legislature and the governor not later than November 1 of each applicable year on an external cost adjustment for purposes of this subsection.

Wyo. Stat. Ann. § 21-13-309(o) (LexisNexis 2025) (emphasis added). Despite the statute's introductory language, the Majority states application of ECAs is not discretionary. It reasons that any other reading "would produce the absurd result of a model that is not cost-based."

[¶223] I disagree. The statute expressly grants the legislature discretion to determine whether and to what extent to enact an ECA, as evidenced by the phrase "[t]o the extent specifically provided by the legislature." The "extent" may be zero. The Majority's reading improperly restricts the legislature's constitutional authority over appropriations and policy choices in education funding. *Campbell IV*, ¶¶ 92–93, 181 P.3d at 71 ("judicial involvement in the legislature's appropriation decisions [should be] an absolute last resort" and "[h]aving this Court function as an account overseer serves no purpose and inappropriately injects the judiciary into executive and legislative branch functions").

2. Teacher Salaries and ECAs—Inadequate Funding Framework Under *Campbell IV*

[¶224] Under *Campbell IV*, funding is inadequate if it is insufficient to enable school districts to provide their students the goods and services in the education basket or for students to meet state standards. The evidence failed to show that the legislature's funding of teacher salaries or its failure to adjust for inflation through ECAs prevented districts from delivering the education basket to their students or caused systemic, concrete harm to students' ability to meet state standards.

[¶225] Since the 2006–07 school year, the Wyoming legislature has **expended $1–$1.5 billion per year on public education**, excluding funding for capital construction. From 1997 to 2020, Wyoming's per-pupil spending has increased and exceeded that of regional states. In 2019–20, Wyoming spent approximately **$18,000 per pupil in operational funds**; after applying a regional cost adjustment, that amount rose to **$20,000 per pupil**. The next closest regional state was Montana, which spent $14,500 per pupil and $15,000 per pupil after applying a regional cost adjustment. Cory Koedel, Ph.D., a professor in the economics department at the University of Missouri, compared the average LM weighted salary to actual average teacher salaries in Colorado, Idaho, Montana, Nebraska, South Dakota, Utah, and North Dakota from 2000 to 2022. Dr. Koedel concluded that in 2007 the average LM weighted salary was higher than the average actual salaries in the other states and in 2022 the average LM weighted salary of $54,035 was a "little below" the average actual salary of $55,416 paid in the other states. "From school year 2006–07 through school year 2022–23, the ***[LM] has provided more funding for teacher salaries than all school districts combined have expended on teacher salaries***." (Emphasis added.) We can also take judicial notice that the LM average teacher salary increased to $75,863, effective July 1, 2026. Wyo. Stat. Ann. § 21-13-309.1(c)(xxxiv)(J) (2026). *See Campbell IV*, ¶ 23, 181 P.3d at 53 (taking judicial notice of post-trial salary increases). I agree with the State—"[t]he idea that districts cannot educate children at this level of funding defies reason." Plaintiffs nevertheless claim the legislature is inadequately funding public education, particularly teacher salaries and inflation adjustments. They have not, however, shown concrete, systemic harm to students from the alleged inadequacies.

[¶226] While school district witnesses testified to difficulties with recruiting, hiring, and retaining quality teachers; reduced number and quality of applicants; and an involuntary greater reliance on individuals holding Exception Authorization Permits (EAs)[30] as classroom teachers, Plaintiffs failed to present reliable evidence establishing a causal link between LM funding and their concerns. Witnesses testified—and the State's expert agreed—that teacher quality is the single most indicative factor in student achievement. Similarly, while there was evidence demonstrating a decline in graduation rates and test scores in some districts, there was also "[e]vidence showing no significant decrease and some minimal increases in statewide average graduation rates, statewide [test] scores, . . . and increases in students qualifying for the Hathaway scholarship program."[31] At best, the evidence that (1) the increased use of EAs resulted in harm to the students and (2) any such harm was <u>caused</u> by the legislature's failure to adequately fund teacher salaries or to properly adjust for inflation was purely conclusory.[32]

[¶227] School district witnesses attributed Wyoming school districts' difficulties in recruiting, hiring, and retaining quality teachers—including the decrease in the number and

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[30] EAs have a bachelor's degree either in (1) education but have not passed the required standard test or (2) not in education but are progressing toward an education degree. They also include those teaching a subject for which they do not have an endorsement.

[31] According to the district court, Kelly McGovern, Superintendent of Sweetwater County School District 1, testified that the school district was only able to provide a "minimal level of education," which is reflected in declining ACT scores, poor reading and math scores, and a 79% graduation rate. The district court characterized a 79% graduation rate as evidence of a "minimal level of education," yet Ms. McGovern's actual testimony was that the rate had improved from 73% five years earlier.

[32] For example, Superintendent Mike Hamel of Carbon County School District 1 testified that the legislature's failure to adopt consistent and cumulative ECAs for salaries has strongly affected the district's ability to maintain competitive salaries. He described the increased reliance on EAs because of an inability to fill teaching positions with qualified applicants. In his view, this meant the school district was not always placing the best teacher in front of every student, which he believed would have "significant cumulative effect" on student performance. He believed that students taught by an EA for four years had "significantly different" student achievement when compared to other classrooms. He offered no explanation of what "significant cumulative effect" meant or how student achievement was "significantly different."

quality of applicants and the use of EAs as classroom teachers—to inadequate funding of teacher salaries. However, the evidence showed a nationwide and statewide teacher shortage. It also showed that since 2012, the number of University of Wyoming students graduating with education degrees and majoring in education has declined. Moreover, districts experienced hiring and recruiting challenges even though the actual salaries they paid teachers substantially exceeded the salaries provided in the LM. Plaintiffs presented no reliable evidence establishing a causal link between (1) the legislature's funding of teacher salaries and its inflation adjustments and (2) the recruitment, retention, or student performance problems they described. Although increasing teacher salaries and requiring annual ECAs may help with recruitment and retention and may thereby reduce reliance on EAs and improve test scores and graduation rates, the record does not establish even a correlation—let alone causation—between the reported concerns and the legislature's funding of teacher salaries or ECAs. We should refrain from issuing "edicts from on high increasing financial inputs in hopes of increasing educational outputs." *Morath v. The Tex. Taxpayer & Student Fairness Coal.*, 490 S.W.3d 826, 833 (Tex. 2016).

[¶228] Our review is limited to deciding whether the level of funding provided by the legislature is sufficient to enable school districts to deliver to their students the goods and services in the education basket and for students to meet state standards. Applying this standard of review, Plaintiffs failed to show that the legislature's funding of teacher salaries and adjustments for inflation are inadequate.

II. Innovations

[¶229] In *Campbell I*, we addressed the constitutionality of an optional mill levy that permitted school districts to generate revenue outside the state's funding system. *Campbell I*, 907 P.2d at 1269. We held that this optional mill levy created wealth-based disparity. *Id.* at 1269–70. We also rejected the state's claims that the optional mill levy served the compelling interest of local control. *Id.* at 1270. *Washakie* clearly held that state, not local, wealth must fund public education. *Id.* Nevertheless, we addressed whether the legislature could permit optional mill levies so the school districts can raise revenue outside of the state's school finance system "in order to enrich its students' educational opportunities beyond those offered elsewhere in the state." *Id.* at 1274. We concluded:

> The constitution requires the legislature to create and maintain a system providing an equal opportunity to a quality education. That system must be a function of state wealth. Once the legislature achieves the constitutional mandate of a cost-based, state-financed proper education, then assuming the legislature has a compelling reason for providing a mechanism by which local districts may tax themselves in order to enhance their programs in an equitable manner, that appears to be constitutionally permissible.

Id. However, we noted:

> [L]ocal enhancement[s] may . . . result in substantive innovations which should be available to all school districts as part of a proper education. The definition of a proper education is not static and necessarily will change. Should that change occur as a result of local innovation, all students are entitled to the benefit of that change as part of a cost-based, state-financed proper education.

Id. We have also interpreted our constitution as requiring the legislature "to provide and fund an education system which is of a quality 'appropriate for the times,'" *Campbell I*, 907 P.2d at 1279, and "to provide a thorough and uniform education of a quality that is both visionary and unsurpassed." *Campbell II*, ¶ 51, 19 P.3d at 538.

[¶230] Relying on this language, the district court decided it was authorized and required to determine whether Plaintiffs proved elementary school mental health counselors, one-to-one technology, SROs, and nutrition programs are substantive innovations that should be available and funded statewide because they are "appropriate for the times and necessary to provide a 'thorough and uniform education of a quality that is both visionary and unsurpassed.'" The court then determined that all four were constitutionally required and entitled to statewide funding.

[¶231] As the Majority recognizes, the State does not contest the district court's order requiring the legislature to fund elementary school mental health counselors. I agree with the Majority that the district court's order requiring funding for one-to-one technology must be reversed because the issue was not raised or tried by consent. I also agree that the district court erred in ordering the legislature to provide and fund SROs and nutrition programs because Plaintiffs (as with their school operations claims) failed to show any constitutional injury or disparity from the State's failure to fund these items.

[¶232] I cannot join the Majority, however, in requiring the legislature to apply criteria drawn from an unrelated discussion in *Campbell II* when deciding whether to offer and fund an innovation statewide or in the Majority's use of the same criteria when reviewing the legislature's policy choice not to include an innovation in the education basket.[33] The

[33] The Majority also states: "The State may, and likely should, develop a process for districts to propose innovations for statewide funding." Resolution of this appeal requires us to address only whether the district court erred in concluding SROs and nutrition programs are innovations which must be included in the education basket and funded statewide. It does not require us to recommend or direct a legislative process for school districts to follow when proposing an innovation for statewide funding. "The 'cardinal principle of judicial restraint' is 'if it is not necessary to decide more, it is necessary not to decide more.'" *MH v.*

criteria described in *Campbell II* were those used by MAP to determine the instructional components necessary to deliver the basket of goods and services **after** the legislature defined and codified the basket. *Campbell II*, ¶¶ 11–12, 19 P.3d at 529–30. That description was never a constitutional requirement for how the legislature decides what belongs in the basket, and we should not require its use when the legislature decides whether an innovation should be included. Just as it is not this Court's role to define "cost" or the contents of the education basket, it is not our role to prescribe the analytical framework the legislature must employ when making that policy judgment. That judgment belongs to the legislature. *Campbell IV*, ¶ 15, 181 P.3d at 51 ("[W]e have consistently held that the constitution imposes on the *legislature* the obligation to determine the kind of education Wyoming's children will be afforded."). *See also Campbell I*, 907 P.2d at 1259, 1279 ("The legislature, in fulfilling its constitutional duty, must define and specify what [a 'proper education' is for a Wyoming child]"; and "[T]he legislature must state and describe what a 'proper education' is for a Wyoming child."). The school districts and the WEA may advocate strongly before the legislature for inclusion of items in the education basket, but what to ultimately include in the basket of goods and services is a legislative policy choice. Courts are not at liberty to second-guess the wisdom or soundness of that choice. *Starrett v. State*, 2012 WY 133, ¶ 12, 286 P.3d 1033, 1038 (Wyo. 2012) ("Members of this Court . . . do not possess either the expertise or the prerogative to make policy judgments. Those judgments are entrusted to our state's elected leaders, who can be removed from office on election day if our state's citizens disagree with those policy judgments. It does not fall to the courts to protect the citizens from the consequences of their political choices."). *See also Bulova Watch Co. v. Zale Jewelry Co. of Cheyenne*, 371 P.2d 409, 419 (Wyo. 1962) ("The disposition of the judicial branch of government has always been to scrupulously refrain from encroaching in the slightest way into the legislative field of policy making where factual or economic factors require latitude of discretion. We will not and we do not substitute our opinions in such matters for the considered judgment of our lawmakers."). The Majority does exactly that by requiring the legislature, when deciding whether to include an innovation in the education basket and fund it statewide, to apply criteria developed for a different purpose in *Campbell II* and then by prospectively announcing that it will use those same out-of-context criteria to second-guess the legislature's policy choices. Such judicial intrusion into legislative policymaking simply opens the door to court-driven basket growth, an outcome not authorized by *Campbell I*, *II*, or *IV*.

First Jud. Dist. Ct. of Laramie Cnty., 2020 WY 72, ¶ 17, 465 P.3d 405, 410 (Wyo. 2020) (Kautz, J., concurring) (quoting *PDK Lab'ys Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring)). *See also Moore v. State*, 912 P.2d 1113, 1115 (Wyo. 1996) ("Fundamental notions of judicial restraint and economy counsel our consideration only of those issues necessary to a full and proper resolution of the matter presented for review, absent reason to believe the question is bound to arise again." (citations omitted)). We should refrain from issuing directives to the legislature which are unnecessary to the resolution of the issues before us.