

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS ("NYSER"), RUBNELIA AGOSTINO, MIRIAM ARISTY-FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARCIA. G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOUILLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, AND ANDY WILLARD,

Plaintiffs

vs.

THE STATE OF NEW YORK, ANDREW M. CUOMO,  
as Governor of the State of New York, NEW YORK STATE  
BOARD OF REGENTS, and JOHN B. KING, Jr.  
as President of the University of the State of New York, and  
Commissioner of Education,

Defendants

COMPLAINT

INDEX NO. 14-

PRELIMINARY STATEMENT

1. This action is being brought to compel the State of New York to provide all students in the state's public schools the opportunity for a sound basic education that is guaranteed to them by Article XI, § 1 of the New York State Constitution and the decisions of the Court of Appeals in *Campaign for Fiscal Equity Inc. v. State of New York*, 86 N.Y.2d 307 (1995) ("CFE I"), *Campaign for Fiscal Equity Inc. v. State of New York*, 100 N.Y.2d 893 (2003) ("CFE II"), and *Campaign for Fiscal Equity Inc. v. State of New York*, 8 N.Y.3d 14 (2006) ("CFE III").

2. In response to the Court of Appeals' CFE decisions that held that New York City's one million public school students were being denied sufficient funding to provide them the opportunity for a sound basic education, the state legislature in 2007 enacted an extensive education reform statute that substantially revised the state education finance system. The Budget and Reform Act of 2007 committed the state to providing substantial increases in funding to the New York City school district and to other school districts throughout the state over a four year phase-in period. After the first two years of the phase-in, however, the state first froze and then dramatically slashed state aid for education.
3. These substantial funding reductions were undertaken without (1) any study of their likely impact on the ability of school districts to provide students the opportunity for a sound basic education, and (2) any guidance to school districts on how they might provide the opportunity for a sound basic education with substantially reduced funds. Moreover, for the past four years, since the extensive budget cuts were implemented, the state has neglected to undertake any activities that would allow it to determine what services school districts actually have curtailed in response to the budget cuts and the impact of these service reductions on students' opportunities for a sound basic education.
4. Plaintiffs allege that, as a matter of law, the state defendants have violated their constitutional responsibility to take appropriate actions to ensure that students are provided the opportunity for a sound basic education at all times, and especially during times of fiscal constraint. Plaintiffs further allege that, as a matter of fact, hundreds of thousands of students in the City of New York and in other districts throughout the State of New York are currently being denied the opportunity for a sound basic education.

## PARTIES

5. New Yorkers for Students' Educational Rights ("NYSER") is an unincorporated association based in New York City, but with members throughout the state, which is dedicated to ensuring that all students in the State of New York receive the opportunity for a sound basic education to which they are entitled under N.Y. CONST. art. XI § 1. NYSER's membership consists of the individual plaintiffs listed below, other parents of students enrolled in public schools in the State of New York, and the following organizations:
  - a. The Center for Children's Initiatives ("CCI") champions the right of all children to start life with the best possible foundation of care, health, and learning, and specifically advocates for access to publicly-funded, high quality pre-kindergarten programs for all three- and four-year-old children in the State of New York.
  - b. Class Size Matters is a not-for-profit organization that advocates for smaller classes in New York City's public schools and the nation as a whole.
  - c. Community Education Councils Five ("CEC 5"), Six ("CEC 6"), and Twenty-Eight ("CEC 28") are statutory bodies that are responsible for establishing policies for the public schools in community school districts five and six in Manhattan, and community district 28 in Queens, respectively, in accordance with the provisions of N.Y. EDUC. LAW art. 52-A.
  - d. The New York City Parents Union is a non-profit organization of parents, headed by parent volunteers, from all five boroughs of New York City that works to protect and enforce the rights of parents and students that are guaranteed by city and state laws and regulations. The Parents Union

seeks to ensure that all students receive a meaningful opportunity for a sound basic education.

- e. The New York State Association of School Business Officials (NYSASBO) represents over 1,800 school business officials and staff from throughout the State of New York, promotes collaboration and professional development, and provides leadership in the management of resources to ensure quality education for all students.
- f. The New York State Council of School Superintendents (NYSCOSS) is a professional and advocacy organization that represents more than 800 school superintendents and assistant superintendents, in New York State. NYSCOSS provides its members professional development opportunities, and other services while advocating for public education.
- g. The New York State PTA (PTA) is a statewide organization of hundreds of thousands of parents, teachers, administrators, students, and other child advocates in approximately 1600 local units and councils. The overall purpose of PTA is to make every child's potential a reality by engaging and empowering families and communities to advocate for all children.
- h. The New York State School Boards Association is a not-for-profit, statewide organization charged with devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of New York's public school districts. Its membership consists of approximately 670, or 91%, of all public school districts and boards of cooperative educational services ("BOCES") in New York State.

- i. Parents for Public Schools of Syracuse, Inc. is dedicated to confronting inequities and other barriers to the fundamental right of all children to a high-quality education.
  - j. Reform Education Financing Inequities Today (“R.E.F.I.T.”) is a consortium of twenty-six low wealth-high tax school districts on Long Island whose combined wealth ratio (“CWR”) is 1.5 or lower, and the Nassau BOCES and Eastern and Western Suffolk BOCES.
  - k. The Rural Schools Association is a statewide organization, representing the interests of, initiating research for, and providing service and information to the small and rural school districts of New York State. Approximately 300 school districts and BOCES units are currently enrolled as members of RSA.
  - l. The Statewide School Finance Consortium (“SSFC”) is an organization of more than 420 New York State public school districts whose mission is to bring equity to the distribution of New York State educational aid. SSFC membership is largely comprised of school districts from average and low-wealth communities that receive a disproportionately low share of state funding. Member districts are from every region of New York State.
6. Rubnelia Agostino, a member of Community Education Council for Community District 10 in the Bronx, sues on her own behalf and on behalf of her minor son, Hector, who is a student in the kindergarten at P.S. 205 in the Bronx.
  7. Miriam Aristy-Farer, the President of the Community Education Council for Community District Six in Northern Manhattan, sues on her own behalf and on behalf of her minor

children, Linus, who is a student in the fourth grade at P.S. 314 in Manhattan, and Luc who is three years old and attends a head start program in the district.

8. Kathryn Barnett sues on her own behalf and on behalf of her minor sons, Evan and Quinton, who are both students in the fourth grade in the Wyoming Central School District in Western, New York, and her daughter, Jordan who is a student in the seventh grade in the same K-8 school that her brothers attend.
9. Ava Capote sues on her own behalf and behalf of her minor son, Giovanni, who is a student in the sixth grade at the Conselyea Preparatory School, a New York City public school that is co-located with P.S. 17 in Brooklyn.
10. Milagros Arcia. G. Changlerth sues on her own behalf and on behalf of her son, Vincent, who is a sophomore at University Neighborhood High School in lower Manhattan.
11. Mona Davids sues on her own behalf and on behalf of her minor children, Eric Davids, who is a student in the kindergarten at P.S. 106 in the Bronx and Mymoena Davids, who is a student in the tenth grade at the Fiorella H. LaGuardia High School in Manhattan.
12. Rolando Garita sues on his own behalf and on behalf of his daughter Asuzena Diaz who is a student in the fifth grade in the Truman Moon Elementary School in the Middletown District in Orange County.
13. Sara Harrington sues on her own behalf and on behalf of her minor children, Kayla and Abby, who are students in the third and first grades, respectively, in School 43 in the Rochester City School District.

14. Nicole Iorio sues on her own behalf and on behalf of her minor children, Vienna, Devon and Justin, who attend high school, middle school and elementary school, respectively, in the William Floyd School District on Long Island.
15. Sonja Jones, a member of Community Education Council 5 in Manhattan, sues on her own behalf and on behalf of her minor son, Glen, who attends the Bedford Academy High School in Brooklyn.
16. Heidi Mouillesseaux-Kunzman sues on her own behalf and on behalf of her daughter Maia who is a high school senior, and her son, Ty, who is a high school sophomore in the Spencer-Van Etten Central School District in Tioga County in the Southern Tier area of New York State.
17. Gretchen Mullins-Kim sues on her own behalf and on behalf of her sons, Theodore Kim, who is sophomore at Yonkers Middle High School, and Enzo Kim, who is a student in the seventh grade at the PEARLS Hawthorne school in Yonkers.
18. Ellen Trachtenberg sues on her own behalf and behalf of her minor son, Jonathan, who is a student in the seventh grade in the Kappa VI middle school in Far Rockaway, Queens.
19. Heidi Teska-Prince sues on her own behalf and on behalf of her minor children, Morgan, who is in the fourth grade, and Nathaniel, who is in the third grade, at the H.W. Smith elementary school in the Syracuse City School District.
20. Andy Willard sues on his own behalf and on behalf of his minor children Ryan and Garrett, who are in the third and seventh grades respectively in the Hermon-Dekalb Central School District in the North Country area of New York State.

21. Defendant the State of New York (“State”) appropriates and allocates financial aid to all school districts in the State of New York, pursuant to the provisions of the Education Law and through an annual budget for state aid to localities.
22. Defendant Andrew M. Cuomo is the Governor of the State of New York and is sued in his official capacity.
23. Defendant New York State Board of Regents is the governing body of the University of the State of New York and exercises legislative and policy making powers over the state educational system and establishes rules and regulations for carrying out the state’s laws and policies relating to education.
24. Defendant John B. King, Jr. is President of the University of the State of New York and Commissioner of Education of the State of New York, and, as such, is the chief executive officer of the Board of Regents and the State Education Department; he is sued in his official capacity.

#### JURISDICTION AND VENUE

25. Since several of the plaintiffs reside in New York County, and the defendants exercise their responsibilities throughout the State of New York, this court has jurisdiction over the subject matter herein pursuant to Article 5 of the N.Y. C.P.L.R.
26. The court has jurisdiction to grant a declaratory judgment and appropriate injunctive relief pursuant to N.Y. C.P.L.R. 3001 and 3017(b).

## FACTUAL BACKGROUND

### A. *THE CFE DECISIONS*

27. Article XI, § 1 of the Constitution of the State of New York (“the Education Article”) provides that:

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

The Court of Appeals has interpreted this provision to “impose[] a duty on the Legislature to ensure the availability of a sound basic education to all the children of the state.” *CFE I*, 86 N.Y.2d at 315; *see also CFE II*, 100 N.Y.2d at 902; *CFE III*, 8 N.Y. 3d at 20; *Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 48 (1982).

28. The Court of Appeals has defined the “sound basic education” to which all students are constitutionally entitled as “the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants.” *CFE II*, 100 N.Y.2d at 908. The Court emphasized that “a sound basic education conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society;” that implicit in the concept is the need to provide students the skills they need to “compete for jobs . . . [that] require a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime;” and that the skills necessary for productive citizenship “means more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably.” *Id.* at 906.
29. After reviewing the extensive evidence that was produced during a seven-month trial in *CFE v. State*, the Court of Appeals affirmed the trial court’s determination that the New York City public school system was not, in fact, delivering the opportunity for a sound basic education

to its one million students, “based on the ‘inputs’ children receive—teaching, facilities and instrumentalities of learning—and their resulting ‘outputs’ such as test results and graduation and dropout rates.” *Id.* at 908. The Court further upheld the trial court’s determination that plaintiffs had established “a correlation between funding and educational opportunity . . . a causal link between the present funding system and [the] proven failure to provide a sound basic education to New York City school children.” *Id.* at 919 (internal citation omitted).

30. In order to remedy these constitutional violations, the Court held that the State must (1) “ascertain the actual cost of providing a sound basic education in New York City;” (2) adopt “[r]eforms to the current system of financing school funding and managing schools [to ensure] . . . that every school in New York City would have the resources necessary for providing the opportunity for a sound basic education;” and (3) “ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.” *Id.* at 930.
31. The Court provided the State a thirteen-month timeline for taking the necessary remedial actions. *Id.* The State, however, failed to do so because of an impasse between the executive and legislative branches, leading to a further round of compliance litigation. Based on the report of a panel of referees that the Court had appointed to consider the costing out studies that had been submitted by the parties, and also by the City of New York and the state education department, the Supreme Court, Judge Leland De Grasse, ordered the State to implement an operational funding plan that would provide students in the New York City public schools an increase of \$5.63 billion in annual funding by the end of a four-year phase-in period.

32. The Appellate Division subsequently modified that order by directing the state to consider “as within the range of constitutionally required funding for the New York City School District, amounts between \$4.7 billion and \$5.63 billion, or an amount in between, phased in over four years.” *Campaign for Fiscal Equity v. State*, 29 A.D.3d 175, 202 (1st Dep’t 2006.)
33. In *CFE III*, the Court of Appeals modified the Appellate Division’s order. It deferred to the governor’s position that \$1.93 billion would meet minimal constitutional requirements. This was the lowest of a range of possible increases in funding for the New York City schools that Standard and Poor’s had listed in a cost analysis they had undertaken for a gubernatorial commission. Specifically, the Court of Appeals modified the Appellate Division’s order to expand the range of the constitutionally-required increases in the annual operating funding level for the New York City public schools to “include[s], as demonstrated by this record, additional operating funds in the amount of \$1.93 billion adjusted with reference to the latest version of the GCEI [Geographic Cost of Education Index] and inflation since 2004.” *CFE III*, 8 N.Y.3d at 27.
34. The final operative order in *CFE III*, based on the Order of the Appellate Division, as modified by the Court of Appeals, therefore, specified that

Defendants are directed to act as expeditiously as possible to implement a budget that allows the city students the education to which they are entitled. Accordingly . . . [the state is] directed that, in enacting a budget for the fiscal year commencing April 1, 2007, the Governor and the Legislature consider, as within the range of constitutionally required funding for the New York City School District, as demonstrated by this record, a funding plan of at least \$1.93 billion, adjusted with reference to the latest version of the GCEI and inflation since 2004, and the Referees' recommended annual expenditure of \$5.63 billion, adjusted for inflation since 2004, or an amount in between, phased in over four years, and that they appropriate such amount, in order to remedy the constitutional deprivations found in *CFE II*.

29 A.D.3d at 191, as modified by 8 N.Y.3d at 57.

*B. THE STATE'S CFE COMPLIANCE PLAN*

35. Following the Court of Appeals' *CFE III* decision, the governor and the legislature reconsidered the issue of "ascertain[ing] the actual cost of providing a sound basic education" *CFE II*, 100 N.Y.2d at 930, not only for New York City, but also for the state at large. First, the state education department ("SED") undertook a new cost analysis. That cost analysis updated the definition of "successful schools," gathered data from a new pool of districts whose schools met those criteria, and then utilized current expenditure figures for those districts. It rejected the very low weightings for the additional costs of educating children from low-income households and English language learners that had been significant determinants of the low end \$1.93 billion Standard and Poor's figure that Governor Pataki had endorsed. Moreover, the SED determined that an extra weighting should also be added for students living in sparsely populated rural districts and utilized a new regional cost of living index. Based on this new study, the New York State Board of Regents (the "Regents") then proposed a total increase in the level of state aid for education of about \$6.8 billion, statewide, to be phased in over four years, of which New York City would receive about \$3.5 billion. New York State Board of Regents Proposal on State Aid, 2007-2008, <http://www.p12.nysed.gov/stateaidworkgroup/2007-08RSAP/rsap0708.pdf>.
36. In January 2007, in order "to provide a statewide solution to the school funding needs highlighted by the Campaign for Fiscal Equity Law Suit" and based on the recommendations of the regents and the record and judicial decisions in the *CFE* litigation, the newly-elected governor, Eliot Spitzer, issued an Executive Budget that proposed a four-year "Educational

Investment Plan” that would substantially increase educational funding. 2007-2008

Executive Budget, Investing in Education,

<http://www.budget.ny.gov/pubs/archive/'fy0708archive/fy0708littlebook/Education.html>.

This plan adopted figures closer to the high end of the range of constitutionally acceptable figures endorsed by the Court of Appeals; at the end of the four-year phase-in period, the plan would increase funding for the New York City public schools by approximately \$5.4 billion annually (\$3.2 billion in increased state funding and an additional \$2.2 billion in increased local funding to which the City of New York was committed) and overall state aid for other school districts throughout New York State by approximately \$4 billion annually.

37. The core of the governor’s plan was the creation of a new foundation aid program, combining approximately thirty previously separate funding streams, “to ensure that each district receives sufficient State and local resources to meet State learning standards.” *Id.* The actual amount of foundation aid to be allocated to particular school districts would be calculated “based on actual costs in successful schools” and in accordance with a formula that adjusted for district enrollment, poverty rates, and cost of living factors, in accordance with the SED’s recent cost study. *Id.*
38. In his memorandum of support of the appropriation bill that the governor then submitted to the legislature, he specifically told the law makers that “[t]his bill enacts numerous changes to the State Education Law to ensure sound, basic pre-K through secondary educational preparation for college or employment. It implements the Court of Appeals’ Campaign for Fiscal Equity decision.” Memorandum in Support of 2007-2008 New York State Executive Budget, Education, Labor and Family Assistance, Article VII Legislation, p. 6-A, <http://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708artVIIbills/ELFAConsBMwto>

c.htm. (emphasis added). The legislature responded to the governor’s proposal by overwhelmingly adopting the plan, with a slight increase in the total funding level and other minor changes, by a vote of 60-1 in the Senate and 126-16 in the Assembly, as the “Budget and Reform Act of 2007.” 2007 Legislative Bill Jacket, N.Y.S. Legislative Archives, L. 2007, ch. 57. The plan is now codified in N.Y. EDUC. LAW § 3602.

39. The new foundation approach was included in the legislation, and it constitutes the main component of the state’s general support for public schools. N.Y. EDUC. LAW § 3602.4. The primary purpose of foundation aid is to provide “adequate funding for a sound basic education in response to the Campaign for Fiscal Equity decision.” New York State Board of Regents, Proposal on State Aid to School Districts for School Year 2012-13, p.7.
40. The Foundation Aid Formula has four basic components:
  - a. A base amount per pupil reflecting the cost to educate students, as determined by the amount spent by successful school districts;
  - b. A regional cost index to ensure a dollar of state aid can buy a comparable level of goods and services around the state;
  - c. An expected minimum contribution by the local community; and
  - d. A pupil need index recognizing added costs for providing extra time and extra help for students with special circumstances.
41. As part of the Budget and Reform Act of 2007, the legislature also adopted a statute that required the Regents to review and evaluate the existing Regents’ learning standards to “determine if they should be strengthened, modified or combined,” and to ensure that they conform to the Court of Appeals’ definition of a sound basic education, *i.e.* one that provides an “adequate opportunity for students to acquire the skills and knowledge they need to

succeed in employment or postsecondary education and to function productively as civic participants upon graduation from high school.” N.Y. EDUC. LAW § 211.

*C. THE STATE’S FAILURE TO IMPLEMENT THE CFE COMPLIANCE PLAN*

42. Pursuant to the Budget and Reform Act of 2007, total annual foundation aid for school districts was to be increased statewide by \$5.5 billion, to be phased in over a four-year period as follows: 2007-2008: 20%; 2008-2009: 22.5%; 2009-2010: 27.5%; 2010-2011: 30%, with appropriate inflation adjustments to be made with each annual increase. L. 2007, ch. 57, §13. Largely in accordance with this schedule, in 2007-08, the foundation funding level state-wide was increased by \$1.1 billion and in 2008-09 by another \$1.2 billion. N.Y. State Division of the Budget, 2007-2008 Archive, <http://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/schoolaid.html>; N.Y. State Division of the Budget, 2008-2009 Archive, <http://www.budget.ny.gov/pubs/archive/fy0809archive/enacted0809/localities/schoolaid/schoolaid.html>.
43. Following the recession of 2008, the State failed to carry out its commitment to provide the amount of state aid that the governor and the legislature had determined to be necessary to provide all students the opportunity for a sound basic education within the four-year phase-in period mandated by the Court of Appeals. Although all of the major components of the 2007 Budget and Reform Act, including the commitment to increase foundation funding by \$5.5 billion, remain in N.Y. EDUC. LAW § 3602, the state first froze the phase-in process, then substantially reduced education funding. It has repeatedly delayed the date for reaching the

final foundation amounts needed to provide students the opportunity for a sound basic education.

44. Specifically, during the third year of the scheduled phase-in, Governor David Paterson and the legislature failed to provide the level of funding called for by the State Budget and Reform Act of 2007. Instead of appropriating the \$1.5 billion increase in foundation funding required under the Budget and Reform Act for that year, the legislature froze foundation funding at the prior year's level. Governor Paterson had, in fact, called for a reduction of \$1.4 billion in foundation funding for the 2009-2010 school year, but the availability of federal funding under the American Recovery and Reinvestment Act (the federal "stimulus act") led the legislature to reject the proposed cut and, instead, to freeze foundation funding at the prior year's level.
45. In or about December 2009, the Regents issued a "Proposal on State Aid to School Districts for School Year 2010-11." Despite the legislature's stipulation that the foundation funding level should remain frozen at the 2008-2009 level for both 2009-2010 and 2010-2011, the Regents called for an increase in foundation aid, and in other state aid for 2010-2011.
46. Acknowledging that a poor economy had led to declining revenues in New York State, the Regents stressed that school districts nevertheless continued to be faced with mounting cost pressures and that "graduating more students is a moral and economic imperative." *Id.* at 7-9. In addition, they noted that although the economic downturn had placed severe pressures on the state budget, the recession and the continuing high unemployment rate, especially for minority families, has increased the number of students in poverty and increased their associated educational needs. *Id.* at 11. The Regents, therefore, stated that it was essential to

“continue moving toward adequacy by maintaining a commitment to the Foundation funding formula and refining distribution of funds to support high need districts.” *Id.* at 10.

47. The Regents further declared that “While serious fiscal challenges exist, the State must maintain its responsibility and commitment to seek adequate funding for all of our school districts . . . .” *Id.* at 10. Highlighting the importance of directing funds to the high need school districts, the Regents stated that “[e]xperience has shown that when State Aid is frozen, there are inequitable consequences that have a disproportionate negative effect on high need school districts. These districts’ resources are farthest from adequate and have a larger portion of their budget dependent on state-funded aid. The freeze affects a greater share of their budgets than districts that are less dependent on State Aid . . . .” *Id.* at 10.
48. Instead of accepting the Regents’ call to begin to resume the phase-in of the constitutionally mandated state aid increases, Governor Paterson proposed in his Executive Budget for 2010-2011, not only to continue the freeze in foundation aid appropriations, but also to *reduce* total foundation aid appropriations by \$2.1 billion through a “one-time” “Gap Elimination Adjustment.” 2010-11 Executive Budget Briefing Book, Education and Arts, p.2. At the same time, certain “expense-based aids” such as building aid, transportation aid, and aid for Boards of Cooperative Educational Services (“BOCES”), were increased by \$367 million, and \$1.3 billion in federal stimulus aid was applied to the education budget, resulting in a total net budgetary reduction of approximately \$740 million. The legislature accepted these recommendations and included the substantial “gap elimination adjustments” in the state aid budget for 2010-2011.
49. The only stated justifications for these substantial reductions were that the cutback in school aid was required “[t]o achieve necessary State savings . . . .” and that “with education funding

representing over 34 percent of State Operating Funds spending and the State continuing to face massive budget gaps, reductions in overall School Aid support are required.” *Id.* at 1. Nowhere in the executive budget was there any indication that the governor had undertaken any new cost study to determine the current “actual costs” of providing a sound basic education, *CFE II*, 100 N.Y.2d at 930, or that he had undertaken an analysis of the impact of his proposed cuts on the opportunity for a sound basic education that could or would be provided to students throughout the state, and especially on the opportunities of students in New York City and other high needs districts.

50. For the 2011-2012 school year, the legislature made the “gap elimination adjustment” (“GEA”), a permanent part of the funding system. N.Y. EDUC. LAW § 3602.17. The GEA purports to close “the gap” between the budgeted state expenditure levels required by the Budget and Reform Act of 2007 and revenues available to support them. For 2011-12, the legislature increased the GEA, and because federal stimulus funds were no longer available, the actual reduction in foundation aid caused by the GEA was about \$2.6 billion statewide, L. 2011, ch. 58 §§26, 37; this was done in a manner which imposed the largest per pupil cuts on high need and average need districts.
51. In 2011-2012, the legislature also adopted a cap on annual increases in state aid to education that permits state aid to increase annually by no more than the increase in personal income in the state for the previous year. N.Y. EDUC. LAW §3602.1(dd). Maintenance of this cap will make it impossible for the State to fund education at the levels required by the Budget and Reform Act of 2007 for approximately fifteen years.
52. In addition to substantially reducing state aid and limiting annual state aid increases, the legislature has imposed a cap on the annual increases in property taxes that local school

districts and municipalities, other than the City of New York, may impose. N.Y. EDUC. LAW § 2023-a. This law prescribes new voting procedures that require a higher percentage of voters to approve a proposed tax levy increase if it exceeds 2% of the prior year's levy or the increase in the national Consumer Price Index, whichever is less. *Id.* at § 2023-a(2)(i). (For 2014, the cap will be approximately 1.7% because inflation last year was under 2%.) Increases up to the cap amounts may be approved by a vote of more than 50% of the eligible voters, but levies that exceed the cap require a 60% supermajority approval vote. *Id.* at § 2023-a(6)–(7). If the district is unable to obtain voter approval, it may not increase its tax levy above the prior year's amount. *Id.*

53. Currently, state aid provides approximately 40% of total K-12 education costs in New York State, federal aid 8%, and local school districts contribute 52%. New York State Education Department, *2012-2013 State Aid Handbook*, p.4, [https://stateaid.nysed.gov/publications/handbooks/handbook\\_2012.pdf](https://stateaid.nysed.gov/publications/handbooks/handbook_2012.pdf). The state-aid system is premised on an expectation that local school districts, in accordance with their relative wealth, will contribute additional funding, on top of state aid, to provide the full amount of foundation funding that is necessary to provide their students the opportunity for a sound basic education. N.Y. EDUC. LAW §3602.4(a). The cap on state-aid increases precludes the state from providing appropriate levels of foundation funding. The property tax levy cap prevents some school districts from raising the additional funding they are expected to contribute under the state-aid system to ensure the availability of educational funding levels required to comply with constitutional mandates. In the absence of any system for ensuring additional state aid, the local property tax levy cap exacerbates existing shortfalls in state aid

and denies students the level of resources necessary to provide them the opportunity for a sound basic education.

54. For the current school year, twenty-eight school districts asked their voters to approve tax increases above the tax cap. Of the twenty-eight, only ten districts achieved the 60% supermajority vote necessary to approve the increases that the school board thought was necessary to meet student needs.
55. In each of the 2012-2013 and 2013-2014 school years, the state provided a modest increase in state aid, but even with these modest increases, foundation aid statewide is still almost \$4 billion below the amount called for in the Budget and Reform Act of 2007 and for the current school year, a \$1.64 billion “gap elimination adjustment” is still being imposed.
56. In his Executive Budget Proposal for 2013-2014, Governor Cuomo acknowledged that four years after the date that the Court of Appeals had established for full constitutional compliance for students in New York City (and that the legislature had extended to all students throughout the state), the current budget merely “*continues* the work of building an education system that ensures every child has an opportunity of a sound, basic education . . .” *Id.* at 25 (emphasis added).
57. Although the state determined in 2007 that a figure closer to the upper end of the constitutionally-required funding range for the New York City School District contained in the Court of Appeals’ CFE decision is actually needed to provide students the opportunity for a sound basic education, students in the New York City public schools are currently not even receiving operational funding at the lowest level of the constitutionally required funding range established by the Court of Appeals.

58. Since the reductions in state aid began in 2009, the amount of operating funds available to schools in New York City have been reduced by approximately 15% and expenditures for central administration and operations have been reduced by about 40%. Although the City of New York has increased its annual school funding by more than the amount to which it was committed under the Budget and Reform Act of 2007, most of those increased funds have been allocated to pay for huge increases in expenses in areas such as mandatory pension and health costs, and contractual payments to private schools for pre-school and school age special education that were not anticipated in the cost analyses that informed the Court of Appeals' *CFE III* decision and the 2007 Budget and Reform Act. These increased city funds have not been used to increase operational funding for the city schools and to ensure the opportunity for a sound basic education to students in the New York City public schools.

THE STATE'S IMPOSITION OF NEW MANDATES AND ADDITIONAL COSTS  
ON SCHOOL DISTRICTS.

59. Although both Governor Paterson and Governor Cuomo have called upon the legislature to enact legislation that would reduce certain unnecessary mandates on school districts that would lower costs to school districts without detrimentally affecting students' educational opportunities, since 2008 the legislature has failed to eliminate any of the current barriers to cost-effective school operations in such areas as construction, school district consolidation, and the promotion of regional transportation.

60. Although the defendants have made no substantial efforts to reduce costly mandates on school districts that are educationally unnecessary over the past five years, they have, at the same time, imposed major new, unfunded requirements in a variety of areas.

61. In 2010, the Regents adopted a set of Common Core standards in English language arts and mathematics and made other changes in the Regents Learning Standards in order to establish a rigorous continuum of academic expectations that they have deemed to be essential for preparing students to be “college- and career-ready” when they graduate high school. The Regents have now established these standards as essential educational requirements for providing students the opportunity for a sound basic education.
62. Proper implementation of the Common Core and Regents Learning Standards requires, among other things, that schools utilize additional staff time and/or hire additional staff or consultants to redesign their curricula, procure new textbooks and instructional materials, train all of their teachers in the new curriculum and assessment requirements, provide teacher planning time, and purchase both hardware and software to handle the new computer-based assessment system that is part of the Common Core approach.
63. On information and belief, the cost of implementation of the Common Core standards exceeds \$100 per student or about \$300 million annually statewide for each year of the three to four year phase-in period. Although the total cost of properly implementing the Common Core statewide would, therefore, be approximately \$1 billion, the state has not appropriated any additional funds to support these major new requirements. New York City and a number of other school districts have received small allocations of federal Race to the Top funds to support Common Core implementation, but these federal funds have constituted less than one-third of the amount needed for proper implementation of the Common Core. In any event, these federal funds are virtually exhausted, and no additional funding has been appropriated or identified to support the extensive on-going Common Core implementation needs.

64. Beginning in 2011, the state has required all school districts to implement a new Annual Professional Performance Review System (“APPR”) for evaluating teachers, administrators, and other professional staff members. N.Y. EDUC. LAW §3012-c. Proper implementation of the APPR system requires school districts to develop or purchase new observation and evaluation systems, train teachers and principals in their use, expand supervisory positions to ensure that the number of mandated observations and evaluations are completed appropriately, and provide mentoring and other mandated support to teachers or other personnel who receive unsatisfactory initial ratings.
65. On information and belief, proper execution of the mandatory classroom observations of each teacher and required follow-up meetings with teachers requires 10-20% of each principal’s time or the equivalent in additional supervisory staffing, and full annual implementation costs range from \$350 for evaluating an experienced teacher to \$4,000 for evaluating and supporting an ineffective teacher. The state has not, however, appropriated any additional funds to support this major new mandate. New York City and many other school districts have received only small allocations of federal Race to the Top funds to support APPR implementation. These federal funds have constituted a small fraction of the amount needed for proper implementation of APPR, and, in any event, these federal funds are virtually exhausted and no additional funding has been appropriated or identified to support the extensive ongoing APPR implementation needs.
66. Effective July 1, 2012, the state has required every school district to implement a Response to Intervention program (“RTI”). RTI is a framework that provides opportunities and tools for schools to identify, especially during the K-3 years, students making sub-standard progress and support them by providing evidence-based interventions, monitoring their

progress, and making data-based decisions to adjust the intensity and nature of those interventions, Accordingly, RTI has great potential to improve the education for students at risk of poor learning outcomes and to reduce referrals for special education.

67. Proper implementation of RTI requires extensive training of teachers and evaluation staff, allocation of substantial staff time for assessment and planning purposes, documenting student needs and progress, and hiring additional staff to support small group and individualized instruction and other interventions. Although in the long run an effective RTI system should reduce the need for later remediation, decrease referrals for special education, and significantly lower overall education costs, in the short run, proper implementation requires substantial additional investments in staff training and staff time. On information and belief, the average initial costs for properly implementing an RTI program in each school are in excess of \$150,000 per year for an initial five-year period. For the past two years, the state has provided no additional appropriations to school districts to support this major mandate. Furthermore, budget reductions over the past few years have eliminated many of the pre-existing staff specialists that may have been able to carry out RTI activities.
68. Pursuant to state and federal law, school districts are required to provide an extensive battery of standardized tests to students on an annual basis. The number and extent of such tests have increased substantially over the past five years. For example, between 2008 and 2012, the number of mandatory testing minutes for fifth graders in New York State increased from 165 to 540. In addition, students in several hundred schools around the state have been required to sit for additional field tests to aid the state's test developers.
69. Standardized student testing requires additional resources for extensive and ongoing test development and for the extra time supervisors, teachers, and other staff members spend

administering and scoring the tests. In addition, administering tests for the many students with disability accommodations consumes substantial time and effort of guidance counselors and other student support staff such as reading specialists. For the past five years, the state has provided school districts no additional funding whatsoever to cover these costs.

70. Although some or all of the above-described new unfunded mandates can in the long run provide valuable educational benefits, the state's failure to provide sufficient resources to ensure their proper implementation both jeopardizes the successful development of these new programs and further constrains the ability of schools to provide an opportunity for a sound basic education. The failure to fund these major new mandates puts additional financial stress on school districts that have not received sufficient resources to meet their pre-existing instructional and operational obligations, which have not been reduced since the new requirements were imposed.
71. The funding levels approved by the Court of Appeals in *CFE III* and the funding increases to which the legislature committed the state in the Budget and Reform Act of 2007 were based on actual operating costs from "successful schools" studies undertaken in 2004 and 2006. Since that time actual costs for mandated employee health premiums and pensions, as well as energy costs, have substantially surpassed historic levels and projected levels for these items. For example, in 2003, annual health insurance costs for the New York City school district were \$595 million, representing 3.5% of the district's operating expenditures. In 2013, health insurance costs were \$1,993 million, representing 11.4% of district operating expenditures. Similarly, in 2003, New York City expended \$795 million or 4.6% of its total operating budget for pensions to retired employees. In 2013, pension costs increased to \$2,707 million, or 15.5% of the total operating budget. According to the state education department,

statewide, school district contributions to the Teacher Retirement System for 2013-2014 are expected to total about 16.5% of salaries. Regents Proposal on State aid to School Districts for School Year 2013-14, p.15.

72. Statewide, between 2010-2011 and 2012-2013, the percentage of overall school district budgets that was spent on instruction has declined from 56.01% to 50.86%; the percentage spent on central services and support has declined from 13.85% to 11.46%; and the percentage spent on employee benefits has increased from 16.19% to 26.37%.
73. Since 1997, the state has operated a School Tax Relief Program (“STAR”). The STAR Program takes two forms: the Basic STAR and the Enhanced STAR. The Basic STAR is applicable to the primary residence of any New York State resident and exempts \$30,000 from the true value of a home or property for purposes of school taxes. The state then reimburses the school district for the school taxes that otherwise would have been collected. The Enhanced STAR, for eligible low-income senior citizens exempts an annually variable amount (\$63,300 for the 2013-2014 school year) from the true value of their primary residence.
74. Residents of New York City, Buffalo, Rochester, Syracuse, and Yonkers, who do not directly pay school taxes, are not eligible for the program, but they receive an alternative, but significantly lower, tax offset subsidy from the state in lieu of STAR payments. Because STAR exemption amounts are adjusted upwards based on property values, and the big five school districts, all of which are high need districts, do not participate in the program, STAR aid is not distributed in accordance with relative school district need.

75. In 2012-2013, \$3.2 billion was distributed in STAR property tax relief to school district residents. Since 2010-2011, at the same time that state foundation aid has been substantially reduced, STAR payments have been maintained and increased.

THE IMPACT OF THE STATE AID CUTS AND THE NEW MANDATES  
ON THE FINANCIAL VIABILITY OF SCHOOL DISTRICTS

76. Because of the extensive reductions in state aid to public schools, between 2009 and 2012, statewide, school districts on average have reduced their instructional expenditures per pupil by approximately 7%, their instructional support for students (guidance, social work, and health services) by 9%, and student activities (extracurricular, physical education, publications, clubs, and bands) by 13%. Federal Reserve Bank of New York, *The Long Road to Recovery: New York Schools in the Aftermath of the Great Recession* (2013). Although all school districts in the state have been detrimentally affected by these cuts, their impact has been disproportionately greater on high need school districts.
77. In response to the combination of substantial funding reductions, major new mandates and unanticipated new costs over the past five years, school districts have had both to utilize accumulated “rainy day” reserves and reduce expenditures. Statewide, school districts’ unrestricted reserves (generally known as “fund balances”) shrank from \$2.76 billion in 2009-2010 to \$1.21 billion in 2012-2013. Regents Proposal on State aid to School Districts for School Year 2013-14, p.16.
78. A school district’s fund balance serves two purposes. The first is to account for encumbered expenses of the school district that were created in one fiscal year, but are due to be paid in the next. The other is to provide cash on hand for the district’s operational cash flows and for unforeseen emergencies.

79. On information and belief, adequate reserves to provide funding stability and to meet fiscal emergencies require reserves amounting to 5-10% of a school district's spending levels. According to the Property Tax Report Cards filed with the state education department, in 2012-2013, 28 school districts had less than 1% of their budget available as a reserve; cumulatively, 75 school districts had less than 2%, and 129 school districts less than 3%. Overall, more than two-thirds of all of the school districts in the state had less than 4% of their budget as a balance reserve. Among high-need school districts, as of September 2012, 27% had lost from half to all of their reserves and another 45% had lost between 1-49% of their fund balance reserves. New York State Association of School Business Officials, *School District Fund Balances, A Tale of Two Insolvencies*, p. 9 (Sept. 2012). 81% of all school districts in the state expect to spend down their fund reserves within five years. *Id.* at 4.
80. According to the latest report from State Comptroller Thomas P. DiNapoli, 87 school districts in New York State are currently in conditions of financial stress. *See*, [http://www.osc.state.ny.us/localgov/fiscalmonitoring/pdf/schools/schools\\_stress\\_list.pdf](http://www.osc.state.ny.us/localgov/fiscalmonitoring/pdf/schools/schools_stress_list.pdf). (This report does not include any analysis of the "big four" school districts of Buffalo, Rochester, Syracuse, and Yonkers.
81. Even with major efforts to eliminate inefficiencies and adopt cost-effective practices, high need school districts have been unable to comply with many state mandates and provide their students the opportunity for a sound basic education at the current funding levels. A particularly cogent example is provided by the efforts of the Syracuse City School District to deal with extensive reductions in state aid over the past four years.

82. Syracuse is a high poverty district of approximately 21,000 students, 80% of whom are from low-income households (measured by eligibility for the federal free and reduced price lunch program). At the time that the Court of Appeals issued its orders in the CFE litigation, Syracuse, like New York City, lacked sufficient resources to provide its students the opportunity for a sound basic education. To remedy this constitutional deficiency, the Budget and Reform Act of 2007 committed the state to increase its aid to the Syracuse school district by about 35% over the four-year phase-in period, which should have resulted in an increased annual funding level of approximately \$85 million over its 2007-2008 level by 2011-2012.
83. The prospect of this substantial state investment, together with the school district's commitment to use these funds productively to improve instruction in its schools and to provide all of its students the opportunity for a sound basic education, induced the Say Yes to Education organization to choose Syracuse as its demonstration city for its ambitious program to guarantee a free college education to all students who would graduate from the city's high school. To motivate students and prepare the highly disadvantaged Syracuse school population to be prepared for college, Say Yes committed millions of dollars of its own funds to providing a range of support and "wrap-around" services like after pre-school, afterschool, and summer school programs.
84. In 2010, realizing that the promised increases in state aid were not likely to materialize in the near future, the Syracuse City School District and Say Yes made a determined effort to continue their efforts to improve education in the district's schools at a lower expenditure level by undertaking an intensive program of cost containment, cost efficiency, and cost effectiveness that they hoped would allow them to provide a meaningful opportunity for a sound basic education to all of their students, despite the extensive cuts in state aid.

85. To assist them in these efforts, Say Yes retained the services of Education Resource Strategies (“ERS”), a leading national cost-effectiveness organization. (The President and Executive Director of ERS was appointed by Governor Cuomo to his New NY Education Reform Commission.) They also retained Schoolhouse Partners, a budget analysis consulting firm, and Croft and Joftus, an educational policy consulting firm, to advise the district on how to eliminate operating inefficiencies, promote cost-effective educational practices, and still meet the state’s instructional practices and provide their students the opportunity for a sound basic education.
86. Working with Say Yes, the district has also entered into a number of agreements with the City of Syracuse, Onondaga Country, Syracuse University, and other community-based organizations to promote cost effective shared services in areas like after school and summer programming, mental health services, and early childhood services.
87. ERS, Schoolhouse Partners, and Croft and Joftus developed extensive restructuring and cost-savings plans, virtually all of which the district adopted. In doing so, the district eliminated a large number of nonessential positions, revamped the special education referral process, and strengthened many of its programmatic structures. Specifically, between 2008-2009 and 2013-2014, a time period during which its student enrollment slightly increased, Syracuse reduced its instructional staff by 164 (10%), its teaching assistants and other instructional support personnel by 257 (26%), its administrative and clerical staff by 72 (17%), and its security and building services staff by 169 (38%). It set in motion major efforts to upgrade its curriculum to meet the Common Core standards requirements, to implement the APPR staff evaluation system, and to improve teacher effectiveness. The District also managed to

renegotiate its contracts with its teachers and administrators, who agreed to reduce previously negotiated salary increases substantially and to work increased hours.

88. Despite these extensive cost-reduction efforts, in order to continue its educational progress and to implement properly the newly-required common core and APPR programs, the Syracuse school district has been compelled over the past two years to utilize a statutory provision that allows certain city school districts to spend additional sums as an advance against future revenues. Over the past two years, Syracuse has borrowed \$28 million to support current operations in this manner. Given this large operational debt (amounting to over 8% of its total budget), unless state aid is substantially increased in the near future, Syracuse will have to further curtail expenditures drastically and abandon its promising efforts to improve instruction to meet state common core and other requirements and to provide all of its students the opportunity for a sound basic education, in order to avoid fiscal insolvency.

89. Even with its exemplary efforts, and substantial instructional progress in recent years, at the present time Syracuse now lacks sufficient resources to be able to provide its students all of the critical services that are necessary to provide them a meaningful opportunity for a sound basic education. Among other things, class sizes, especially in the lower grades, have increased dramatically, the district lacks reading and math specialists to provide Academic Intervention Services (“AIS”) and RTI services in the elementary grades; critical after-school and summer-school services have been dramatically reduced; graduates lack sufficient credits to be accepted to SUNY schools; cutbacks in custodians have rendered many buildings filthy and mice-infested; and the paucity of support staff has weakened discipline and led to high suspension rates that undermine instructional efforts.

THE IMPACT OF THE STATE AID CUTS AND NEW MANDATES ON  
STUDENTS' OPPORTUNITIES TO OBTAIN A SOUND BASIC EDUCATION

A. *NEW YORK CITY*

90. In his *CFE* decision, the trial court judge, the Honorable Leland De Grasse, explicating the minimal requirements for providing a sound basic education established by the Court of Appeals, *CFE I*, 86 N.Y. 2d at 317, specified that the state must ensure at least the following resources:

- sufficient numbers of qualified teachers, principals, and other personnel;
- suitable and up-to-date curricula;
- an expanded platform of services to help students who are at risk of failing;
- adequate resources for students with disabilities and English language learners;
- appropriate class sizes;
- sufficient and up-to-date books, supplies, libraries, technology, and laboratories;
- a safe, orderly environment; and
- adequate and accessible facilities.

187 Misc. 2d 1, 114-15 (N.Y. Sup. Ct. 2001), *aff'd*, 295 A.D.2d 1, 10 (1st Dep't 2002), *aff'd*, *CFE II*, 100 N.Y.2d at 932.

91. More than ten years after the Court of Appeals' ruling in *CFE II* and more than six years after state defendants enacted the Budget and Reform Act of 2007 in order to implement the Court of Appeals' ruling, because of budgetary reductions and other actions and inactions of the state, students in the City of New York are still being denied the

opportunity for a sound basic education on a systemic basis in each of the specified areas of constitutional requirements.

1) Qualified teachers, principals and other personnel

92. The reduction in state aid for education since 2009 has caused a substantial reduction in the number of teachers, principals, administrators, and support staff throughout the city. The paucity of teachers and lack of adequate training has resulted in many schools having insufficient numbers of properly certified and adequately trained teachers to provide mandated instructional time in core courses and in many schools not being able to offer state-required courses in the arts, health, career and technical development. *See, e.g., Campaign for Educational Equity, Teachers College, Columbia University, Deficient Resources: An Analysis of the Availability of Basic Educational Resources in High Needs Schools in Eight New York State School Districts* , available at [http://www.equitycampaign.org/i/a/document/25804\\_DeficientResources2-21-13.pdf](http://www.equitycampaign.org/i/a/document/25804_DeficientResources2-21-13.pdf). (“Deficient Resources.”)
93. Many schools now lack sufficient guidance counselors to provide their students state-required services, including basic academic counseling and college readiness counseling and supports. For example, thirty-five high schools in New York City have no guidance counselors at all, and in 115 high schools, guidance counselors have caseloads in excess of 300 students each, with guidance counselors in twenty-one schools attempting to handle course selection and college guidance activities for over 500 students. *Creating College Ready Communities 31* (Center for New York City Affairs, The New School, 2013). In 2012, the New York City Comptroller determined that there was a need for an additional 1600 guidance counselors for the New York City schools in order to meet state

requirements for responding to the needs of students with behavioral or adjustment problems, and to provide necessary college counseling. Office of the Comptroller, The Power of Guidance (2012).

2) Suitable and Up to Date Curricula

94. The extensive staff reductions mean that many schools now lack sufficient teachers to meet minimum instructional time requirements in English Language Arts, mathematics, science, and social science, and in many schools art, physical education, health, career and technical courses, and other required subjects are simply not offered. *See, e.g. Deficient Resources, supra 90.*
95. Many recent New York City public school graduates could not meet the recommendations and specific requirements for adequate academic coursework for incoming students at the City University of New York (“CUNY”) because their schools do not offer the specific courses like chemistry or physics, or the sequences of courses in foreign languages, mathematics and other subjects that CUNY institutions recommend or require for incoming students.

3) Expanded Platform of Services for At-Risk Students.

96. The expanded platform of extra services for at risk students as described by Justice De Grasse include “more time on task,” pre-kindergarten, literacy, after school, summer, and other extended time programs. *CFE v. State of New York*, 187 Misc. 2d 1, at 76, 79.
97. In order to provide “more time on task,” the commissioner’s basic regulations require schools to provide extra academic intervention services for students whose academic performance is below grade level or who are at risk of failing to achieve grade-level performance in one or more of the four core subject areas. These services may be provided during the regular school day or extended day, or through afterschool and/or

Saturday, extended year or summer programs. N.Y. COMP. CODES R. & REGS. tit. 8 §§100.1(g); 100.2(ee).

98. Lacking sufficient resources, most schools provide some of the required services, some of the time to some of the eligible students, but the vast majority of schools in New York City are currently failing to substantially comply with the AIS requirements.
99. Since 2012, the state has also required all school districts to identify students with learning difficulties or behavioral problems and to promptly provide them RTI services that will meet their needs through graduated levels of appropriate academic interventions, as necessary. N.Y. COMP. CODES R. & REGS. tit. 8 §100.2(ii). Virtually no schools in New York City are currently meeting this requirement.
100. A substantial number of schools lack sufficient school psychologists or social workers to meet state requirements for providing mental health services for students with behavioral or adjustment problems.
101. The budget reductions since 2009 have also resulted in substantial reductions in the availability of literacy, afterschool, summer, and other extended day programs throughout the city, and, on a systemic basis, New York City's schools are not offering sufficient literacy, after school, summer and other extended day programs to meet constitutional requirements.
102. In 2007, as part of its plan to provide all students the opportunity for a sound basic education in the wake of the *CFE* litigation, the legislature adopted a new funding formula for its "Universal Pre-Kindergarten Program" ("UPK") that aimed to provide all four-year-olds in the state access to publicly-funded prekindergarten programs within four years. After the new system had been implemented for two years, however, starting in

2010, the state froze further increases and then prohibited additional districts from joining the program, and reduced the total amount available for the UPK program. The maximum amount of state funding available today for UPK is \$385 million, less than it was in 2007-2008 when the maximum allocated amount of UPK funding statewide was \$451 million. Although the state has provided small increases in foundation funding for K-12 programs for the past two years, no such increases have been appropriated for the “universal” prekindergarten program.

103. At the present time, approximately 50,000 at risk pre-schoolers in the City of New York do not have access to full-day publicly funded pre-kindergarten. Although Governor Cuomo and the legislative leaders have acknowledged the importance of full day prekindergarten programs to prepare at risk students for school success, they have not either expanded the state’s existing UPK program to provide these services to all at risk students in the City of New York, nor have they permitted New York’s mayor to raise local taxes to accomplish this goal through a city-funded program.

4) Adequate Resources for Students with Extraordinary Needs

104. More than 14% of students in the New York public schools are English language learners (“ELLs”). Because of a shortage of certified bilingual and English as a Second Language (“ESL”) teachers, many of these students are not receiving the bilingual and ESL services to which they are legally entitled. Class sizes for ELL and bilingual students are larger than the appropriate range articulated by the Court of Appeals and in many cases are larger than class sizes for monolingual students in the same building. Since many ESL classes contain students speaking a range of languages, small classes and small group instruction are especially important for this population.

105. In many schools, staff shortages mean that students are not receiving the full number of instructional minutes in ESL instruction called for in state law. Moreover, in many schools, ESL services are provided on a pull-out basis that requires ELL students to miss basic instruction in science, social studies or other state-required subject areas. Most ELL students who qualify for AIS services are not receiving them. Staff shortages also mean that ELL students do not receive the support services, including counseling, to which they are entitled by state law.
106. Many schools lack sufficient classrooms to house pull-out classes for ELL students and classes are conducted in hallways and other non-classroom spaces like storage rooms and copier rooms.
107. Most immigrant students, who constitute a large proportion of the ELL students in the New York City public schools, are not receiving experiential services such as field trips to cultural events, historical sites and governmental functions, all of which are especially important to prepare this population for civic participation
108. Most schools lack appropriate instructional materials for bilingual and ESL classes. Many schools also lack sufficient funds to adequately translate notices to parents of ELL students. Many students are not being administered the Language Assessment Battery-Revised test for determining ELL needs in a timely manner, and there is a lack of appropriate testing and diagnostic tools in an appropriate range of languages to provide accurate assessments for placement of ELL students into special education. Many schools also lack appropriate staffing to serve ELL students who have been placed in special education.

109. More than 17% of the students in New York City have been diagnosed as being in need of special education services and have received Individual Education Programs (“IEPs”) setting forth the particular services to which they are legally entitled. Because of a shortage of certified special education teachers and related service providers, many students with disabilities are being placed in inappropriate settings and are being denied adequate services.
110. Teacher shortages have led to increases in class sizes beyond regulatory norms in numerous integrated co-teaching (“ICT”) classes in New York City, self-contained special education classes with broader ranges of ages and abilities than regulations allow, and less than required levels of support from special education teacher support services and resource room teachers. Many students have been placed on waiting lists for speech, occupational and physical therapy and other related services.
111. Special education teachers are regularly taken out of ICT classrooms to substitute for general education teachers to save schools the expense of substitute teachers. As a result, students with disabilities in those classes are deprived of their required instructional support.
112. As a result of funding shortages, many schools in New York City are not able to properly implement the Department of Education’s new special education reform program and in many schools the service prescriptions delineated in students’ IEPs are based on those services that are already available in the student’s school or services that are less costly, rather than on individualized student needs as required by law. *See, e.g.* Perry and Associates, *Getting It Right: School-Level Implementation of New York City Department of Education Special Education Reform* 21, 27. 45-46 (Dec. 2013)

5) Class Size

113. In *CFE II*, the Court of Appeals indicated that class sizes of twenty to twenty-three students were an appropriate benchmark for determining whether class sizes were reasonable. 100 N.Y.2d at 115; *see also*, *CFE v. State*, 187 Misc. 2d at 52-54.
114. In 2007, as part of its plan for implementing the Court of Appeals' *CFE* order, the legislature adopted the Contract for Excellence law, N.Y. EDUC. LAW §211-d, in order to regulate the expenditure of the additional CFE funding called for in the Budget and Reform Act of 2007. That law required, *inter alia*, that the New York City Department of Education develop, and the state commissioner of education approve, a plan for reducing class sizes in the New York City public schools. In 2007, the commissioner approved the New York City Department of Education's plan to reduce class sizes to an average of no more than twenty students per class in grades K-3, twenty-three in grades 4-8 and twenty-five in core high school classes over a five-year period.
115. In New York City, in 2013-2014, average class sizes, according to the New York City Department of Education class size reports, were 24.9 students in grades K-3, 26.8 students in grades 4-8 and 26.7 students in the high schools. These averages mask the fact that in certain areas average class sizes were much larger (*e.g.* average K-3 class sizes in Queens averaged 25.8 and fourth through eighth grade classes in Staten Island averaged 29.2 students) and that hundreds of individual classes exceeded 30 and in some cases 35. These class sizes are comparable to those the Court of Appeals declared to be unconstitutional in *CFE*. *See CFE v. State*, 187 Misc. 2d at 52, *aff'd*, *CFE II*, 100 N.Y.2d at 115.

#### 6) Instructional Materials

116. Most schools in New York City lack sufficient funds to purchase up to date textbooks and curricula that are aligned with the Common Core curriculum that is now in New York State mandated in English language arts and mathematics. In addition, many schools lack sufficient textbooks to allow students to take them home to complete homework assignments, to review or to study for a test. Many of these schools also lack adequate numbers of library books and basic and current computer hardware. They also lack sufficient resources to maintain and repair existing technology and replace worn out or obsolete software, hardware, or necessary accessories (such as ink cartridges). As a result, much of the instructional technology they do have is functionally unusable. Many schools also lack sufficient equipment for particular subject needs like calculators, compasses, protractors for math, basic art supplies such as paint, clay, easels, and smocks, and musical instruments.
117. After five years of funding shortages, many schools are unable to purchase basic supplies like chalk, paper, and pencils and rely on voluntary teacher and parent contributions for these basic materials. Many teachers spend more than \$1,000 or more a year on school supplies and educational materials, and many parents spend \$100 or more provide classroom supplies, including paper towels, hand sanitizers, pencils, markers, and glue.

#### 7) A Safe, Orderly Environment

118. Extensive lay-offs of administrative personnel, guidance counselors, psychologists, and social workers have precluded the implementation of positive behavioral intervention programs, peer intervention, anti-bullying and other preventive and pre-emptive programs for dealing with potential discipline problems; as a result, substantial discipline problems

currently exist in many schools in New York City. Pervasive problems with bullying occur in many schools that lack sufficient resources to provide required school-wide training for teachers on bullying prevention, and to document in detail each bullying incident, as required by state law.

8) Adequate and Accessible School Buildings

119. Substantial overcrowding exists in northern Manhattan, throughout the borough of Queens, in parts of Brooklyn, and in other locations throughout the city.
120. Shortages of science laboratories, a major area of constitutional concern for the Court of Appeals (*see CFE II*, 100 N.Y.2d at 911 n.4.), are still a major problem in New York City. Approximately 16% of New York City high schools lack a science lab. New York City Independent Budget Office, *Availability and Distribution of Selected Program Resources in New York City High Schools 14* (2013) (the “IBO Report”). Nearly 30% of the city’s high school students do not have access to an art or music room, *Id.* at 12; 9% of the high school buildings lack gymnasiums, and 11% lack libraries; almost half of the schools that have libraries and almost 40% of those that have gyms have to share them with other schools in co-located buildings, resulting in diminished access for students. *Id.* at 15.
121. Overcrowding in many schools has resulted in situations where special education services are delivered in hallways and where up to five related services providers are compelled to share a single office where they attempt to provide separate services to several students at the same time.
122. Overcrowded cafeterias have resulted in 40% of New York City’s schools serving lunch before 11 am every day, and in 75 schools, before 10 am.

123. Layoffs of custodial personnel have lowered standards of cleanliness in many schools and, as a result, numerous schools are infested with mice and/or cockroaches or other insects, classrooms have had to be quarantined due to mold. Bathrooms have become unsanitary because of lack of repairs and maintenance.

9) Other Sound Basic Education Issues

124. The Court of Appeals in its *CFE* decisions repeatedly stressed that the state constitution requires schools to prepare students to be capable citizens. To satisfy this constitutional mandate, schools need to be able to provide students the opportunity to participate in the kind of curricular and extracurricular activities that develop the character traits and interpersonal relationships they need to function productively as civic participants.

Students also need sufficient opportunities for community engagement in civic institutions to provide them civic knowledge and practical civic skills.

125. The extensive budget reductions in recent years have forced many schools throughout the city to eliminate or extensively curtail their civics-related extracurricular and afterschool offerings, and their civic engagement programs including community service programs, student government, school newspapers, Model UN and moot court programs, as well as visits to city councils, state legislatures, and other civic engagement activities.

Accordingly, many students currently lack meaningful opportunities to develop the skills necessary to function as civic participants.

126. The Court of Appeals also emphasized that all students are constitutionally entitled to meaningful opportunities to develop the skills they need to obtain competitive employment. Many schools in New York City now lack adequate resources to provide students sufficient job-related courses and internship activities, appropriate college

preparation courses, and career and college counseling to prepare them for competitive employment.

127. In many areas, parent organizations now run extensive fundraising drives to support salaries for staff personnel to provide basic state-mandated instruction in reading, art, and other subjects, and for professional development and other necessary services. For example at P.S. 187 in Manhattan, the parents organization and a parent-organized 501(c)3 non-profit group pays for professional development for teachers to help them meet the demands of the new Common Core curriculum, the elementary school science and arts programs, a Junior Great Books literacy program for third and fourth graders, second language instruction for the middle school, and a prep course for eighth graders taking the high school admissions test. To pay for all this, the parents raised \$185,000 last year. Aside from the impropriety of public school parents having to pay for basic school services, this practice raises serious equity issues, since parents in many low income neighborhoods do not have the ability to raise money in order to avoid teacher lay-offs or provide enrichment activities.
128. In or about June 2013, the state imposed on students attending public schools in New York City a \$290 million penalty that has further impeded their opportunity to obtain a sound basic education. This penalty resulted from the failure of the New York City Department of Education (“DOE”) and the United Federation of Teachers (“UFT”) to conclude an agreement related to the state’s new annual professional performance review system for evaluating teachers and building principals (“APPR”) by a January 17, 2013 deadline date that the governor and the legislature had written into the budget bill for the 2012-2013 school year. L. 2012, ch. 53 & ch. 57, Part A, § 1. Even though the dispute that

triggered the imposition of the penalty had been resolved by a binding APPR plan that the commissioner of education imposed on the DOE and the UFT in May, 2013, the defendants nevertheless withheld \$290 million from the appropriation that had been enacted by the legislature for the New York City public schools.

129. In 2013, only 26 percent of students in third through eighth grade in the New York City public schools obtained a proficient grade on state's achievement tests in English, and only 30 percent were considered proficient in math.
130. Only 61% of the students who entered New York City schools in 2007 received high school diplomas as of June 2012. Less than 21% of these students were deemed "college and career" ready under the regents' current standards.

*B. SCHOOL DISTRICTS IN THE REST OF NEW YORK STATE*

131. In enacting the Budget and Reform Act of 2007, and the Contract for Excellence, the governor and the legislature acknowledged that not only in New York City, but also schools in many other school districts in the State of New York lacked adequate resources to provide their students the opportunity for a sound basic education.
132. Although the Budget and Reform Act of 2007 was enacted to remedy these constitutional violations, as a result of the state's failure to implement the Act and the reductions in state aid to education since 2009, the individual plaintiffs and hundreds of thousands of students in Buffalo, Rochester, Syracuse, and Yonkers, and in numerous other rural, small city and suburban districts are currently being denied the opportunity for a sound basic education on a systemic basis.

133. On a systemic basis, students in Buffalo, Rochester, Syracuse, Yonkers, as well as students in numerous rural, small city and suburban districts are currently being denied sufficient numbers of qualified teachers, principals, and other personnel; suitable and up-to-date curricula; an expanded platform of services to help students who are at risk of failing; adequate resources for students with disabilities and English language learners; appropriate class sizes; sufficient and up-to-date books, supplies, libraries, technology, and laboratories; a safe, orderly environment; adequate and accessible facilities; and meaningful opportunities to develop the skills needed to be productive citizens and competitive workers.
134. For example, annual statewide surveys of school superintendents from throughout the state other than New York City, Buffalo, Rochester, Syracuse, and Yonkers, have indicated that over the past three years, budgetary pressures have resulted in negative or very negative impacts on core instruction in English, mathematics, science, and social studies, and on extra help for students who need it; in addition, only 24% said that they currently had sufficient resources to enable students to meet the common core standards. New York State Council of School Superintendents, *Not Out of the Woods: School Districts Still Struggling To Find A Way Out of the Budget Challenges* 18, 21 (January, 2014.)
135. In 2013, the percentage of third through eighth graders who were proficient on the state's English Language Arts achievement test were 12% for Buffalo, 5% for Rochester, 9% for Syracuse, and 16% for Yonkers; for high need rural districts the ELA proficiency rate was 18%, and for high need urban and suburban 18%, compared with 35% for average need

districts and 52% for low need districts. The scores on the third through eighth grade achievement tests in mathematics were comparable.

136. In 2013 graduation rate in Buffalo for students who entered ninth grade in 2008, was 48%, for Rochester 49%, Syracuse 51%, and Yonkers 72%; for high need rural districts the graduation rate was 77% and for high need urban/suburban, 65%. In average and low need districts, the graduation rates for this cohort were 85% and 94% respectively. Statewide, only 35% of all students meet the state's current college and career ready graduation standards.

THE STATE'S FAILURE TO RESPOND APPROPRIATELY TO THE IMPACT OF  
CHANGES IN EDUCATIONAL POLICY AND ECONOMIC CIRCUMSTANCES

137. As a matter of constitutional law, the state's continuing obligation to uphold constitutional rights cannot be disregarded, abridged, or delayed because of fiscal constraints or changes in economic circumstances.
138. Therefore, the state has an ongoing, affirmative obligation to ensure at all times that students are being provided the opportunity for a sound basic education.
139. In adopting in the Budget and Reform Act of 2007, a budget plan that informed school districts of the amounts of state aid they could expect to receive over the next four years, the legislature recognized that long-term planning and sustained and stable funding is a necessary prerequisite for school districts' ability to provide all students the opportunity for a sound basic education.
140. Nevertheless, the defendants have responded to the changed economic circumstances since the 2008 recession by reducing the amounts they had themselves determined to be necessary to provide all students the opportunity for a sound basic education and by delaying the date

established by the Court of Appeals for fully implementing a constitutionally-acceptable funding level for the New York City public schools.

141. These actions were taken solely because of fiscal constraints, and without any consideration of the impact of these reductions in appropriations and deferrals on services at the school level and on students' opportunities to obtain a sound basic education
142. At no time since they began to reduce state aid to school districts in 2010 have defendants demonstrated or even asserted that despite these substantial reductions in educational appropriation all students in the state were being provided the opportunity for a sound basic education. On the contrary, by repeatedly extending the phase-in period, the legislature has implicitly recognized that they have a continuing constitutional obligation to provide the full amount of funding that they had determined to be necessary to meet constitutional sound basic education requirements in the 2007 Budget and Reform Act, and that the funding levels for state aid that have been in effect since 2009 are constitutionally inadequate.
143. The Court of Appeals held in *CFE II*, 100 N.Y.2d at 924, that "the simple constitutional principle" governing education finance issues is that "the State has ultimate responsibility for the schools." It is, therefore, the State of New York and not the New York City School District or the school districts in Buffalo, Rochester, Syracuse, Yonkers, and the numerous other rural, small city and suburban school districts in which students are currently not receiving the opportunity for a sound basic education that is ultimately responsible for these extensive constitutional deficiencies.
144. Changes in economic or other circumstances may justify a reconsideration of educational policies and operations, and possibly of the funding levels required to provide all students the opportunity for a sound basic education, but only if the State demonstrates that it has put into

effect new policies and practices that can reasonably ensure that all students will be provided the opportunity for a sound basic education at a different funding level under the changed circumstances.

145. Before deviating from the amounts set forth in the 2007 Budget and Reform Act, and from the court-ordered phase-in schedule, and since that time, the state defendants have failed to (1) identify the essential courses of study and the types of services, supports, and resources that must be available to meet constitutional requirements; (2) notify school districts of such essential courses of study and types of services, supports, and resources; (3) provide school districts and schools information, guidance, and recommended methods for improving the efficiency and cost effectiveness of their operations that might allow for compliance with constitutional requirements despite reductions in state aid; (4) ensure a system of accountability that measures whether every school has sufficient resources and that all students are in fact receiving the opportunity for a sound basic education; (5) develop and implement a new cost study methodology, based on current state educational policies and expected practices and current prices, in order to determine the “actual cost” of providing students the opportunity for a sound basic education under current conditions; and (6) revise the state aid formulas to ensure that all schools, in fact, have sufficient funds to provide all of their students the opportunity for a sound basic education.
146. Since 2009, the defendants have failed to carry out *any* of the constitutionally-required actions necessary to ensure that students in New York State are being provided the opportunity for a sound basic education under current conditions.

A. *FAILURE TO IDENTIFY ESSENTIAL COURSES OF STUDY, SERVICES, SUPPORTS, AND RESOURCES*

147. Although the state defendants have substantially reduced educational funding over the past five years, they have taken no steps to identify the essential courses of study, services, supports, and resources that must continue to be available, even in times of economic constraint, in order to provide all students the opportunity for a sound basic education.
148. The state education law and the regulations of the commissioner of education impose hundreds of educational and operational requirements on local school boards and local schools. Many, but not all, of these state requirements relate to courses of study and types of services, supports, and resources that are needed to provide all students the opportunity for a sound basic education.
149. Since 2003, when the Court of Appeals in *CFE II* issued a conclusive definition of the general constitutional requirements for a sound basic education, neither the governor, the legislature, the Regents, nor the commissioner of education has reviewed existing laws and regulations to ensure that they conform to constitutional requirements and that they provide appropriate guidance to school districts regarding the courses of study and types of services, supports, and resources they need to have in place in order to provide all their students the opportunity for a sound basic education.
150. Since 2008, neither the governor, the legislature, the Regents, nor the commissioner of education has reviewed existing laws and regulations to determine which of the existing laws and regulations relate to constitutional requirements, and therefore must continue to be fully implemented, despite funding cut backs, and which relate to non-constitutional programs, services and supports which may be curtailed or eliminated in times of fiscal constraint.

151. In *CFE II*, 100 N.Y.2d at 931, the Court of Appeals recognized that “[t]he definition of a sound basic education must serve the future as well as the case now before us.” The Court also defined the constitutional right to a sound basic education in terms of an “opportunity for a meaningful high school education.” *Id.* at 908. Since the constitutional definition is related to decisions that the legislature and the Regents make in determining the substance of a “meaningful high school education,” the legislature and the Regents have an ongoing constitutional responsibility when they raise standards and high school graduation requirements to ensure that students are provided additional courses of study, services, supports, and resources, as necessary, in order to have a meaningful opportunity to meet those standards and requirements.
152. In 2010, the Regents reviewed their learning standards and decided to strengthen them in order to ensure that students are “college and career ready” when they graduate from high school. The Regents have now defined “college and career ready” in operational terms to mean graduating with at least a score of seventy-five on the regents English language arts examination and an eighty on the regents mathematics examination.
153. Since 2010, neither the governor, the legislature, the Regents, nor the commissioner of education has reviewed existing laws and regulations to identify and give notice of the courses of study, and types of services, supports, and resources that must be available in order to provide all students the opportunity for a sound basic education in accordance with current Common Core and college and career ready standards and requirements.

*B. FAILURE TO NOTIFY SCHOOLS ABOUT ESSENTIAL COURSES OF STUDY, SERVICES, SUPPORTS AND RESOURCES*

154. Since 2009, state defendants have failed to notify school districts of the courses of study, and types of services, supports, and resources and must be maintained to meet constitutional standards.
155. Since 2009, the only advice state defendants have provided to local school districts on how to cope with the reduced funding is that they somehow should “do more with less.”
156. In the absence of appropriate notice and any guidance whatsoever from the state defendants regarding (1) the additional courses of study and types of services supports, and resources that are essential to meet constitutional requirements, including, but not limited to constitutional requirements related to the state’s current Common Core and college and career ready standards, and (2) how school districts could possibly meet those requirements when faced with substantial reductions in state aid, students throughout the state are being denied the opportunity for a sound basic education.
157. In the absence of appropriate notice or guidance school districts faced with state-aid reductions and limitations on their ability to raise local revenues have been forced to eliminate many courses of study, services, supports, and resources that are, in fact, essential to providing the opportunity for a sound basic education.

*C. FAILURE TO DEVELOP EFFICIENT AND COST EFFECTIVE POLICIES*

158. Since 2009, despite substantial reductions in state aid, the state defendants have failed to substantially reduce unnecessary and costly mandates, the elimination of which would not detrimentally affect students’ educational opportunities.

159. Since 2009, despite substantial reductions in state aid, the legislature and the Regents have imposed further requirements on local school districts, without providing any additional resources and without providing any guidance on how these new requirements could be effectuated without reducing or eliminating courses of study, or services supports and resources essential to meeting constitutional requirements.
160. Although they have substantially reduced state aid since 2009, the state defendants have failed to provide schools and school districts information, and guidance on improving the efficiency and cost effectiveness of their operations.
161. The state defendants have failed to pursue the large potential for achieving substantial cost savings, while maintaining or improving services to students in areas such as:
- Reducing New York’s referral rates for special education (the second highest in the country) by eliminating unnecessary referrals to K-12 special education through effective implementation of RTI procedures and other programs;
  - Reforming the inefficient, fraud-plagued system for pre-school special education, state-wide expenditures for which have almost doubled (from approximately \$1 billion to approximately \$2 billion) during the same time period that state appropriations for K-12 education have been substantially reduced;
  - Requiring cost-effective regional transportation policies;
  - Revising the transportation reimbursement system that currently reimburses school districts for up to 90% of their costs, with no efficiency requirements;
  - Incentivizing cost-effective state-wide or regional health insurance programs
  - Eliminating impediments to feasible consolidations of school districts;

- Repealing the Wicks Law that precludes school districts from using efficient methods for school construction;
- Revising the building aid statutes to eliminate “hold harmless” provisions that allow reimbursements to school districts to be based on enrollment and need factors that date back to 1981, and other provisions that provide incentives to undertake new construction projects that exceed sound basic education needs;
- Eliminating and/or consolidating the approximately 140 different forms and reports that school districts must file with the state education department and other state agencies;
- Eliminating the burdensome and time consuming contract for excellence planning and reporting requirements for New York City and other high need districts so long as the extra funding for which these reports and requirements were adopted is not being provided by the state.

*D. FAILURE TO ENSURE AN ACCOUNTABILITY SYSTEM FOR MEASURING WHETHER STUDENTS ARE RECEIVING A SOUND BASIC EDUCATION*

162. *CFE II*, 100 N.Y.2d at 930, requires the state to “ensure a system of accountability to measure whether the reforms [to the current system of financing school funding and managing schools] actually provide the opportunity for a sound basic education.”
163. Since 2007, the defendants have failed to develop any system for monitoring whether the Budget and Reform Act of 2007, the Contract for Excellence and other reforms adopted to implement the Court of Appeals’ CFE orders “actually provide the opportunity for a sound basic education.”

164. Since 2009, the state defendants have not undertaken any studies or developed any system for analyzing or monitoring the extent to which the reductions in state aid and implementation of property tax caps have, in fact, resulted in students throughout the state being denied the opportunity for a sound basic education.
165. Although, on information and belief, the governor, the legislature, the Regents and the commissioner of education are aware of the facts set forth in paragraphs 90 through 136 above, they have taken no actions to respond to these facts or to other published reports, surveys and findings of continuing violations of constitutional sound basic education requirements.
166. The state defendants have no systemic, reliable information on the extent to which their failure to implement the Budget and Reform Act of 2007 and the reductions of state aid and imposition of the property tax cap have, in fact, detrimentally affected students, and on the extent to which constitutional sound basic education requirements are currently being violated throughout the state. Therefore, they have acted arbitrarily and unreasonably and in violation of Article XI §1 of the New York State Constitution in making budgetary decisions since 2009 in the absence of any such information.

*E. FAILURE TO UNDERTAKE PROPER COST STUDIES*

167. The Court of Appeals held that in order to ensure that students are being provided the opportunity for a sound basic education, the state must determine “the actual cost” of providing such an opportunity. *CFE II*, 100 N.Y.2d at 930.

168. The cost studies that the governor, the department of education, the legislature, and the plaintiffs undertook in response to the Court of Appeals' order in *CFE II* were all undertaken in 2004, based on financial data from the 2002-2003 school year.
169. Since 2004, neither the governor nor the legislature have undertaken any further studies or analyses to determine the "actual cost" of a sound basic education.
170. In 2006, the state education department revised its previous cost study in response to the Court of Appeals' *CFE III* decision. That study was utilized by the governor and the legislature in enacting the Budget and Reform Act of 2007.
171. In 2009, the state education department updated the sound basic education study it had undertaken in 2006 and found only a minor variation from the base foundation figure that the legislature had utilized in the Budget and Reform Act of 2007. No changes were made in the foundation funding formula as a result of the 2009 updating study.
172. The state education department has not revised its "successful school district" methodology since 2006 to take into account the altered economic conditions and the policy changes that have occurred over the past five years.
173. State defendants are constitutionally required to undertake a new cost study based on current educational policies and practices and current costs.
174. The successful school districts methodology that the state education department used in the past no longer constitutes a rational approach for determining the "actual cost" of providing a sound basic education under current circumstances because, *inter alia*,:
  - a. It does not rationally relate current expenditure levels to current outcome criteria. The methodology utilizes current student achievement scores in the fourth grade, eighth grade and on high school regents examinations as a measure of success.

However, the fact that a school district has high scores in the current year does not provide a rational indication that its schools are adequately funded, since most of these scores reflect cumulative results that were developed over all of the years of a student's educational career. The full impact of a current budget reduction will not be fully reflected in these outcome measures for years to come.

- b. Its definition of "success" is not based on current Common Core and college and career ready standards;
- c. It fails to take into account the substantial additional costs of implementing Common Core standards, APPR, RTI, and other state mandates that have been imposed on school districts in recent years
- d. It fails to take into account the substantial and unanticipated increases in health, energy and pension costs that have occurred since 2004.
- e. It cannot determine whether school districts that have achieved "successful" outcomes did so in an efficient and cost effective manner. Since the statistically-based successful schools methodology does not reveal or examine actual educational practices, districts that, in fact, have been unable or unwilling to adopt efficient or cost effective practices in response to economic constraints may inappropriately be identified as "successful."

175. The state is constitutionally required to develop a rational new cost methodology that is responsive to current conditions in undertaking a new cost study.

*F. FAILURE TO REVISE THE FUNDING FORMULAS*

176. The Court of Appeals held in *CFE II*, 100 N.Y.2d at 930, that the state must reform the current system of financing school funding to ensure that “every school . . . [will] have the resources necessary for providing the opportunity for a sound basic education.” The Court of Appeals further held that resources provided by the state aid system must “be calibrated to student need.” *Id.* at 929.
177. The current state education finance system does not ensure that every school has the resources necessary to provide all of its students the opportunity for a sound basic education.
178. Since 2009, state defendants have made modifications to the state education finance system that have created substantial inadequacies and inequities in the mechanisms and formulas for providing and distributing state aid for education.
179. By imposing an arbitrary “gap elimination adjustment,” state defendants have, since 2010, reduced annual appropriations to amounts below the levels needed to provide all students the opportunity for a sound basic education as determined by the Court of Appeals and by the state legislature.
180. In implementing the gap elimination adjustment and other changes to the system for state aid since 2009, the state defendants have ignored the requirement to calibrate state aid to student need and have, in fact, imposed heavier cuts on school districts with high needs than on school districts with average or low needs.
181. By largely freezing foundation aid since 2009, state defendants have failed to take into account growth in school enrollment and have, thereby, denied schools and school districts that have experienced increases in student population the additional resources they need to provide all of their students the opportunity for a sound basic education.

182. By imposing an arbitrary cap on annual increases in state aid correlated with the annual increase in personal income in the state, the state has failed to ensure that every school has the resources it needs to provide all students the opportunity for a sound basic education.
183. The amount of foundation aid that each school district receives under the current foundation formula is based, *inter alia*, upon a calculation that subtracts from the total amount of foundation aid each district needs to provide all its students the opportunity for a sound basic education an “expected local share” that is determined in accordance with each school district’s relative wealth and taxing capacity. Some local districts are not, however, currently contributing their expected local share and the cap on increases in property tax levies prevents them from doing so. This means that students attending schools in those districts are not receiving the resources that the state itself has determined are necessary to provide them the opportunity for a sound basic education.
184. The state defendants have compounded the problem described in the previous paragraph by imposing a cap on the amount that school districts can raise through local property taxes without a supermajority vote of the local taxpayers. Last year, only ten of the approximately 700 school districts in the state enacted budgets that exceeded the cap. This means that school districts that not have contributed their full expected local share in the past, but desire to do so now, or in the future, have been, or may in the future, be precluded from doing so by the tax cap.
185. The state defendants have failed to provide additional state aid for students attending schools in school districts that have not provided their expected local contribution, or that now desire to provide their expected local contribution, but are precluded by the tax cap from doing so.

186. Although state aid to most school districts is still substantially below the level needed to provide all students the opportunity for a sound basic education, state defendants have directed some of the small sums they have made available for increasing state aid to education to a limited number of school districts through “competitive grants” without regard to the relative need of students in the districts that have received these grants and students in districts that have not received these grants.

#### FIRST CAUSE OF ACTION

187. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 186.

188. State defendants have failed to comply with the specific decisions and orders of the Court of Appeals in *CFE I*, *CFE II*, and *CFE III* to remedy the Court’s finding that students attending the New York City public schools were not being provided the opportunity for a sound basic education as required by N.Y. CONST. art. XI, §1 in that they have:

- a. Failed to provide the individual plaintiffs whose children attend the New York City public schools and all other students attending the New York City public schools the minimum constitutional level of operational funding mandated by the Court of Appeals in *CFE III*;
- b. Deferred compliance with constitutional requirements for students attending the New York City public schools beyond the four-year phase-in period mandated by the Court of Appeals;
- c. Failed to provide the individual plaintiffs whose children attend the New York City public schools and all other students attending the New York City public schools the

- minimum constitutional level of funding determined by the legislature to be necessary to ensure them the opportunity for a sound basic education;
- d. Failed to provide the individual plaintiffs whose children attend the New York City public schools and all other students attending the New York City public schools the minimum constitutional level of funding necessary to ensure them the opportunity for a sound basic education;
  - e. Imposed an arbitrary “gap elimination adjustment” applicable to all school districts throughout the state that has reduced in the past and will reduce in the future the amounts of foundation aid districts receive regardless of the level of funding actually necessary to meet constitutional requirements;
  - f. Imposed an arbitrary cap on future increases in state aid appropriations applicable to all school districts throughout the state regardless of the level of funding actually necessary to meet constitutional requirements;
  - g. Imposed financial penalties on students attending the New York City public schools for actions or inactions of the New York City Department of Education and its professional unions in developing and implementing the APPR system, pursuant to the penalty provisions of L. 2012, ch. 57, Part A, § 1 and L. 2013, ch. 57, Part A § 1 without regard to the needs of students attending the New York City public schools.

## SECOND CAUSE OF ACTION

189. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 188.

190. State defendants have failed to provide the individual plaintiffs and numerous other students in school districts throughout the State of New York the opportunity for a sound basic education required by N.Y. CONST. art. XI, § 1, in that they have:
- a. Failed to implement the reforms to the state aid system and the levels of funding the legislature determined in 2007 were necessary to ensure compliance with the sound basic education requirements of Art. XI, § 1;
  - b. Deferred compliance with the four-year phase-in period for the new state-wide education finance system that the legislature had determined to be necessary for constitutional compliance and that was consistent with the timeline for constitutional compliance mandated by the Court of Appeals for students in the New York City public schools;
  - c. Imposed an arbitrary “gap elimination adjustment” applicable to all school districts throughout the state that has reduced in the past and will reduce in the future, the amounts of foundation aid districts receive regardless of the level of funding actually necessary to meet constitutional requirements;
  - d. Imposed an arbitrary cap on future increases in state aid appropriations applicable to all school districts throughout the state regardless of the level of funding actually necessary to meet constitutional requirements;
  - e. Incorporated an “expected local share” in the original calculation of the foundation aid amount needed to provide students in each school district the opportunity for a sound basic education, but failed to ensure that every local school district in fact, is able to, and does, contribute its expected local share;

- f. Imposed on all school districts throughout the state except New York City, Buffalo, Rochester, Syracuse, and Yonkers, a cap on local property taxes that impedes the ability of those districts to provide the expected local contributions necessary to ensure the provision of a sound basic education for their students, without providing additional state aid to compensate for shortfalls in such local contributions.
- g. Failed to provide the individual and all other students attending public schools throughout the state of New York the minimum constitutional level of funding necessary to ensure them the opportunity for a sound basic education;

### THIRD CAUSE OF ACTION

- 191. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 190.
- 192. State defendants have, in violation of N.Y. CONST. art. XI, § 1, failed since 2009, to respond appropriately to changes in fiscal and educational conditions and to maintain a state system of education in which all of the students receive the opportunity for a sound basic education in that they have failed to:
  - a. Identify the essential courses of study and types of services, supports, and resources that must be available to meet constitutional requirements;
  - b. Notify school districts of their responsibility to provide such courses of study and types of services, supports, and resources, and of the manner in which the state will ensure adequate funding to enable them to meet these constitutional requirements;

- c. Provide school districts and schools information, guidance and recommended methods for improving the efficiency and cost effectiveness of their operations;
- d. Ensure a system of accountability that measures whether every school has sufficient resources and that all students are, in fact, receiving the opportunity for a sound basic education;
- e. Develop and implement a rational cost study methodology to determine the “actual cost” of providing students the opportunity for a sound basic education based on current state policies, expected practices and current costs; and
- f. Revise the state aid formulas and mechanisms to ensure that all schools, in fact, have sufficient funds to provide all of their students the opportunity for a sound basic education.

#### FOURTH CAUSE OF ACTION

- 193. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 192.
- 194. The state defendants have failed and are continuing to fail to provide the individual plaintiffs and students throughout New York State an opportunity for a sound basic education in violation of Article XI, §1 of the New York State Constitution.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment:

DECLARING that:

- a. The state defendants have failed to comply with the Court of Appeals’ decisions and orders in *CFE I*, *CFE II*, and *CFE III*;

- b. The state defendants have failed to comply with the requirements of N.Y. CONST. art. XI, §1 and are not providing students in the New York City public schools and students throughout the state with the opportunity for sound basic education;
- c. The current state education finance system is inequitable, inadequate and in violation of the requirements of N.Y. CONST. art. XI, §1;
- d. The “gap elimination adjustment,” set forth in N.Y. Educ. Law § 3602.17, the cap on state aid increases set forth in N.Y. EDUC. LAW § 3602(dd), and the supermajority requirements regarding increases in local property tax levies, N.Y. EDUC. LAW §§ 3602(dd) & (18), violate N.Y. CONST. art. XI, § 1 and are null and void;
- e. The penalty provisions of L. 2012, ch. 57, Part A, § 1 and L. 2013, ch. 57, Part A § 1 violate N.Y. CONST. art. XI, §1, were and are null and void, and that penalties imposed in the past pursuant to those statutes were unconstitutional;

ENJOINING state defendants immediately to:

- a. Discontinue use of the “gap elimination adjustment” set forth in N.Y. EDUC. LAW § 3602.17, the cap on state aid increases set forth in N.Y. EDUC. LAW § 3602(dd), and the supermajority requirements regarding increases in local property tax levies, N.Y. EDUC. LAW §§ 3602(dd) & (18);
- b. Reimburse the New York City public schools for all penalties imposed pursuant to L. 2012, ch. 57, Part A, § 1 and L. 2013, ch. 57, Part A § 1.

FURTHER ENJOINING state defendants to:

- a. Identify the essential courses of study and types of services, supports, and resources that must be available to all students in order to meet constitutional requirements;
- b. Notify school districts of their responsibility to provide such courses of study and types of services, supports, and resources, and of the manner in which the state will ensure adequate funding to enable them to meet these constitutional requirements;
- c. Provide school districts and schools information, guidance, and recommended methods for improving the efficiency and cost effectiveness of their operations;
- d. Ensure a system of accountability that measures whether every school has sufficient resources and that all students are in fact receiving the opportunity for a sound basic education;
- e. Appoint an independent commission to develop and implement a rational new cost study methodology, based on current state policies, effective procedures, and costs to determine the “actual cost” of providing students the opportunity for a sound basic education;
- f. Revise the state aid formulas and mechanisms to ensure that all schools, in fact, have sufficient funds to provide all of their students the opportunity for a sound basic education;

PERMANENTLY ENJOINING the state defendants to

- a. Establish and maintain a state education finance system that provides all students the opportunity for a sound basic education, *inter alia*, by periodically:

- b. Identifying the essential courses of study, and types of services, supports and resources that must be available to all students in order to meet constitutional requirements;
- c. Notifying school districts of their responsibility to continue to provide such courses of study and types of services, supports, and resources, and of the manner in which the state will ensure adequate funding to enable them to meet these constitutional requirements;
- d. Providing school districts and schools information, guidance, and recommended methods for improving the efficiency and cost effectiveness of their operations;
- e. Ensuring a system of accountability that measures whether every school has sufficient resources and that all students are in fact receiving the opportunity for a sound basic education;
- f. Appointing an independent commission to determine the “actual cost” of providing students the opportunity for a sound basic education, based on current state policies, effective procedures, and costs;
- g. Revise the state aid formulas and mechanisms to ensure that all schools, in fact, have sufficient funds to provide all of their students the opportunity for a sound basic education;

AWARDING plaintiffs their reasonable attorney's fees, disbursements, and costs in bringing this action; and

PROVIDING such other and further relief as the Court may deem just and proper.

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