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# CFE REPORTS

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The Newsletter of the Campaign for Fiscal Equity, Inc.

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## CFE FILES BRIEF IN FINAL APPEAL TO STATE'S HIGHEST COURT

**O**n January 31, 2003, the Campaign for Fiscal Equity, Inc., filed its brief in the final appeal of the landmark school-funding lawsuit, *CFE v. State of New York*. The submission of CFE's brief to the Court of Appeals in Albany marks the final stages of the decade-old challenge to the state's education funding formula on behalf of millions of school children who have been denied their constitutional right to the opportunity for a "sound basic education."

In responding to the Appellate Division's holding that the word "educated" means nothing more than what students are expected to learn by the eighth grade, or what students need to know in order to get a "low-level" job, CFE strongly urged the Court of Appeals to overturn this pessimistic and degrading decision and asked for a much stronger constitutional standard. Even Governor George Pataki, before a group of parents and teachers on September 11, 2002, at Pace University, stated "Anybody who thinks an 8th-grade education is adequate is 100 percent wrong."

Therefore, based on the overwhelming evidence of systemic failure presented at trial, and the Court of Appeals holding in *CFE I* that the

Education Article has substantive meaning, CFE in its brief, asked the Court of Appeals to declare that the New York State constitution requires the state to ensure that the public schools provide all students the opportunity "to obtain an adequate high school education, one that prepares them for competitive employment and to function as capable and productive civic participants," and that the State must assure that essential resources be provided in 7 areas ranging from sufficient numbers of qualified teachers to adequate resources for students with extraordinary needs.

The CFE brief also asks the Court to direct the State to

- Ascertain, to the extent possible, the actual costs of the resources needed to provide the opportunity for a sound basic education in all school districts in the state through a thorough objective costing-out study.
- Ensure that every school district has sufficient funds, taking into account variations in local costs, to provide the opportunity for a sound basic education to all students in its schools.
- Establish a comprehensive accountability system that will (1) ensure that funds are used efficiently to produce the conditions for teaching and learning necessary to enable schools to provide all students the opportunity for a sound basic education; (2) involve members of local school communities in taking responsibility for creating in their schools a climate conducive to effective teaching and learning; (3) ensure that the state education finance system is as comprehensible to the public as possible and provides sustained,

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stable funding that will promote effective long-term planning by school districts.

CFE is optimistic that the Court of Appeals will reverse the Appellate Division decision and affirm the right of all New York students to a decent high school education.

## GROUPS FILE AMICUS BRIEFS IN CFE CASE

The following groups representing broad interests and perspectives have filed amicus briefs in support of CFE's appeal to the Court of Appeals.

### *New York State School Boards and National School Boards Associations*

On February 3, 2003, the New York State School Boards Association (NYSSBA) and the National School Boards Association (NSBA) filed an amicus brief in support of CFE's appeal to the Court of Appeals. NYSSBA is a statewide organization that represents nearly 95% of New York's school districts, including both low- and high-need districts. NSBA is a national organization that represents 95,000 school board members who serve more than 90% of the nation's K-12 students. Their strong support demonstrates that the CFE lawsuit addresses a statewide problem and that a proper remedy will have a statewide impact.

In their brief, the groups urge the Court to adopt New York's Regents Learning Standards as the mark by which to measure the adequacy of the state's funding system. They add that, despite difficult fiscal times, the State remains obligated to provide all students with the opportunity for a sound basic education. They highlight a comprehensive costing-out study, currently being undertaken by NYSSBA and CFE, to determine the actual costs of providing a sound basic education for all of New York State's school children.

### *Council of Great City Schools*

CFE also received support in its appeal with the filing of the Council of Great City Schools' amicus brief on February 5. The Council is a coalition of nearly 60 of the nation's largest urban public school systems. Its brief will provide the Court of Appeals

## CFE AND NYSSBA TO HOLD 12 COMMUNITY FORUMS ON EDUCATION ADEQUACY

As part of the landmark study launched by the New York Council on Costing Out, 32 organizations (including CFE and the New York State School Boards Association (NYSSBA)) to determine the cost of providing an adequate education to every child in New York State, 12 community forums are being held across the state. The public meetings, which began on March 12 and will end on May 1, are designed to gather input on the needs, challenges, and expenses faced by various schools in their efforts to enable all children to meet the Regents Learning Standards and the requirements of the federal No Child Left Behind Act.

Representatives from each of the 12 forums will come together on May 16 for a statewide summit on these issues. The information gathered at these meetings will assist the research team working on Costing Out: New York Adequacy Project as they calculate the true cost of educating New York's children.

We have already gathered important information from Rochester, Buffalo, Horseheads, Ellicottville, Lake Placid, Brooklyn, and Valhalla. Below is a list of forums that remain.

**Please join us from 6:30 p.m. – 9 p.m. at one of these locations:**

- **April 3:** Campus Magnet High School Auditorium 207-0, 116th Street, **Cambria Heights**, NY 11411
- **April 10:** Farmingdale High School Lecture Hall, 150 Lincoln Street, **Farmingdale**, NY 11735
- **April 24:** Cicero Elementary School Cafeteria, 5979 Rt. 31, **Cicero**, NY 13039
- **April 30:** IS 44 Auditorium, 100 W. 77th Street, New York, NY 10024
- **May 1:** NYSSBA Offices, 24 Century Hill Drive, Suite 200, **Latham**, NY 12110
- **May 16:** A *statewide summit* for invited representatives from the 12 evening forums.

with a national perspective on urban education issues and specific examples of successful reform efforts in urban school districts.

### *League of Women Voters*

On February 21, the League of Women Voters of New York State submitted a proposed *amicus* brief in support of CFE's case. Their brief offers the Court a historical perspective on the central role that public schools have played in preparing students for their civic responsibilities and

emphasizes that effective public schools are an essential component of a thriving democracy. The brief focuses on student preparation for civic engagement, demonstrating that there is a strong scholarly consensus on the range of skills, knowledge, and values that are essential for civic participation. This consensus supports the types of cognitive analytic skills and knowledge contained in the Regents Learning Standards.

***The City of New York***

In a strong bipartisan demonstration of support, the Republican and Democratic leadership of the City of New York filed a joint proposed *amicus* brief on behalf of CFE's appeal on February 25. Mayor Michael Bloomberg, Chancellor Joel Klein, the New York City Council, Speaker Gifford Miller, Council Education Committee Chair Eva Moskowitz, and the five Borough Presidents submitted the brief as *amici curiae*.

The City's brief provides the court with first-hand knowledge of the potentially detrimental effects of the Appellate Division's ruling. The City *amici* provide a unique perspective on the special needs of at-risk children and the current funding system's negligence of poor, urban, and minority pupils, a majority of its student population. This brief also makes clear that despite the recent changes in school governance and the accountability and curriculum reforms recently unveiled by Mayor Bloomberg and Chancellor Klein, real system-wide improvements will continue to be stifled without additional state funding.

***Midstate School Finance Consortium***

On February 28, the Midstate School Finance Consortium supported CFE's appeal by filing a proposed *amicus curiae* brief. A voluntary association of 239 New York State school districts and 19 BOCES, the Consortium is committed to educational reform and the improvement of the state school funding system. In their brief, the Consortium underscores the state's obligation to provide an adequate high school education to every student by calling attention to the fact that, despite the Appellate Division's holding that the state's education obligation ends at eighth grade, the State's compulsory attendance laws require students to be enrolled in school until age 16 or 17. In addition, the Consortium addresses the "complex and byzantine" nature of the state's funding formula and

outlines its own proposal for a new, more simplified mechanism.

***Politicians and Advocacy Groups***

On March 3, 29 groups submitted a proposed *amicus* brief, prepared *pro bono* by the law firm Davis Polk & Wardwell, in support of CFE's appeal. These groups included the Alliance for Quality Education and its nearly 200 member organizations, 28 members of the New York City Council, and other groups representing a broad range of interests and regions of New York State. The *amici* recognize the beneficial contribution that a well-educated population will make to the broader society. They maintain that the present school funding formula is the cause of the State's failure to provide every student with the opportunity for a sound basic education, and that the State's obligation to provide this education ends at the high school, not eighth grade, level.

***The Partnership of New York City***

On March 10, the Partnership for New York City filed an *amicus* brief supporting CFE. The Partnership is a network of business leaders committed to enhancing the City's economy and maintaining its position as a global center of commerce. In their brief they assert that in order to solidify the City's position as a commercial capital, public schools must prepare students for higher education and high-level jobs and surpass the eighth-grade standard set by the Appellate Division.

***Black, Puerto Rican and Hispanic Legislative Caucus and NAACP***

CFE's appeal received significant additional support with the submission of an *amicus curiae* brief to the Court of Appeals, on behalf of the Black, Puerto Rican and Hispanic Legislative Caucus, the NAACP, and a group of 15 national, state, and local elected officials, also on March 10. The brief draws the Court's attention to the disparate racial impact of the State's school funding formula and deems court intervention necessary to rectify the formula's inequities that are "impervious to change."

Several more briefs supporting CFE's case are expected to be filed shortly. To date, no group has filed a brief in support of the State's case.

# THIRD ANNUAL ACCESS CONFERENCE FOCUSES ON EDUCATION REFORM IN DIFFICULT TIMES

CFE's national project, ACCESS, held its third annual conference on education adequacy in Alexandria, Virginia, on February 27-28, 2003. The conference, **Education Adequacy: Strategies for Achieving Reform in Difficult Times**, was co-sponsored by the National School Boards Association and attended by almost 100 attorneys, policy people, advocates, and others from 27 states and the District of Columbia. The two-day meeting primarily on overcoming the special difficulties posed by fighting for costly education reforms at a time when almost every state in the country has a severe budget shortfall.

Senator Christopher Dodd of Connecticut energized the attendees with his passionate keynote address on inequality in educational resources and his insights on the federal No Child Left Behind Act (NCLB). Senator Dodd, a longtime advocate of education in the Senate, noted that while NCLB holds students and schools accountable for low test scores, it does not guarantee that the state and federal governments will fund programs to improve the quality of education in poor districts. People are often surprised, he said, that education funding comprises only 2% of the federal budget because it seems to get about 95% of the rhetoric. The senator touted the Student Bill of Rights that he and Representative Chaka Fattah of Philadelphia

introduced in the last Congress as an initial approach for remedying these funding and accountability problems.

CFE Executive Director and Counsel Michael A. Rebell opened the conference by noting that despite a difficult economic climate, plaintiffs continue to prevail in education adequacy cases. Of the cases decided by state highest courts since September 11, 2001, plaintiffs have won five out of six indicating that nationally the commitment to equity in education remains strong. On the second day of the conference, Mr. Rebell presented CFE's model for public engagement as a tool for school reform. The model, which received comment from Wendy Puriefoy of the Public Education Network, Beth Olanoff of Good Schools Pennsylvania, and Abdi Soltani of Californians for Justice, emphasizes public engagement as a theory of change.

Other conference highlights included a panel on the needs of at-risk students featuring Professors Gary Natriello and Jeffrey Henig of Columbia University, an address on studies supporting the efficacy of early-childhood education by Professor Steve Barnett of Rutgers University, and a talk by Douglas Gould on communications strategies to promote school funding reform. All participants also appreciated the general "Roundup from the States" session, in which knowledgeable attendees briefly discussed current school-funding litigation issues in 20 states. The updates clearly demonstrated a growing trend around the country to utilize costing-out studies in connection with adequacy litigations, as CFE has initiated in New York.

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