

# EXHIBIT E

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE DELAWARE PUBLIC )  
SCHOOLS LITIGATION ) C.A. No. 2018-0029-VCL  
 ) STATE TRACK  
 )

**Answering and Rebuttal Expert Witness Report of Michael S. Jackson**

**A. Background**

I have been advised that the above referenced litigation involves Plaintiffs' claims that the State of Delaware is not providing an adequate education to students Plaintiffs have characterized as being "disadvantaged." My understanding is that Plaintiffs define "disadvantaged students" as being students with disabilities, low-income students, and English Learners. I further understand that among the issues Plaintiffs have raised is the funding provided for public education in Delaware, including the funding provided for educating disadvantaged students. This report (the "Report") addresses that issue including the funding for public education and other budget items in Fiscal Years ("FY") 2016 through FY 2020.

## **B. Qualifications**

I have a Bachelor of Arts Degree in Political Science from Villanova University and a Master's Degree in Public Administration from the University of Delaware.

I was appointed to the position of Director of the Office of Management and Budget ("OMB") by Governor John Carney in January of 2017. My appointment was confirmed by the members of the 149<sup>th</sup> General Assembly. The position of Director of OMB is a cabinet-level position.

As Director of OMB, I am responsible for fiscal planning for the State and preparation of the operating and capital budgets. I work with the Governor in preparing a financial plan for the consideration of the Delaware General Assembly. As the Director of OMB, I have many other duties and responsibilities as outlined more specifically on pages 5 through 7 of the deposition I gave to Plaintiffs' counsel in this case, as well as the responsibilities described throughout my deposition.

My previous employment includes the following:

Deputy Controller General in the Office of the Controller General of the State of Delaware from 2013 until 2017. Among the duties that I had as Deputy Controller General was reviewing and analyzing the fiscal impact of legislation brought before the Delaware General Assembly concerning public education.

Previous to my employment as Deputy Controller General, I was the Budget Director at the University of Delaware from 2010 to 2013. Prior to that, I held the position of Associate Secretary for Finance and Administration at the Delaware Department of Education (“DDOE”) from July of 2009 through February of 2010.

Before becoming the Associate Secretary for Finance at DDOE, I was the Acting Director of OMB for approximately three (3) months. I have also held the position of Director of Budget, Development and Planning at OMB. In that capacity, I was responsible for the development of the entire State Budget. I also held the position of Chief of Fiscal and Policy Analysis in the State Budget Office from approximately July of 2003 until June of 2004. Before that, I held the position of Assistant Chief of Fiscal and Policy Analysis from approximately 2002 to 2003. From June of 1998 until 2002, I was a Fiscal and Policy Analyst in the Budget Office. I started as an Associate Fiscal and Policy Analyst and ended up as a Senior Fiscal and Policy Analyst. In the last year or two in that role, I was responsible for the public education budget.

During my employment with the State of Delaware, I have been involved with numerous committees, task forces, and teams including the Equalization Funding Committee (the “Equalization Committee”), the Inter-Agency Collaborative Team, the Inter-Agency Resource Management Committee and

many other positions and responsibilities as outlined in my deposition taken February 25, 2020.

As a result of my employment with the State of Delaware as set forth above, including my current role as Director of the OMB, I am familiar with major components of the State Budget over a number of years. Based on that experience, as well as publicly-available information concerning the revenue and expenditures from the State of Delaware, I have formed the following conclusions and opinions:

**C. Conclusion and Opinions**

For FY 2016 through FY 2020, the average percentage of the State of Delaware Operating Budget for public education increased from 33.39% in FY 2016 to 35.65% in FY 2020.

This was an average increase of 5.40% during that time frame or a total of 23.31%. For FY 2017 the increase was 5.71%; for FY 2018 the increase was 2.81%; for FY 2019 this was a 4.58% increase; for FY 2020 this was an 8.48% increase.

For FY 2016 through FY 2020, the operating budget state funds for public education increased from approximately \$1.3 billion in FY 2016 to \$1.6 billion in FY 2020. The State Capital Budget is not included in the budgeted funds referred to in the preceding sentence.

The increase in funding and the percentage of the State Operating Budget during FY 2016 through FY 2020 is substantially attributable to the State's increasing investment in assisting high needs children, particularly the transition to direct funding for low-income and English Learner ("EL") students as well as additional support for K-3 special needs students and mental health support.

During FY 2016 through FY 2020, the State Budget for Higher Education averaged 5.68% of the total budget. Although the percentage of the budget slightly decreased during this period, in dollar terms, the Higher Education budget increased from approximately \$230 million in FY 2016 to approximately \$249 million in FY 2020.

During FY 2020 the combined Education and Higher Education budget is approximately 41% of the total budget. The five year average from FY 2016 to FY 2020 is approximately 40% of the total budget.

The State also provides many investments to support K-12 and early learning through departments other than the Department of Education such as the Department of Health and Social Services ("DHSS") and the Department of Services for Children, Youth, and Families ("DSCYF"), primarily child care for low-income families and wrap around support for students such as behavioral health and social services support.

DHSS's budget averaged approximately 28% of the total State Budget for FY 2016 through FY 2020. Although the percentage of the budget slightly decreased during this period, in dollar terms, DHSS's budget increased from approximately \$1.19 billion in FY 2016 to approximately \$1.237 billion in FY 2020.

DSCYF's budget averaged 4% of the State's total budget in the period of FY 2016 through FY 2020. DSCYF's budget increased from approximately \$155 million in FY 2016 to approximately \$189 million in FY 2020.

The total of the Education, Higher Education, DHSS, and DSCYF budgets for FY 2020 is approximately 72% of the total State Budget.

Although the COVID-19 crisis has and will continue to decrease state revenue, in my experience, the Governor and the General Assembly have consistently placed a priority on public education even in times of fiscal downturns.

#### **D. Education Budget**

The Education Budgets for FY 2016 through FY 2020 are publically available and may be found as part of the larger State Budget at the following link: <https://budget.delaware.gov/budget/index.shtml>

The Education Budget shows the expenditures made through the Delaware Department of Education on public education in Delaware. It does not include

local funds raised by school districts through their own taxing authority, nor does it include funds received from the federal government used for public education purposes.

The chart attached hereto as Appendix 1.A shows the dollar amounts and percentage of state operating budget funds by state agencies for FY 2016 through FY 2020 as well as the average dollar budgeted funds and corresponding percentage of state revenue. Appendix 1.B shows the State of Delaware Capital Budget for FY 2016 through FY 2020.

Appendix 2 shows the budget state funds for programs for High Needs Students.

Appendix 3 is a bar chart showing State budgeted funds from the General Fund for state agencies during the period FY 2016 through FY 2020.

Appendix 4 depicts the Percentage of Total Budget Growth in the State Operating and Capital Budgets for the period FY 2016 through FY 2020.

Appendix 5 depicts the average percentage of the State Budget by agency for the period FY 2016 through FY 2020.

Appendices 6, 7, 8, 9, and 10 show the percentage of the State Budget by agency for FY 2016, FY 2017, FY 2018, FY 2019, and FY2020, respectively. All information in the appendices is incorporated by reference to this Report.

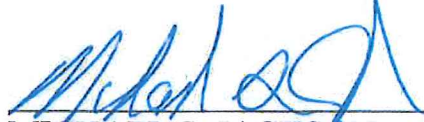


## **E. Supporting Materials**

In addition to the materials attached as Appendices to this Report, I relied on the publicly available state budget information including the budget epilogues. A link to the State Budget for FY 2016-2017 through FY 2019-2020 may be found at: <https://budget.delaware.gov/budget/index.shtml>

**Certification of Michael S. Jackson**

As described previously in this Report, I am employed as Director of the Office of Management and Budget of the State of Delaware. I did not receive any compensation for preparing this Report beyond my salary as OMB Director.



MICHAEL S. JACKSON

Dated: May 28, 2020

# APPENDIX 1(A)

**General Fund Budget**  
(\$ thousands)

Agency	FISCAL YEAR 2016		FISCAL YEAR 2017		FISCAL YEAR 2018		FISCAL YEAR 2019		FISCAL YEAR 2020		FISCAL YEAR 2016 - 2020	
	Operating Budget	Total Budget	Operating Budget	Total Budget	Operating Budget	Total Budget	Total Oper & Suppl	Total Budget	Total Oper & Suppl	Total Budget	Average Percent of Total Budget	Percent of Total Budget Growth
Legislative	15,823.0	0.40%	16,090.3	0.39%	16,250.3	0.40%	16,676.5	0.33%	17,281.4	0.39%	0.39%	0.24%
Judicial	95,121.5	2.43%	96,381.0	2.36%	96,236.4	2.34%	97,363.8	2.25%	100,680.5	2.32%	2.32%	0.92%
Executive	194,681.1	4.98%	184,771.8	4.52%	146,264.8	3.56%	212,076.9	4.91%	173,080.8	3.83%	3.83%	-3.57%
Technology and Information	40,177.4	1.03%	41,153.5	1.01%	41,829.5	1.02%	42,419.6	0.98%	42,996.0	0.95%	0.95%	0.47%
Other Elective	173,870.4	4.45%	184,202.1	4.51%	194,341.0	4.73%	189,342.4	4.38%	191,908.1	4.25%	4.25%	2.98%
Legal	56,594.7	1.45%	58,753.2	1.44%	59,478.1	1.45%	63,625.8	1.47%	64,732.7	1.43%	1.43%	1.34%
Human Resources	-	0.00%	-	0.00%	-	0.00%	15,299.5	0.35%	27,058.3	0.60%	0.60%	4.47%
State	24,654.8	0.63%	25,111.7	0.61%	23,291.9	0.57%	25,206.3	0.58%	26,914.7	0.60%	0.60%	1.45%
Finance	14,353.2	0.37%	14,626.6	0.36%	14,467.4	0.35%	14,407.6	0.33%	14,392.0	0.32%	0.32%	0.19%
Health and Social Services	1,118,804.1	28.62%	1,183,846.3	28.99%	1,178,420.7	28.69%	1,201,764.2	27.82%	1,237,154.9	27.41%	27.41%	0.37%
Services for Children, Youth and Their Families	155,065.8	3.97%	159,029.7	3.89%	162,251.8	3.95%	174,470.5	4.04%	188,923.2	4.19%	4.19%	19.55%
Correction	284,086.8	7.27%	295,388.1	7.23%	308,147.6	7.50%	329,479.1	7.63%	344,643.9	7.64%	7.64%	5.59%
Natural Resources and Environmental Control	36,587.9	0.94%	38,023.8	0.93%	37,112.9	0.90%	37,896.3	0.88%	38,159.3	0.85%	0.85%	10.00%
Safety and Homeland Security	130,687.3	3.34%	134,003.6	3.28%	135,189.8	3.29%	137,527.1	3.18%	144,128.6	3.19%	3.19%	0.26%
Transportation	-	0.00%	5,000.0	0.12%	5,000.0	0.12%	5,000.0	0.12%	5,000.0	0.11%	0.11%	2.22%
Labor	9,780.7	0.25%	9,838.3	0.24%	9,548.4	0.23%	9,543.3	0.22%	10,986.0	0.24%	0.24%	0.83%
Agriculture	8,351.0	0.21%	8,583.7	0.21%	8,222.2	0.20%	8,325.6	0.19%	8,421.8	0.19%	0.19%	0.09%
Elections	4,378.5	0.11%	4,510.6	0.11%	4,916.6	0.12%	8,174.3	0.19%	8,656.8	0.19%	0.19%	0.20%
Fire Prevention Commission	5,341.2	0.14%	5,541.1	0.14%	5,405.8	0.13%	5,341.2	0.12%	5,543.3	0.12%	0.12%	0.14%
Delaware National Guard	4,807.0	0.12%	4,867.4	0.12%	4,769.2	0.12%	4,825.6	0.11%	4,880.1	0.11%	0.11%	0.13%
Advisory Council for Exceptional Citizens	238.0	0.01%	242.0	0.01%	247.7	0.01%	247.5	0.01%	281.2	0.01%	0.01%	0.01%
Higher Education	230,005.7	5.88%	234,443.4	5.78%	237,069.5	5.77%	237,443.8	5.50%	248,798.7	5.51%	5.51%	0.01%
Education	1,305,084.2	33.39%	1,379,643.5	33.78%	1,418,473.8	34.54%	1,483,492.2	34.34%	1,609,256.4	35.65%	35.65%	3.10%
<b>TOTAL</b>	<b>3,908,494.3</b>		<b>4,084,051.7</b>		<b>4,106,935.4</b>		<b>4,319,949.1</b>		<b>4,513,878.7</b>		<b>34.34%</b>	<b>605,384.40</b>

# APPENDIX 1(B)

Capital Budget (\$)

AGENCY*	FY 2016		FY 2017		FY 2018		FY 2019		FY 2020		Fiscal Year 2016 - 2020	
	Capital Budget	Percent of Total Budget	Capital Budget	Percent of Total Budget	Capital Budget	Percent of Total Budget	Capital Budget	Percent of Total Budget	Capital Budget	Percent of Total Budget	Average Percent of Total Budget	Percent of Total Budget Growth
AGENCY*	4,520,000.00	1.89%	3,600,000.00	1.52%	911,062.00	0.00%	7,761,062.00	0.00%	40,000.00	0.01%	0.67%	-2.35%
LEGISLATIVE	1,500,000.00	0.61%	1,411,062.00	0.60%	5,714,151.00	2.10%	24,514,151.00	5.47%	8,611,062.00	1.97%	1.05%	3.73%
JUDICIAL	9,650,300.00	3.91%	8,781,351.00	3.72%	14,500,000.00	5.33%	17,500,000.00	3.91%	21,507,168.00	4.91%	4.02%	6.22%
OFFICE OF MANAGEMENT AND BUDGET	14,500,000.00	5.87%	14,300,000.00	6.05%	-	0.00%	11,300,000.00	2.52%	17,500,000.00	4.00%	5.05%	1.57%
DELAWARE STATE HOUSING AUTHORITY	-	0.00%	-	0.00%	-	0.00%	500,000.00	0.11%	7,500,000.00	1.71%	0.85%	3.93%
TECHNOLOGY	-	0.00%	-	0.00%	-	0.00%	27,057,750.00	6.04%	-	0.00%	0.02%	0.00%
LEGAL	26,212,800.00	10.61%	22,830,475.00	9.66%	16,101,197.00	5.91%	5,000,000.00	1.12%	36,500,165.00	8.34%	8.11%	5.40%
FINANCE	-	0.00%	-	0.00%	-	0.00%	18,012,671.00	4.02%	22,993,500.00	5.25%	6.57%	-1.53%
HEALTH AND SOCIAL SERVICES	25,919,797.00	10.49%	20,370,000.00	8.62%	13,550,000.00	4.98%	1,600,000.00	0.36%	2,045,000.00	0.47%	0.60%	-0.38%
SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES	2,762,500.00	1.12%	1,600,000.00	0.68%	1,100,000.00	0.40%	11,658,650.00	2.60%	14,801,928.00	3.38%	3.87%	1.73%
CORRECTION	11,496,840.00	4.65%	9,428,650.00	3.99%	12,918,650.00	4.74%	33,528,829.00	7.48%	42,318,700.00	9.81%	9.03%	8.84%
NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	26,061,300.00	10.55%	26,436,421.00	11.19%	16,656,891.00	6.12%	41,703,459.00	9.31%	8,823,459.00	2.02%	4.00%	2.14%
SAFETY AND HOMELAND SECURITY	4,743,318.00	1.92%	8,572,700.00	3.63%	8,582,883.00	3.14%	200,000.00	0.04%	3,700,000.00	0.85%	0.18%	1.94%
AGRICULTURE	-	0.00%	-	0.00%	-	0.00%	10,000,000.00	2.23%	-	0.00%	0.45%	0.00%
ELECTIONS	1,032,000.00	0.42%	45,000.00	0.02%	1,730,000.00	0.64%	1,964,400.00	0.44%	2,150,000.00	0.49%	0.40%	0.59%
FIRE PREVENTION COMMISSION	3,172,000.00	1.28%	2,205,000.00	0.93%	2,050,000.00	0.75%	2,473,227.00	0.55%	2,400,000.00	0.55%	0.81%	-0.40%
DELAWARE NATIONAL GUARD	18,000,000.00	7.25%	16,500,000.00	6.98%	16,500,000.00	6.08%	41,375,000.00	9.24%	53,350,000.00	12.19%	8.33%	18.54%
HIGHER EDUCATION	71,269,200.00	28.86%	76,424,600.00	32.34%	134,542,464.00	49.42%	165,909,697.00	37.04%	186,217,588.00	37.28%	37.13%	49.80%
EDUCATION	26,146,550.00	10.59%	23,780,000.00	10.06%	27,430,000.00	10.07%	25,912,500.00	5.78%	26,579,132.00	6.07%	8.52%	0.23%
MISCELLANEOUS	-	-	-	-	-	-	-	-	-	-	-	-
GRAND TOTAL	246,986,405.00		236,285,259.00		272,267,098.00		447,971,386.00		437,637,700.00		190,651,295.00	

\*Projects were reorganized to the agency benefiting from the funding in instances where those agencies were different than the agency managing the project. Therefore, the agency totals in this spreadsheet may not agree to the Bond Bill in all instances.

## APPENDIX 2

## State Funds - High Needs Students

		State Funds						
	Appropriation Name/Description	FY2016	FY2017	FY2018	FY2019	FY2020	Reference	
Enrollment-Based	Academic Excellence	38,753.8	38,753.8	38,862.9	39,886.9	42,889.0	14 Del. C. § 1716	
Enrollment-Based	Homeless Transportation			975.0	8,600.0	9,800.0	HB 225, Section 330(d)	
	<b>Subtotal - Enrollment Based</b>	<b>38,753.8</b>	<b>38,753.8</b>	<b>39,837.9</b>	<b>48,486.9</b>	<b>52,689.0</b>		
Categorical	School Based Health Centers*	4,859.5	3,947.6	4,334.5	4,753.3	5,093.3	14 Del. C. § 4126	
Categorical	Child Care (POC)	32,190.8	32,190.8	32,190.8	41,050.7	46,515.6		
Categorical	Middle School Behavioral Health Consultants	3,012.0	3,012.0	3,012.0	3,010.1	3,009.3	HB 225, Section 189	
Categorical	K-5 Early Intervention (FCTS)	4,437.6	4,432.5	4,432.5	4,377.2	4,547.6	HB 225, Section 187	
Categorical	Targeted Prevention Programs	2,225.0	2,225.0	2,225.0	2,225.0	2,225.0	HB 225, Section 1	
Categorical	Early Childhood Assistance Program (ECAP)	6,149.3	6,149.3	6,149.3	6,149.3	6,149.3		
Categorical	Opportunity Fund*			1,000.0	6,000.0	25,000.0	HB 225, Section 361	
Categorical	Student Success Block Grant - K-3 Basic				2,855.2	4,489.7	HB 225, Section 364	
Categorical	Student Success Block Grant - Reading Interventionist				3,571.4	3,974.0	HB 225, Section 364	
Categorical	Early Childhood Initiatives	11,900.0	21,255.9	25,636.9	29,496.9	36,216.6	HB 225, Section 328	
Categorical	Birth to Three*	4,034.6	4,426.6	5,250.3	6,483.3	7,409.1	14 Del. C. § 3001	
Categorical	TANF Cash Assistance	16,730.0	16,730.0	15,320.2	15,320.2	14,520.2	Title 16 chapter 2	
Categorical	Delaware Healthy Children Program (CHIP)*	3,760.0	1,936.3	1,936.3	2,034.7	5,214.1	Title XXI of the Social Security Act	
	<b>Subtotal - Categorical</b>	<b>89,298.8</b>	<b>96,306.0</b>	<b>101,487.8</b>	<b>127,327.3</b>	<b>164,363.8</b>		
Discretionary	Division III Equalization	89,493.2	91,355.0	93,993.7	96,094.8	98,004.8	14 Del. C. § 1707	
Discretionary	Educational Sustainment	28,150.9	28,150.9	28,150.9	28,150.9	28,150.9	HB 225, Section 315	
							14 Del. C. § 1304	
							14 Del. C. § 1707(h)	
							14 Del. C. § 1711	
	<b>Subtotal - Discretionary</b>	<b>117,644.1</b>	<b>119,505.9</b>	<b>122,144.6</b>	<b>124,245.7</b>	<b>126,155.7</b>		
	<b>Total - State General Funds</b>	<b>245,696.7</b>	<b>254,565.7</b>	<b>263,470.3</b>	<b>300,059.9</b>	<b>343,208.5</b>		

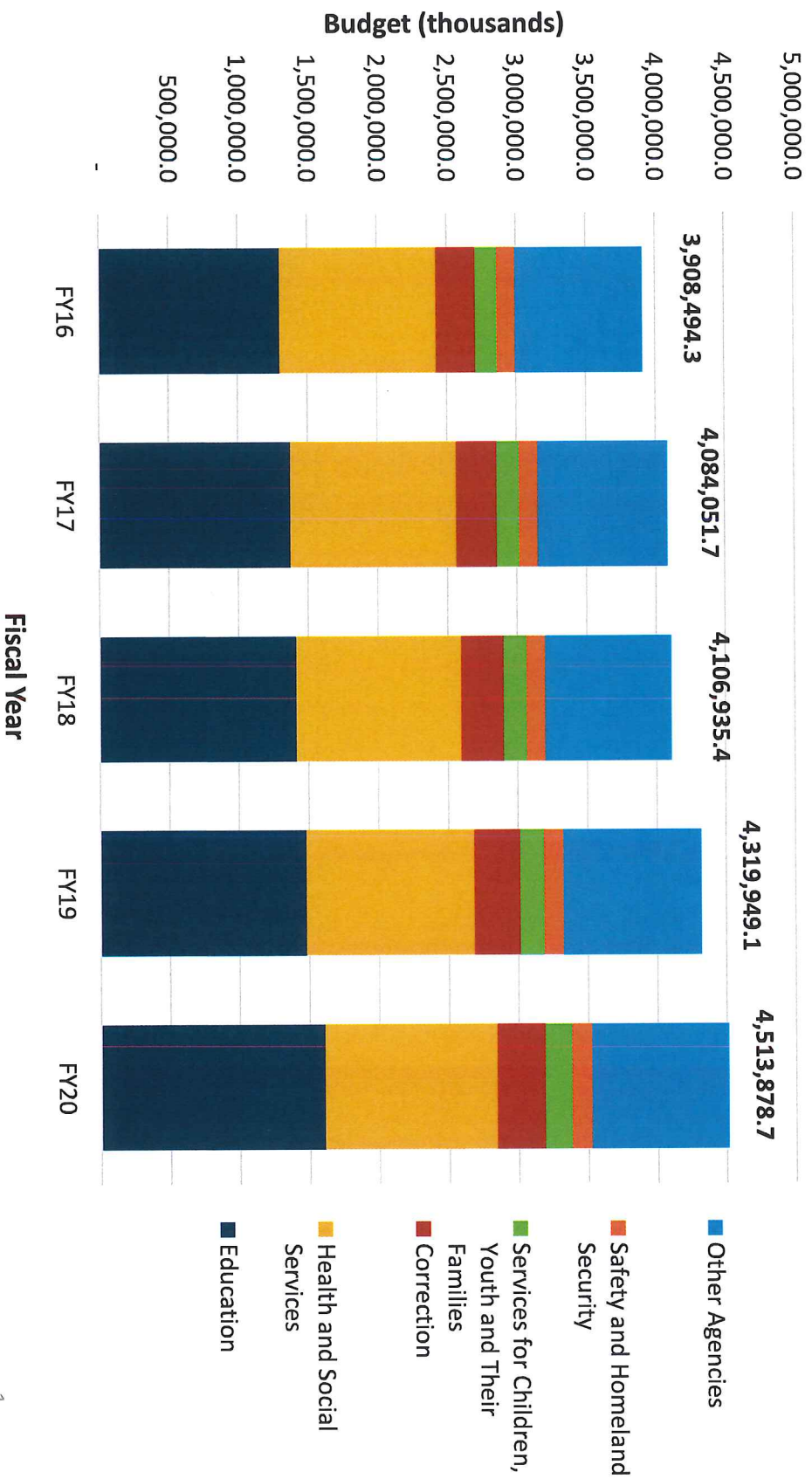
\* Denotes items with ASF or one-time funds included in budgeted amount



# APPENDIX 3

# General Fund Budget History

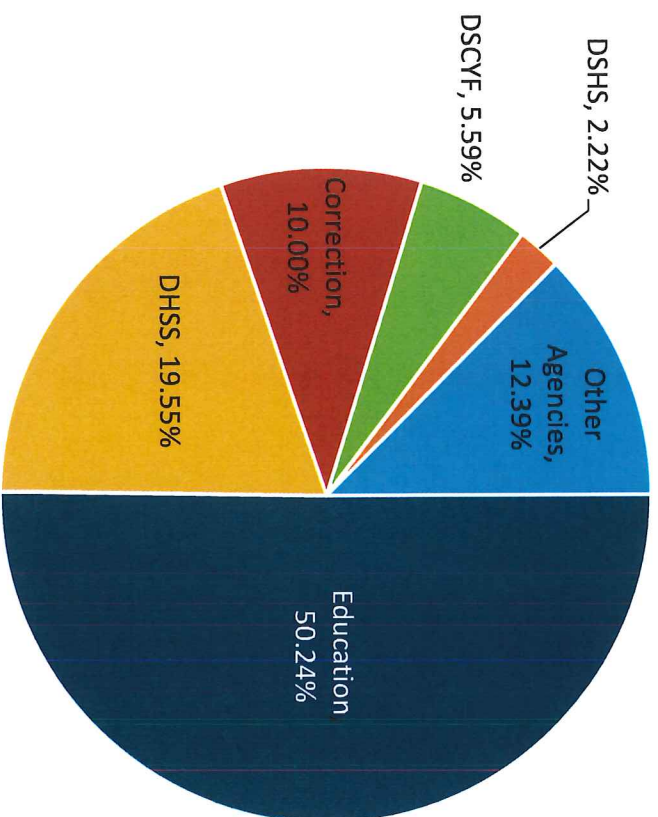
## FY2016-FY2020



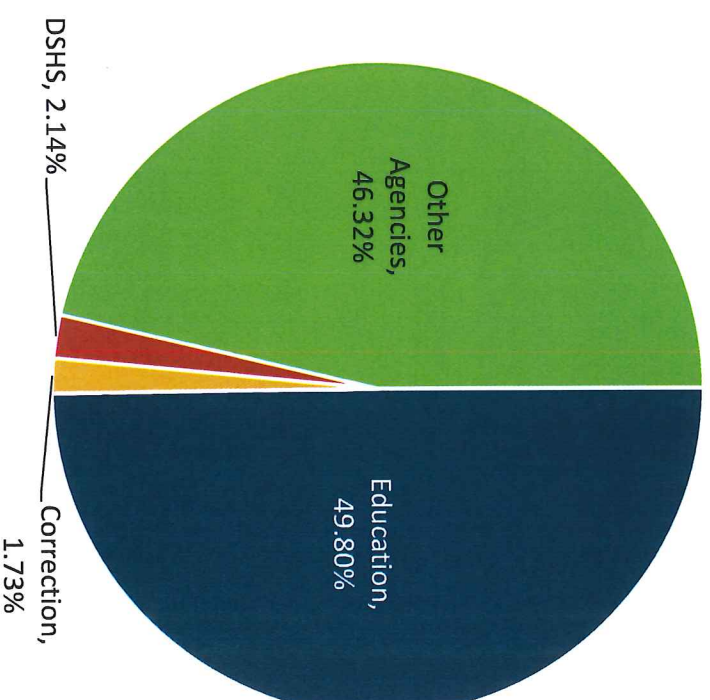
# APPENDIX 4

# Percent of Total Budget Growth FY2016 – FY2020

## Operating Budget



## Capital Budget



Operating Budget growth inclusive of funds appropriated in the One Time Supplemental Bills in FY19 and FY20

DHSS – Health and Social Service

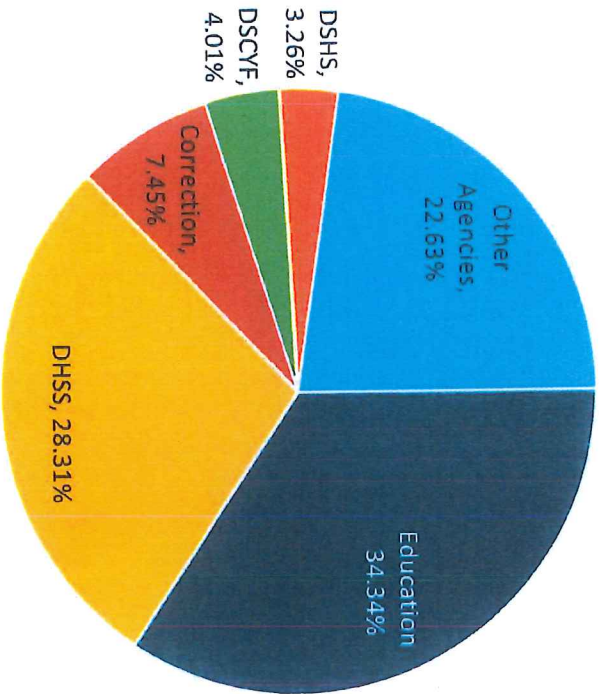
DSCVF – Services for Children, Youth and Their Families

DSHS – Safety and Homeland Security

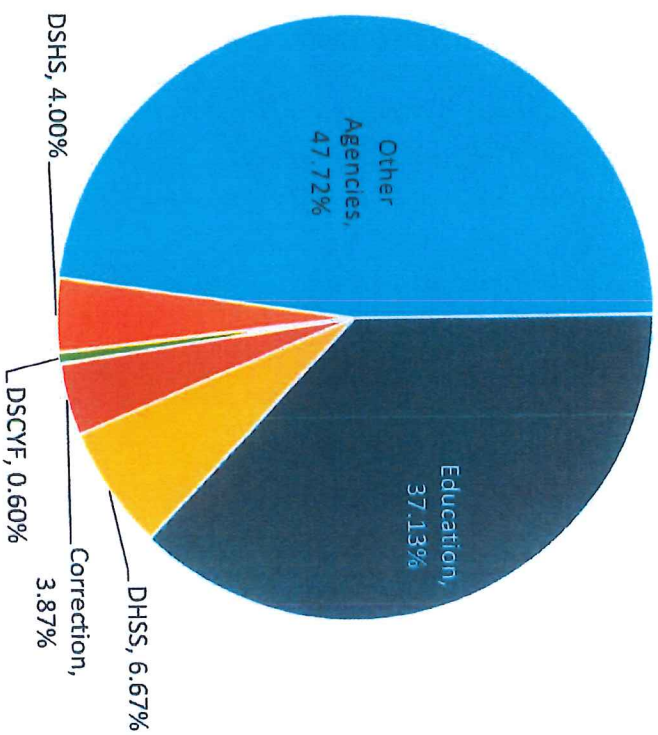
# APPENDIX 5

# Average Percent of Total Budget FY2016 – FY2020

## Operating Budget



## Capital Budget



Operating Budget growth inclusive of funds appropriated in the One Time Supplemental Bills in FY19 and FY20

DHSS – Health and Social Service

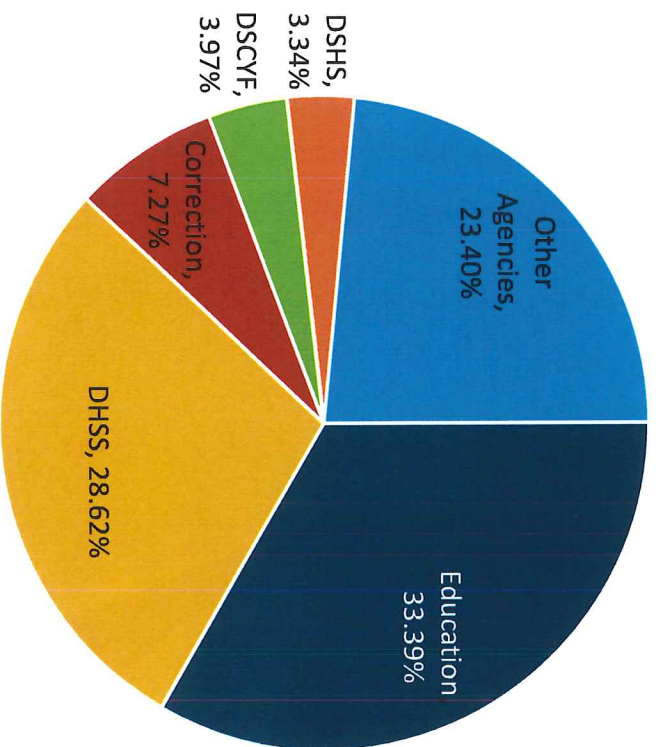
DSCYF – Services for Children, Youth and Their Families

DSHS – Safety and Homeland Security

# APPENDIX 6

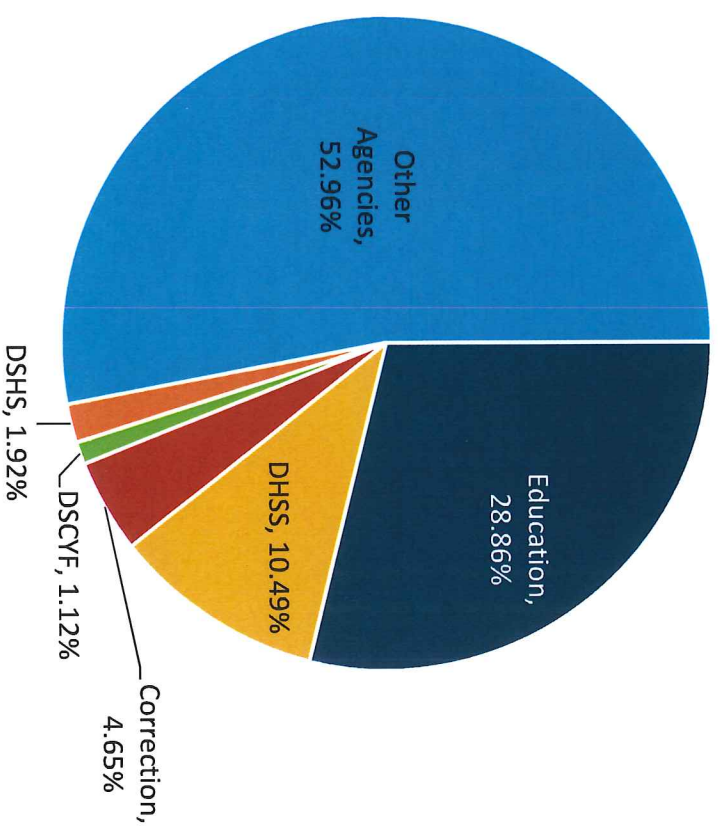
# Percent of Total Budget FY2016

## Operating Budget



DHSS – Health and Social Service  
DSCYF – Services for Children, Youth and Their Families  
DSHS – Safety and Homeland Security

## Capital Budget

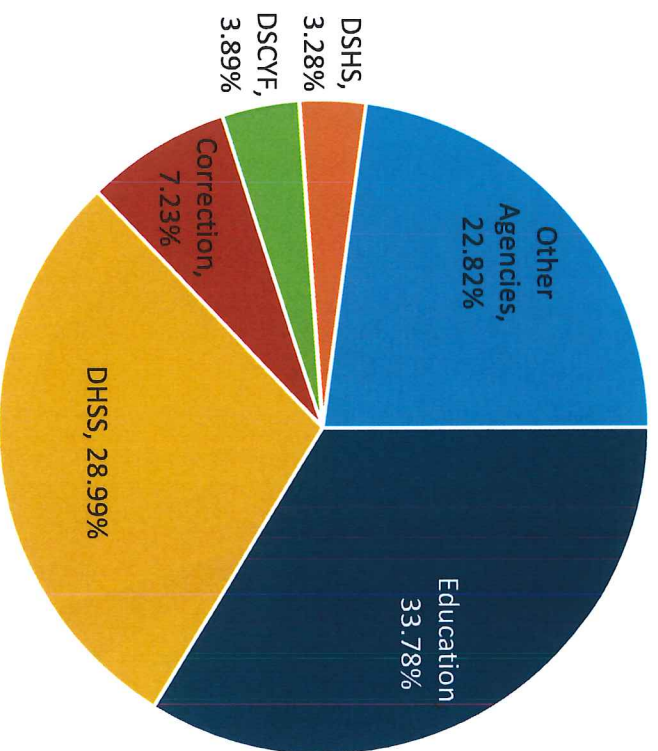




# APPENDIX 7

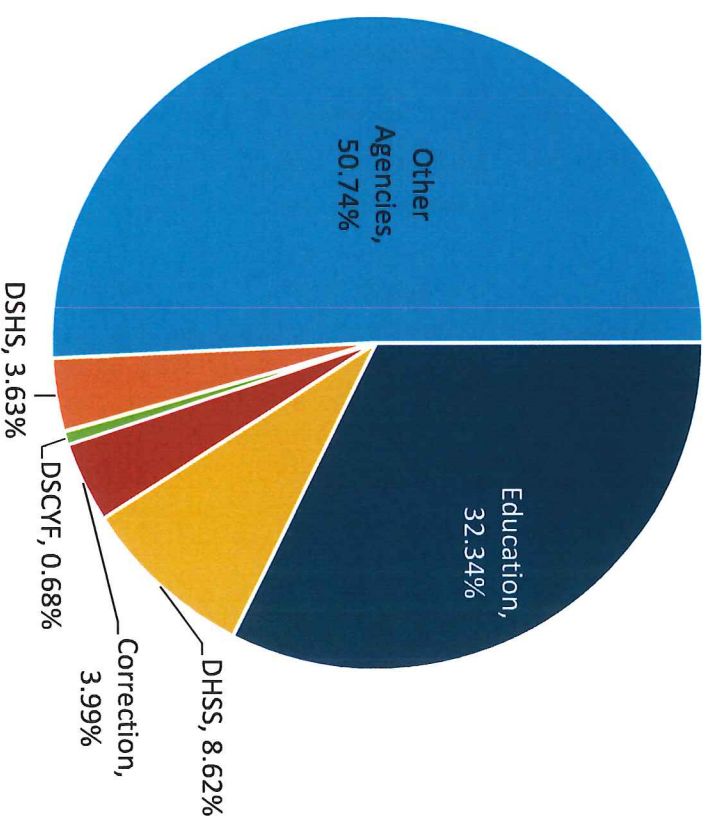
# Percent of Total Budget FY2017

## Operating Budget



DHSS – Health and Social Service  
DSCYF – Services for Children, Youth and Their Families  
DSHS – Safety and Homeland Security

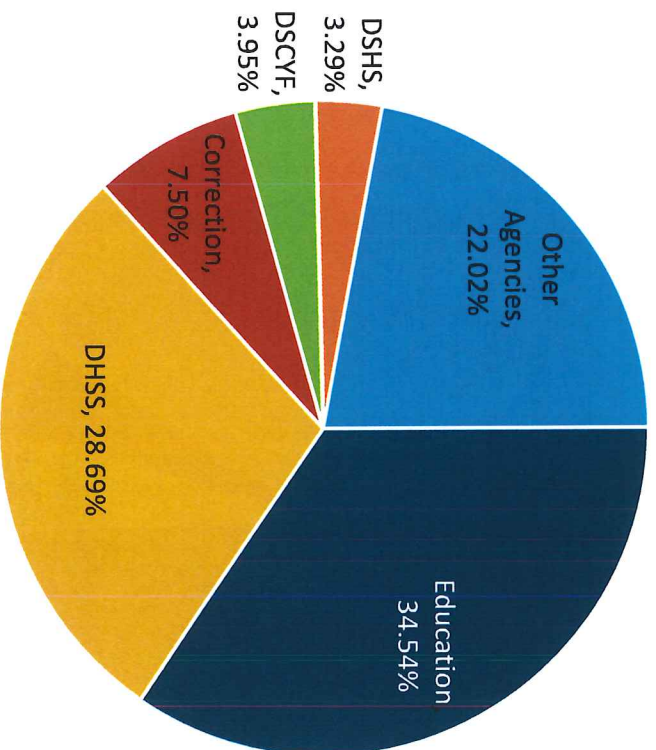
## Capital Budget



# APPENDIX 8

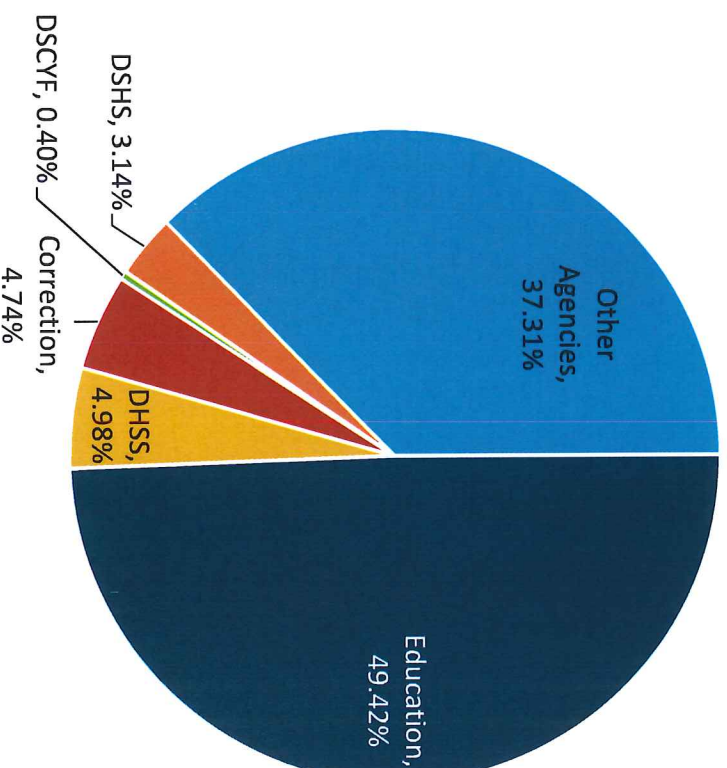
# Percent of Total Budget FY2018

## Operating Budget



DHSS – Health and Social Service  
DSCVF – Services for Children, Youth and Their Families  
DSHS – Safety and Homeland Security

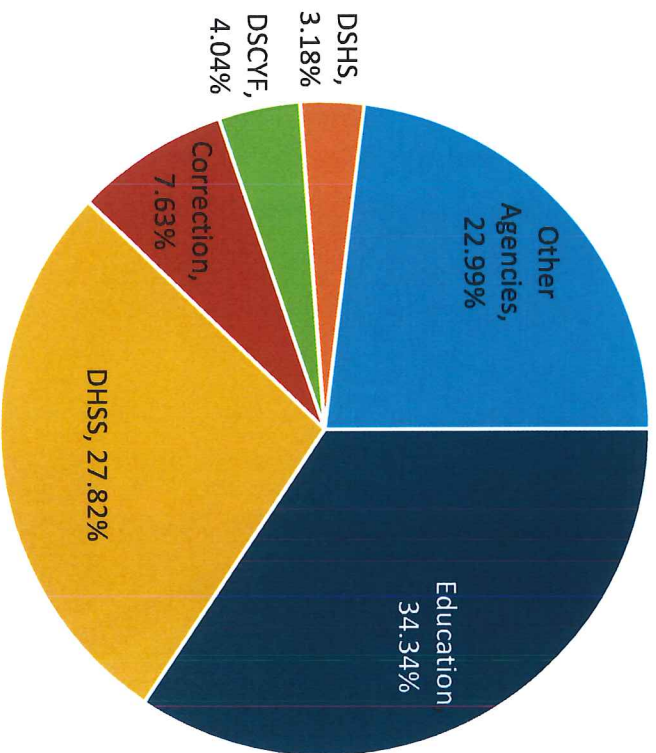
## Capital Budget



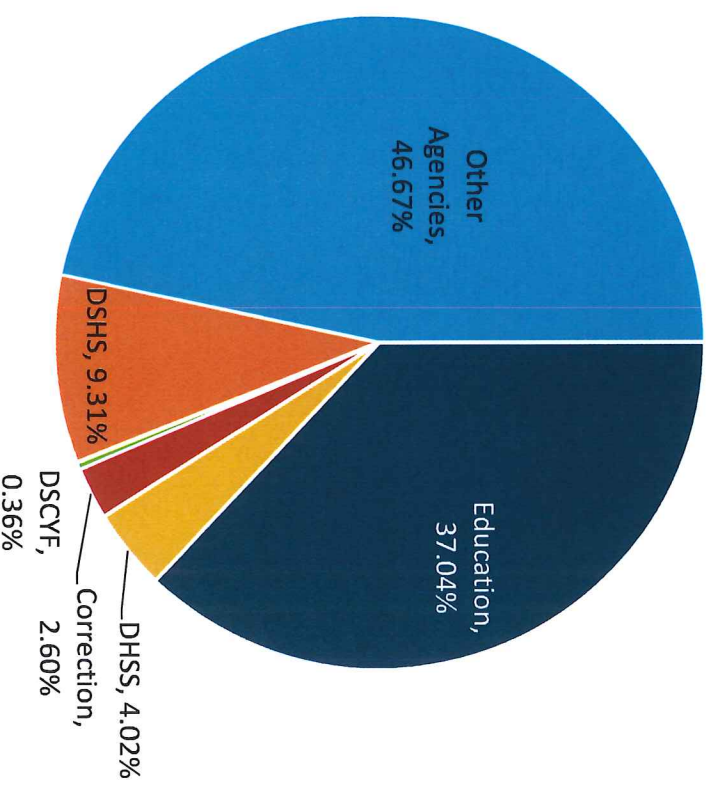
# APPENDIX 9

# Percent of Total Budget FY2019

## Operating Budget



## Capital Budget



Operating Budget growth inclusive of funds appropriated in the One Time Supplemental Bills in FY19 and FY20

DHSS – Health and Social Service

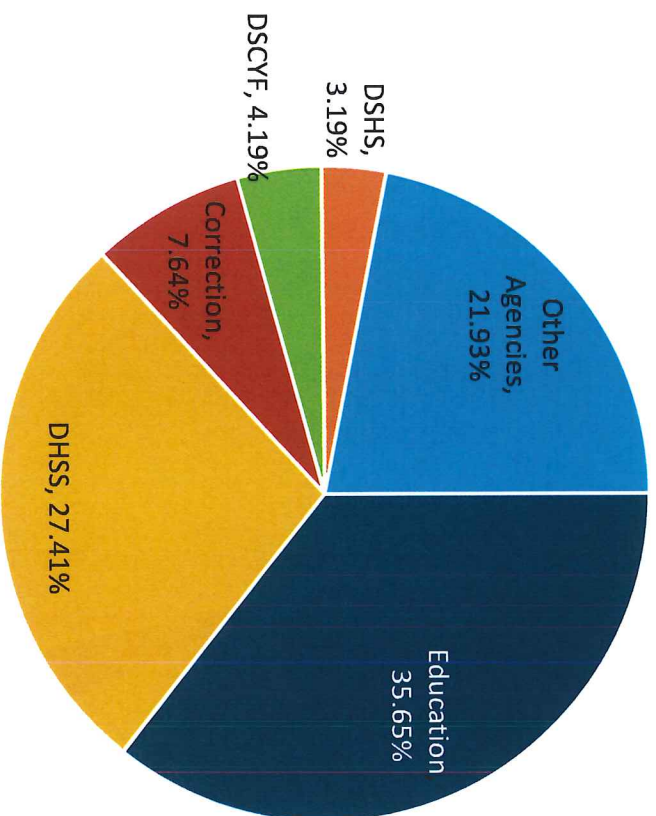
DSCYF – Services for Children, Youth and Their Families

DSHS – Safety and Homeland Security

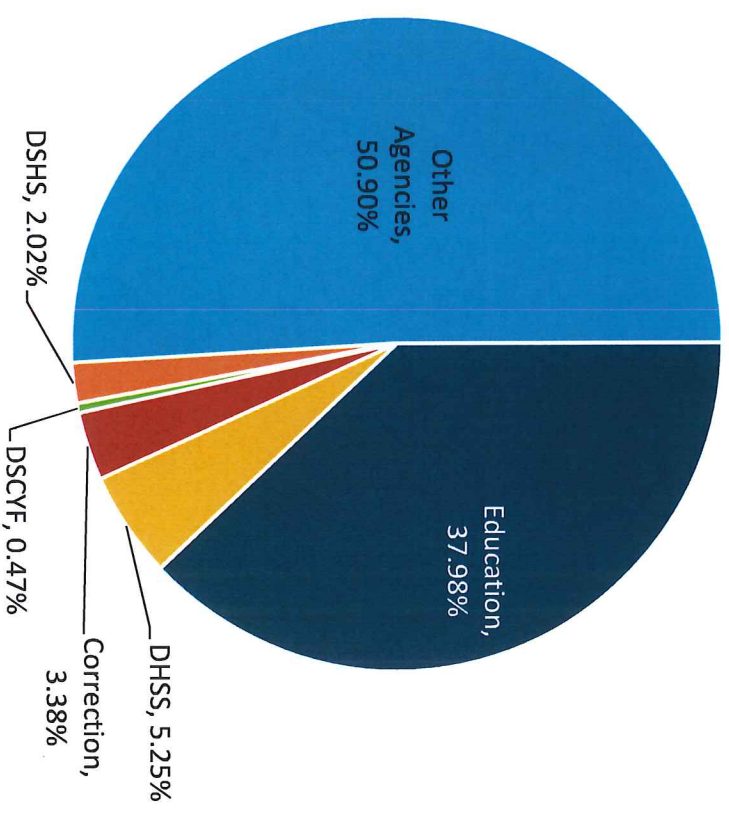
# APPENDIX 10

# Percent of Total Budget FY2020

## Operating Budget



## Capital Budget



Operating Budget growth inclusive of funds appropriated in the One Time Supplemental Bills in FY19 and FY20

DHSS – Health and Social Service

DSCYF – Services for Children, Youth and Their Families

DSHS – Safety and Homeland Security