

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 25

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CAMPAIGN FOR FISCAL EQUITY, INC., *et al.*, : Hon. Leland DeGrasse  
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Plaintiffs, : Index No.: 111070/93  
: :  
v. : Special Referees:  
: Hon. William C. Thompson  
THE STATE OF NEW YORK, *et al.*, : Hon. E. Leo Milonas  
: John D. Feerick, Esq.  
: :  
Defendants. :  
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**STATEMENT OF DR. ROBERT BERNE**

**Background and Qualifications**

1. I am the Senior Vice President for Health at New York University (NYU), and a member of the President's Core Leadership Group that meets daily with the President. In addition to my administrative responsibilities, I have retained my tenure as a Professor of Public Administration and teach a graduate course each year in education policy. Before assuming my present responsibilities, I was the Dean of the Robert F. Wagner Graduate School for Public Service, then Vice President for Academic Development of NYU, and then Vice President for Academic and Health Affairs. I have also been a member of the NYU faculty since 1976, and a tenured professor since 1984. I hold a Ph.D in Business and Public Administration from Cornell University.

2. For nearly three decades, my academic research has focused on issues of education finance and related issues in New York State and New York City, including education finance, equity, academic standards, and accountability. I have published numerous books, articles, and reports concerning education finance issues, including many works dealing specifically with New York State and New York City. I also have served nationally as a Board

member of the American Education Finance Association. A full list of my published works and funded research studies is included in my curriculum vitae, which is attached as Exhibit A.

3. In the recent past, I headed the staffs of two major New York State commissions charged with investigating major issues involving educational policy and education finance in New York City and New York State. I first served in 1988 as Director of Policy Research for the New York State Temporary Commission on the Distribution of State Aid to Local School Districts, known as the Salerno Commission. The Governor and the Legislature established the Salerno Commission to examine and make recommendations concerning all aspects of New York State's education finance system for public education. The report that the Commission issued, and for which I organized and directed all the research, involved most of the education finance issues that have been litigated in the present litigation. Between 1989 and 1991, I also served as Executive Director of the New York State Temporary Commission on New York City School Governance, known as the Marchi Commission. The Marchi Commission examined in depth a range of issues regarding governance and accountability in the New York City public school system.

4. I have also served as an expert consultant in several major education finance cases, testifying on behalf of both plaintiffs and defendants, including the California case of *Serrano v. Priest* (defense consultant and witness); the Maryland case of *Hornbeck v. Somerset County* (plaintiffs' consultant); the Texas case of *Edgewood v. Kirby* (defendants' consultant and witness); and the Massachusetts case of *Hancock v. Commissioner of Education* (plaintiffs' consultant and witness). During the trial of this litigation, I testified as an expert witness on behalf of the Plaintiffs, and last year I served as a consultant to the Sound Basic Education Task Force organized by CFE.

5. The opinions set forth in this affidavit are based on my research, study and knowledge of education policy in general, and the education finance system in New York State

and New York City in particular. In addition, I have reviewed numerous documents submitted to the Panel by the parties, including: (1) the New York Adequacy Study undertaken by the American Institutes for Research and Management Analysis and Planning, Inc. (the “AIR/MAP Study”); (2) the Resource Adequacy Study for the New York State Commission on Education Reform authored by Standard & Poor’s (the “S&P Study”); (3) the Final Report of the Sound Basic Education Task Force; (4) the Final Report of the New York State Commission on Education Reform (the “Zarb Commission Report”); (5) Plaintiffs’ Memorandum Concerning the Sound Basic Education Compliance Proposals, dated September 1, 2004 (“Plaintiffs’ Mem.”); (6) the Memorandum In Support of Defendants’ Sound Basic Education Compliance Plan; (7) the witness statement of Dr. Robert Palaich; and (8) the witness statement of Dr. Thomas Parrish. I have also reviewed the Court of Appeals’ Order of June 26, 2003, and I am familiar with the facts of this litigation from having served as an expert consultant during the trial phase.

6. I have been asked by the Plaintiffs to provide testimony concerning several issues raised by the Panel during these proceedings: (1) The validity and reasonableness of Plaintiffs’ and Defendants’ estimates of the cost of providing all New York City schoolchildren with the opportunity for a sound basic education; (2) the appropriate standard for determining the cost of providing the opportunity for a sound basic education; (3) the regional cost index that should be used to account for cost differences between New York City and the rest of New York State; (4) the mechanism that would best ensure that the necessary level of funding in New York City is provided each year; and (5) the appropriate costing-out methodology that should be used in the future. Each of these issues is addressed in turn below.

## Validity and Reasonableness of the Cost Estimates

7. Plaintiffs contend that a total of \$17.2 billion in current 2004-2005 dollars is needed for basic educational operations<sup>1</sup> in New York City in order to ensure that every student is provided with the opportunity for a sound basic education. Plaintiffs calculate that current annual spending must increase by \$5.6 billion to meet the \$17.2 billion target. (Plaintiffs' Mem. at 10.) Plaintiffs have based this figure on the AIR/MAP stage 3 recommendation of \$15.9 billion in 2001-2002 dollars, which, adjusted for inflation and increases in student population, amounts to \$17.2 billion in current 2004-2005 dollars.<sup>2</sup> Subtracting federal aid of \$812 million,<sup>3</sup> and current state and local allocations of approximately \$10.8 billion<sup>4</sup> results in the \$5.6 billion figure.

8. In my opinion, Plaintiffs' cost estimate is reasonable and based upon a sound and appropriate cost analysis. In fact, in my judgment, Plaintiffs' estimate is conservative and may at

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<sup>1</sup> This figure omits capital funds, debt service, and transportation.

<sup>2</sup> Plaintiffs' inflation increases (approximately 7.3% over the three year period) were based on the Division of the Budget's Composite CPI for New York. I consider use of this general CPI index to be a very conservative measure, because actual teacher salary costs, pension and health insurance, which constitute over 70% of typical school district expenditures, undoubtedly rose substantially more than 7.3% over the past three years. In addition to the 7.3% inflation adjustment, the 2004 figures also include a 1.1% student enrollment increase.

<sup>3</sup> The \$812 million dollars in federal funds used in this figure represents that amount of federal funds spend by New York City in 2001-2002 for IDEA, Title I, ESEA, Title VI, vocational aid and other general federal aid. It excludes FEMA, Medicaid, JTPA, WIA and adult education.

<sup>4</sup> Total state aid to New York City for 2004-2005 for the operating aid categories included in the AIR/MAP proposal was \$5.5 billion, according to the state aid runs released by the State Education Department in August, 2004 (*see* [www.oms.nysed.gov/faru/Profiles](http://www.oms.nysed.gov/faru/Profiles)), and estimated New York City allocations for 2004-2005 were estimated at \$5.3 billion, according to the expenditure projections provided by the New York City Department of Education to the Sound Basic Education Task Force, in August, 2004. A copy of the Department of Education's Total Funded Expenditure report is annexed hereto as Exhibit B.

some point require some upward adjustment to take into account certain additional cost factors that were excluded by Plaintiffs.

9. Plaintiffs' cost estimates were derived from the extensive cost analysis entitled *The New York Adequacy Study* that was undertaken by the American Institutes for Research and Management Analysis and Planning last spring, and which I understand is generally known as the "AIR/MAP Study." The AIR/MAP Study was based primarily on "professional judgment" techniques, but it also to incorporated aspects of each of the other cost analysis methodologies that have received some attention, including "successful schools," "econometric" and "expert judgment"

10. The primary advantage of the professional judgment approach is its focus on actual educational practice; it relies on experienced educators to determine what specific resources and programs are necessary to give students an opportunity to meet the specified performance standards. In contrast to the successful schools and econometric models, the educational program itself drives the cost analysis. Educators first identify the specific resources (including teachers, support staff and instrumentalities of learning) and programs necessary for a particular student population. Policy and finance personnel can then determine the cost of those elements. The result is a fully costed-out program of educational resources that is specifically tailored to the needs of the particular student population.

11. A methodologically sound professional judgment analysis should include the following elements:

- (1) An appropriate standard.
- (2) The use of at least several different groups of knowledgeable and experienced educators to determine appropriate resource levels.
- (3) Resource assessments undertaken across varying demographic profiles (*e.g.*, high and low poverty, urban, rural, suburban.).
- (4) Appropriate estimates of special education costs.

(5) Multiple levels of review and synthesis.

(6) Stakeholder participation.

(7) Transparency.

12. I have reviewed the AIR/MAP Study and it is clear that it incorporated all of these elements. In addition, the AIR/MAP Study built on established professional judgment techniques and adopted a number of important innovations that have advanced the state of the art in this area. To my knowledge, the AIR/MAP Study is the most sophisticated, extensive and comprehensive costing-out study that has ever been done in the United States. The AIR/MAP Study's highly detailed, multi-faceted and transparent consideration of the issues allows readers and policy makers to understand precisely the specific factors that were considered and that led to decisions that were made at each stage of the process.

13. The AIR/MAP Study produced separate cost estimates for each of the three principal stages of the Study. The Stage 1 estimate was based on the initial work of the individual panels. The Stage 2 estimate was based on review and refinement of the initial Phase 1 work by the Summary Professional Judgment Team. The Stage 3 estimate responded to the analysis provided by the Stakeholder Panel and the expert consultants and included additional review and refinement by the Summary Team. In addition, the AIR/MAP Study includes a modification to the Stage 3 estimate to take into account additional administrative costs associated with increasing the level of resources and program to meet the needs of specific student populations. (The three stages are described in detail in Chapter 4 of Volume 1 of the AIR/MAP Study at pages 65-92.)

14. It is my opinion that the AIR/MAP Stage 3 recommendation with the moderate increase for central administration, which amounted to \$5.2 billion in 2001-2002 dollars, represents the best estimate of the costs of providing all students in New York City the

opportunity for a sound basic education. I base this opinion on (1) the overall soundness of the AIR/MAP Study; (2) the fact that the Stage 3 estimate represents the final estimate of the Study, incorporating the reviews and refinements of the Summary Judgment Team based on the recommendations of the Stakeholder Panel and the expert consultants; and (3) my view that the additional administrative expense added to the initial Stage 3 estimate is realistic.

15. There are several specific aspects of the AIR/MAP cost analysis that I think should be highlighted. AIR/MAP calculated specific figures for New York City and every other school district in the state by applying the prototype educational models developed at stages 1, 2, and 3 to the actual demography of every school in the district, and then adding the individual school totals into a combined district total. AIR/MAP then added to that total a factor to cover central district administration for items such as superintendent's staff, personnel and business functions, curriculum development and supervision and custodial services. (AIR/MAP Study, vol. 1 at 37-39, 70.) The amount of central district administrative overhead expenses in each stage was extremely conservative: current (school year 2001-2002) actual central district overhead figures, allowing no increase whatsoever in central administrative costs related to the substantial program expansions that would be taking place at the school levels.

16. AIR/MAP also computed an additional estimate, which consisted of the basic Stage 3 figure increased modestly to account for the reality that there would be increased central administrative expenses associated with the adoption of the recommended programmatic increases. This increase was not proportionate to the proposed increase in school level instructional expenditures; rather, it calculated an overhead ratio based on a detailed analysis of specific central administrative items that reasonably would be expected to grow with the augmented instructional programs (such as finance administration, and maintenance and

operations), but omitted other items like board of education and school superintendent expenses which would not be expected to increase. (AIR/MAP Study, vol. 1 at 39.)<sup>5</sup>

17. In my opinion, inclusion of a sum representing a moderate increase in administrative expenses is reasonable and appropriate. Obviously, if there is a substantial increase in basic instructional programming for early childhood services, reductions in class size and more extended day programs, more buildings will be in operation for longer periods of time, necessitating higher expenditures for maintenance and operation, and some increase in the central staff which develops curriculum and provides professional development for these programs.

18. I note that my opinion regarding the reasonableness of the administration costs estimates added to the initial Stage 3 estimate leads me to embrace an amount that is somewhat higher than the Plaintiffs' cost proposal, which is limited to the initial Stage 3 estimate. As indicated above, in my view, CFE has taken a very conservative stance, since it would be reasonable to assume that there would be some increase in central administrative costs if there is a substantial increase in the instructional program and the numbers of buildings and classrooms in use.

19. It is important to note that one other particular strength of the AIR/MAP Study was the methodology and assumptions used to identify appropriate resources for special education students. This is in fact a groundbreaking new approach to special education financing. I have previously undertaken extensive study of this issue (*see, e.g.,* Robert Berne et al., *Focus On Learning: A Report on Reorganizing General and Special Education in New York*

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<sup>5</sup> The AIR/MAP Study uses the arcane terms "lump-sum approach" to describe the method which includes only current actual central overhead expenses, and the phrase "combined lump-sum/ratio approach" to describe the method which adds the formula for calculating a partial, but not proportionate, increase for central administrative expenses.

*City*, Institute for Education and Social Policy, Oct. 1995) recommending substantial reform of the special education system to substantially increase the number of special education students who are placed in mainstream settings. I believe that the AIR/MAP Study appropriately identified resources by (1) using special education experts on the initial panels, and (2) convening separate special education panels. I also believe that the AIR/MAP Study appropriately assumed that a very high percentage of special education students would be served in neighborhood schools in mainstream programs, which is consistent with state and federal policy and current education theory. Moreover, as my own studies have confirmed, it is not reasonable to expect that more segregated programs would give rise to any significant cost savings. Indeed, the continuation of long-entrenched special education policies and funding practices, which typically provide additional funding for students placed in segregated settings, has provided incentives for school districts to maintain too many students with disabilities in these settings. The AIR/MAP analysis of special education resource provides a clear and rational approach to overcome the inadequacies of current special education funding practices.

#### **The S&P Study**

20. The Defendants apparently now assert that the additional cost of providing the opportunity for a sound basic education in New York City is approximately \$1.93 billion in current dollars. (Defendants' Mem. at 25-26.) Apparently, Defendants' estimate is based on the S&P Study conducted at the request of the Zarb Commission. I have read the S&P Study and I do not find in it any recommendation for \$1.93 billion or any other specific amount. I also do not believe that the S&P Study was (or even purported to be) a methodologically sound analysis of the actual costs of providing a sound basic education in New York City. The S&P analysis is flawed in many serious respects including: (1) it does not appropriately take into account the actual needs of specific student populations; (2) it improperly assumes that what happens in "successful" schools with low numbers of at-risk students provides a legitimate basis for

determining what resources should be provided to low-achieving schools with high numbers of at-risk students; and (3) it uses an arbitrary “cost-effectiveness” filter that has no empirical or theoretical justification and has never been accepted by education finance professionals. (*See also* paragraph 25, below.)

21. I note that the Zarb Commission recommended a statewide increase in the range of \$2.5 billion to \$5.6 billion in 2003-2004 dollars. (Zarb Commission Report at 24.) This range is apparently based on their reading of the S&P Study, which they say “generated a range of additional costs from \$2.5 billion to \$5.6 billion.” (*Id.*)<sup>6</sup> But figures in the S&P Study were set forth for illustrative purposes only; by plugging different variables into the EdResource Calculator, even higher illustrative figures would emerge from the S&P analysis. In fact, the Zarb Commission only cited the S&P statewide illustrative figures from the illustrations that used the 50% cost reduction factor. The S&P Study itself, however, provides tables that show that the \$2.5 billion to \$5.6 billion illustrations would rise, using all of the same poverty, regional cost and other variables except the 50% cost reduction, to a statewide range of \$6.03 billion to \$10.28 billion. (S&P Study at 23-24.)

22. In sum, then, it is my opinion that the Panel of Special Referees should recommend that the amount of state and city funds needed to provide all students in New York City the opportunity for a sound basic education in 2004-2005 is \$16.4 billion, which would require an estimated increase of \$5.6 billion over the current level of state and city expenditures.<sup>7</sup>

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<sup>6</sup> The Zarb Commission does not offer any opinion concerning the share of the statewide total adequacy gap that should go to New York City, even though the S&P report had recommended that New York City should receive 74% to 84% of the statewide total. (S&P Study at 23, fig. 11.)

<sup>7</sup> The recommendation should be phrased in terms of the \$16.4 billion total expenditure figure, and not in terms of the “adequacy gap,” because the \$5.6 billion gap figure is based on estimates of current-year state and local spending that were issued at the beginning of the fiscal year.

## **The Appropriate Standard for Costing-Out Analysis**

23. At the outset, it is important to distinguish between standards used for accountability purposes and standards used in a costing-out study to determine appropriate levels of resources necessary to provide an opportunity to obtain a sound basic education.

Accountability standards, which are used to judge how well schools or districts are performing with current levels of resources and programs, are typically set using precise outcome results, *e.g.*, what percentage of students met a particular reading standard, or passed a certain test, or graduated from high school. These standards are often established as benchmarks, with consequences to follow if the benchmark is not met. Thus, an appropriate accountability standard might set a specific achievement standard, with mandated school or district leadership change or school closings to follow if the standard is not met within a certain time.

24. In my experience, these precise outcome standards are less useful for a cost analysis study undertaken to determine what resources are necessary to provide students with the opportunity to obtain an adequate education. Instead, it is sufficient and preferable for this purpose to articulate a standard geared to a broader achievement level such as the Court of Appeals standard, *i.e.*, a full opportunity to obtain “a meaningful high school education” or, more specifically, the standard used by the AIR/MAP panels, *i.e.*, the opportunity to meet the Regents Learning Standards and obtain a high school diploma. This standard is definite and easily understood by educators. New York students are required to meet the Regents Learning Standards in order to obtain a high school diploma and educators work with these standards on a daily basis. They know what resources it takes to provide the opportunity to meet those standards. In addition, the AIR/MAP standard makes sense as a matter of education policy: If the State sets education standards, it should ensure that schools provide the resources so that students have the opportunity to meet those standards.

25. I do not believe that using specific outcome standards as a base for determining the costs of an adequate education would provide any advantage over using the Court of Appeals and AIR/MAP “opportunity” standards. Indeed, it is not reasonable to expect that the resources necessary to ensure that a specific high percentage of students pass a basket of Regents exams would differ in any significant way from the resources necessary to provide all students with the opportunity to meet the Regents’ Learning Standards.

26. For this reason, I also do not believe that the successful schools methodology provides any advantage over the professional judgment methodology in determining the cost of providing an adequate education. While the specific outcome standards used in the successful schools model give the appearance of precision and rigor, in fact, the successful schools model actually does not provide any theoretical or experiential basis to determine what particular resources are necessary to assure a given outcome for a given student population. The S&P Study provides a clear example of this fact. The study tells us nothing about the actual resources – whether provided in schools or by parents – that were required to achieve any particular outcomes. For example, the successful schools used by S&P to set the cost benchmark had high pass rates on Regents exams and low percentages of at-risk students. We know (and it is a matter of New York State education policy) that at-risk students require additional resources to achieve academic success and the S&P Study provides no basis to determine what those resources are or what they cost.

### **The Regional Cost Index That Should Be Used**

27. The method that was used in the AIR/MAP Study to calculate the relative costs of purchasing educational services among New York States school districts was a Geographic Cost of Education Index (“GCEI”) that was calculated by Jay Chambers for this study. Essentially, the GCEI bases its analysis of regional cost differences on differences in the costs of hiring teachers and other personnel, who constitute the overwhelming bulk of all educational costs.

The analysis uses a “hedonic wage model” that differentiates between discretionary costs that school districts incur in hiring personnel and costs that are beyond its control. Discretionary costs include items like years of teaching experience, educational preparation, and the nature of job assignments such as the extent to which qualifications match subject matter taught.

Uncontrollable factors include items like population density, housing costs, and unemployment rates in the area.

28. The Regents used a regional cost index based upon a comparison of wage scales for 63 college-educated professional titles, which purposely excludes teachers’ salaries because in many counties school districts are often the dominant purchasers of college-educated labor. (Regents Proposal at 44.) The wage data are taken from the Bureau of Labor Statistics Occupational Employment Statistics. In calculating the index, the New York City and Long Island Labor force regions were treated as a single labor force region. (*Id.* at 45.)

29. Based on a comparative scale in which the lowest cost school district in the state is 1, New York City’s index would be 1.236 on the GCEI index. (Plaintiffs’ Mem. at 23.) The comparable figure on the Regents’ Regional Cost Index (“NYRCI”) would be 1.496. (Regents Proposal at 44.) This is why use of the GCEI with the S&P EdResource Calculator yields substantially lower total cost figures.<sup>8</sup>

30. In my view, both the GCEI and the NYRCI have comparative strengths and weaknesses. The GCEI is primarily based on current teacher salary scales, which may understate the salary levels needed to obtain additional qualified personnel in a competitive market, while

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<sup>8</sup> For example, according to S&P’s EdResource calculator, the \$1.93 billion minimal estimate uses the GCEI; if one changes the scenario to use the NYRCI while holding all other factors constant, the resource gap estimate increases to \$4.10 billion. Attached hereto as Exhibit C is a true and correct copy of a printout from S&P’s EdResource Calculator that shows the effect of switching from the GCEI to the RCI on Defendants’ estimated spending gap for New York City.

the NYRCI looks exclusively to non-teacher professional salary scales, which may overstate the amounts needed to attract qualified teachers in the New York metropolitan area. Since both indices have advantages and disadvantages, a reasonable and rational way to capture their advantages while diminishing the effects of their flaws is to simply average them and use that number as the basis for a regional cost adjustment.

### **Appropriate Mechanism for Ensuring Necessary Funding**

31. It is important that the Court not only determine the amount of funds that the New York City Public Schools need in the current year, or, on a phase-in basis for the next few years. The Court must also mandate changes in the existing state aid formulas to ensure that the state education finance system continues to provide New York City's students – as well as other students in the state – sufficient funds to provide them the opportunity for a sound basic education on a continuing basis. Without an appropriate mechanism in place to ensure that adequate funding is provided to New York City each year, much of the tremendous effort that has been expended by the parties and by the Court in this litigation may go to waste.

32. The trial record in this case substantiated in great detail the findings that led to the Court of Appeals' holding that the current system is “needlessly complex, malleable and not designed to align funding with need.” *CFE v. State of New York*, 100 N.Y.2d 893, 929 (2003). The current state aid “formula” actually consists of over 50 separate formulas, funding stream caps, hold harmless guarantees, and grants in aid – many of which actually cancel each other out. The resulting system is so obfuscating and confusing that few citizens can understand it, and it is easily susceptible to manipulations and inequities. This irrational system has been in effect for decades and it must be substantially reformed if students' constitutional rights are to be upheld on a permanent basis.

33. The basic reform mechanism that needs to be put into place is a foundation funding approach for state aid – which is the predominant system in most other states around the

country. Essentially this means that all the basic operating funds for New York City and each other school district would be provided through a single sound basic education block grant formula, instead of through dozens of complex separate funding streams. A foundation system would provide a flexible yet focused mechanism for ensuring that adequate funding is provided on an ongoing basis, and would bring certainty and stability to the state education finance system. This stability would promote sound planning and budgeting and help to rationalize education finance.

34. All of the parties to this proceeding apparently agree that the current system should be transformed into a foundation funding system. Their differences lie in the degree of foundation reform that each party advocates: Plaintiffs call for the combining of 40 of the current funding streams into the basic foundation block, the Regents call for 29, the Zarb Commission 22, and the Governor 7-13.

35. In my opinion, the Plaintiffs' approach is the most sensible and the most workable. If the system is to move to a foundation model, anyone who would advocate the continuation of any funding streams outside the basic foundation block should have a heavy burden to justify why all funding should not be consolidated into the basic grant. All of the parties have agreed that capital funds, transportation, BOCES, high-cost special education and a few small statewide grant programs administered by the State Education Department should continue to be separately funded. The main difference between Plaintiffs' position and that of SED is that SED would keep several of the large special education funding streams outside of the foundation, at least for another year or two, pending further study.<sup>9</sup> None of the other parties

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<sup>9</sup> I understand that Plaintiffs have agreed to defer inclusion of these special education categories into the foundation until the second or third year of the phase-in period and to work with the Regents to design appropriate transition mechanisms.

have provided any substantial justification for keeping large numbers of additional programs outside of the basic foundation amount.

36. A further advantage of Plaintiffs' approach is that it is fully aligned with the funding recommendations of the AIR/MAP Study, and a simple foundation formula can therefore be calculated to provide an appropriate foundation amount to New York City and every other district in the state if the Court should accept the results of the AIR/MAP Study as the appropriate sound basic education block amount. The Sound Basic Education Task Force has in fact proposed the following statutory block grant formula for a foundation system that would implement the AIR/MAP stage 3 allocation, with appropriate inflation adjustments for 2004-2005 and the following years:

New York City's **foundation amount** during each of the next four years shall equal:

- a. its Geographic Cost of Education Index (GCEI) as determined by the AIR/MAP Study: 1.236

**multiplied by**

- b. its Educational Needs/Scale Index (EN/SI) as determined by the AIR/MAP Study: 1.535

**multiplied by**

- c. its total student enrollment in all grades including Pre-Kindergarten and Early Childhood Development Programs, and with students attending half day programs being included in this enrolled pupil count on a proportional basis

**multiplied by**

- d. the following unweighted "per pupil" foundation amounts:
  - i. for the 2005-2006 school year, 5,868
  - ii. for the 2006-2007 school year, 6,791
  - iii. for the 2007-2008 school year, 7,749

iii. for the 2008-2009 school year, 8,742.<sup>10</sup>

37. It is important to note that the Legislature had many chances to reform the current school funding mechanisms and chose not to do so. In my judgment, the Court must step in and design a formula to ensure a constitutionally acceptable funding mechanism or risk that another generation of New York's school children will be shortchanged. The Court, in mandating a formula, can permit the Legislature the option of substituting a formula of their own provided that it meets the constitutional tests. But the specification of an amount without a formula will be an invitation for a temporary rather than a long-lasting remedy.

38. In addition to a state aid allocation, a constitutionally adequate system must include a mechanism for ensuring that a definitive amount of local funding is provided each year to complement the state allocation. This means that there must be a formula that determines in a clear and transparent manner the amount of funding that New York City and every other local district must contribute for their schools' operations. Although localities should have the discretion to add extra amounts if they so choose to provide a higher level of services, the system must ensure that the core sound basic education funding amount is mandatory.

39. The Sound Basic Education Task Force has developed a formula that determines a fair local share for each district in the state using the Combined Wealth Ratio methodology recommended for this purpose by the Regents, but which differs from the Regents approach in two specific ways. First, it bases the pupil count on the number of students enrolled in each district's schools, rather than on student attendance. Second, it adds a need factor, calculated on the percentage of K-6 students eligible for free or reduced priced lunch as a measure of poverty and increases the pupil count by 60% for each poor student. (*See* Sound Basic Education Task

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<sup>10</sup> Current federal aid (but not possible future increases) and the City's contribution should be subtracted from this total to arrive at a final State operating aid figure each year.

Force Final Report at 32-33, n.28.) Applying this formula to New York City results in a state/city split of 57.25% for the state and 42.75% for the city. Because current state aid to New York City is substantially below 57.25%, if this formula were applied to the \$16.4 billion sound basic education amount the Plaintiffs are proposing, New York City's required share of the estimated \$5.6 billion increase would be approximately \$1.3 billion or 23% of the total amount to be phased in over the next four years. (See Sound Basic Education Task Force Final Report at 36, Table 1.5.)

### **Costing-Out Methodology For Future Studies**

40. The parties all agree that the increase in sound basic education funding as determined by the court should be phased-in over a multi-year period in order to provide the school system a reasonable period of time to effectively absorb the increased funding. I endorse Plaintiffs' suggestion that the phase-in period be four years, and that it be coordinated with a comprehensive four-year plan to be adopted by the Chancellor after extensive public engagement, and to be reviewed by the Commissioner.

41. The AIR/MAP researchers recommended that a new costing out analysis be conducted every three to five years to reconsider education costs as they exist at that time. (AIR/MAP Study, vol. 1, at 91.) That is a sensible proposal. Plaintiffs have proposed that the Regents undertake such a study after the methodology they propose to use on future occasions has been the subject of a public hearing process. Presumably, if, on the basis of the present record issues, the Court findings that speak to acceptable and unacceptable practices that have been used in the costing-out analyses undertaken in connection with the current case, those findings would provide appropriate guidance to the Regents in developing their methodology for future costing out studies.

42. I do not believe it necessary or appropriate for the Court at this time to endorse professional judgment, successful schools or any other methodology for *future* funding purposes.

Education finance is an area of intense academic research and debate and research techniques are constantly evolving and improving. The state of the art in a few years may be quite different than it is today, so to lock researchers into a particular methodology years in advance would not be beneficial. So long as a methodology that is consistent with established professional practices is administered in a reasonable, consistent manner, future costing-out approaches should be left to the sound discretion of the Regents or other policy makers.

43. In conclusion, I believe that the Panel of Special Referees should accept Plaintiffs' proposal that total state and city spending for basic education be increased to \$16.4 billion, which would constitute an estimated \$5.6 billion increase, to be phased in over the next four years. This is the only proposal that has been presented to the Court that is based on a detailed costing-out analysis and recommendations by experts in the field, and the AIR/MAP Study on which it was based was not only reasonable but decidedly conservative in its treatment of inflation trending from 2001 to 2004, the regional cost of living index, and central administrative overhead factors.