

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

-----X

CAMPAIGN FOR FISCAL EQUITY, INC., et al.,	:	
	:	Index No. 111070/93
Plaintiffs,	:	
	:	Hon. Leland DeGrasse
- against -	:	
THE STATE OF NEW YORK, et al.,	:	Panel of Special Referees:
	:	John Feerick
Defendants.	:	E. Leo Milonas
	:	William Thompson

-----X

TESTIMONY BY CHARLES FOSTER

1. I am a Chief Budget Examiner in the Education Unit of the New York State Division of Budget, a position I have held since 1995. I report to a Deputy Budget Director and I supervise a staff of over 20 employees. Working at the direction of the Budget Director and in conjunction with the Governor’s program staff, I am responsible for preparation of the Governor’s annual Executive Budget recommendations for education.

Introduction

2. I am responding to the Special Referees’ following two questions:

#6: “...whether any of the measures [necessary to provide all New York City schoolchildren with the opportunity for a sound basic education] that should be implemented with respect to such operating funds or capital expenditures should be phased in over some period of time and, if so, what time period and in what increments”

#16: “Who should determine the State and City share of operations funding and capital expenditures necessary to provide New York City schoolchildren the

opportunity for a sound basic education and what methods or principles should be used in determining those respective shares”

3. In addition, consistent with the Special Referees’ invitation to provide additional information that would assist the Referees’ in complying with the Courts’ mandate, this testimony will also provide additional information with respect to State funding for school construction, with a particular focus on New York City.

Question # 6

4. I will begin my testimony with a response to question #6 regarding the appropriateness of a multi-year phase in of funding to support needed education reforms in New York City.

State Sound Basic Education Plan

5. In response to the \$1.93 billion resource gap for New York City’s schools identified by the Standard & Poor’s study, the State has submitted to the Court a Sound Basic Education Plan. The State’s Sound Basic Education Plan calls for additional State, local and Federal funds totaling \$4.7 billion to be phased-in over a 5-year period. To assist the Court in evaluating this plan, I would offer the following information.

6. To comply with the order of the Court, the State Plan must assure that additional resources are provided to New York City schools to close the \$1.93 billion resource gap identified in the Standard & Poor’s study. To the extent that the 5-year State Plan sets forth \$4.7 billion in overall funding, any funds beyond those needed to cover the City’s \$1.93 billion resource gap will be available as supplemental funding. The sufficiency of these funds to meet the future needs of New York City schools could be re-evaluated as part of a periodic “look-back” -- perhaps every four

years -- which would update the original costing out study and assess the effectiveness of the education reforms that have been implemented during this period.

7. The annual amounts of the State portion of this \$4.7 billion will be provided in increments determined annually by the Governor and the Legislature. It is likely that the annual State increments will vary from year to year, depending on the amounts needed to support the various education reforms -- including those reforms that are the subject of collective bargaining -- and the level of funds that are available annually from local and Federal sources.

8. The funding components of the \$4.7 billion set forth in the State Plan may be broken down as follows: \$2.2 billion in State funds; \$1.5 billion in City funds; and \$1 billion from the Federal government.

9. The \$2.2 billion in State funds has two components:

- \$1.2 billion, which represents New York City's 60 percent allocation from the \$2 billion in statewide Video Lottery Terminal (VLT) revenues that will be deposited in a Sound Basic Education Fund; and
- \$1 billion, which represents New York City's 40 percent allocation from \$2.5 billion in projected school aid increases over this 5-year period.

10. The \$1.5 billion in New York City funds represents a local match of 40 percent of the combined \$3.7 billion State/City funding total. This 60-40 State-local match is reflective of the historical responsibility for funding for New York City public schools. In 1994-95, the State's portion of total non-federal New York City school expenditures was 45.6 percent and the City's portion was 54.4 percent. By 2001-02, State participation accounted for 55.5 percent and City participation was 44.5 percent. Also, the State Plan assumes continuation of the existing statutory

Maintenance of Effort (MOE) which requires the City to maintain the total amount of expenditures (excluding pension and debt service) funded by City funds for the support of the City School District at the prior year's level. An exemption to the MOE is authorized in the event the amount of City funds relied upon to balance the City's overall budget reflects a decrease. In such an event, City funds in support of the City School District may be reduced by up to the same percentage as the decrease in overall City funds to support the City's budget.

11. The \$1 billion in Federal funds is based on a forecast of funding from Title I of the Federal Elementary and Secondary Education Act, which provides funding for the education of children in poverty, and funds provided under the Federal Individuals with Disabilities Education Act (IDEA). In 2003-04, New York City received \$1.15 billion in Federal flow through funds -- approximately \$925 million in Title I funding, and \$200 million in IDEA funds. For the three year period between 2001 and 2004, there was a cumulative increase in Federal funds to New York State of 56 percent or approximately 19 percent annually. Based on this statewide annual increase, New York City is projected to receive approximately \$200 million in annual Federal increases. In 2004-05, New York City's projected Federal fund increase amounted to approximately \$110 million (\$80 million from Title I / \$30 million from IDEA) -- an increase less than those of recent years due to current Federal budget constraints.

Reasons for Multi-Year Phase-In

12. A multi-year phase-in is appropriate for three basic reasons: (a) to ensure the orderly planning and implementation of desired reforms; (b) to ensure appropriate accountability mechanisms are in place to ensure intended results are actually being achieved; and (c) to ensure program affordability without major disruption of other critical programs.

13. In his testimony, John Cape will speak in greater detail to the appropriateness of a multi-year phase-in of the funding set forth in the State Plan in the context of the overall State Financial Plan.

State/New York City Funding Relationship

14 In their question #16, the Special Referees asked:

Who should determine the State and City share of operations funding and capital expenditures necessary to provide New York City schoolchildren the opportunity for a sound basic education and what methods or principles should be used in determining those respective shares

State/Local Partnership to Fund Schools

15. Across the nation, the funding of public elementary and secondary education traditionally has been a State/local partnership, with the Federal government playing a less significant financial role. State and local governments (with the exception of Hawaii) currently share the costs of public schools, with the proportion of school expenditures supported by state funds vs. local funds varying from state to state. According to data for 2002-03 compiled by the National Education Association, states such as Vermont and New Mexico fund more than 70% of total local education spending, while states such as California and Illinois fund less than 40%.

16. In New York State, State revenues support approximately 48% of statewide local education spending, and approximately 51% of local education spending in New York City. Total statewide expenditures on elementary and secondary education in New York State totaled \$35.49 billion in 2001-02 according to the State Education Department. Of this amount, \$17.09 billion came from State funds, and represented 48.2 percent of local expenditures.

17. According to the State Education Department, total spending by New York City schools in 2001-02 was \$11.93 billion. Of this amount, \$6.12 billion in State funds supported 51.3 percent of New York City's overall education spending, with local revenues of \$4.90 billion supporting 41.1 percent, and Federal funds of \$0.9 billion supporting the remaining 7.6 percent.

18. State aid to schools is generally allocated on a wealth-equalized basis with poorer districts receiving more aid than wealthier districts, and New York City is a district of above average wealth. The State measures relative school district wealth by an index (the Combined Wealth Ratio, or "CWR") that measures an individual school district's combined property and income wealth per student relative to the statewide average. By definition, a CWR of 1.0 represents a district of average wealth. New York City's CWR for 2004-05 is 1.005, placing it above the State average and making it a district of above average wealth. New York City's 1.005 CWR for 2004-05 placed it 212th out of 680 districts statewide in terms of wealth – the City was thus wealthier than 468 other districts in the State.

Role of Governor and Legislature

19. The determination of the level of financial participation that is expected of state and local governments in New York State is a public policy issue appropriately left to the Governor and the Legislature -- as it is elsewhere throughout the nation. Presumably, State policy on this issue will continue to be established based upon factors that include the fiscal capacity of State and local governments, as well as statewide educational needs and priorities.

State Funding for School Construction

Building Aid Overview

20. According to a publication of the Association of School Business Officials, 38 states have programs that provide funds for school construction and 12 states provide no direct funding for school construction. Of the 38 states that provide funds for school construction, 22 states provide funding in accordance with the relative wealth of the school district. New York is among these states

21. In New York, the percentage of State reimbursement varies depending on the relative property wealth of the individual school districts. State aid percentages range from a minimum of 10 percent in the wealthiest districts to a maximum of 95 percent in the poorest districts.

22. New York provides State aid to support local school construction on a reimbursement basis, where local school districts receive State aid for a portion of their approved construction costs. Providing state aid for school construction on a reimbursement basis is an approach used in many other states, including Pennsylvania, Kansas and Rhode Island.

23. New York's building aid program is among the most generous in the nation in that it provides open-ended funding for all locally initiated construction projects that comply with State guidelines.

24. For New York City, in the 2004-05 school year, the State provides reimbursement of 60.7 percent of construction costs for projects approved by the New York City Department of Education after July 1, 2000.

State Building Aid Allocations

25. The recently enacted 2004-05 State Budget provides \$15.2 billion in State aid for public schools. Within this total, \$1.40 billion is provided in State building aid. This compares to

the \$536 million provided in 1994-95 for State building aid, which represents an increase of \$864 million, or over 160 percent.

26. For the 2004-05 school year, New York City will receive an estimated \$418.6 million in building aid. This compares to \$121 million in State building aid that was provided to New York City ten years ago in 1994-95 -- an increase of \$298 million, or over 240 percent.

Recent Building Aid Enhancements

27. In 1997, a statutory change was enacted to adjust State building aid reimbursement to reflect the higher costs of construction in certain school districts due to local labor market conditions. This modification produces a regional cost index of 1.8753 for New York City in 2004, which is the highest in the State, compared to the index of 1.0 for lower cost regions. The effect of this regional cost index is to adjust approved construction costs so that a cost allowance of \$1 million for a school facility project in a lower cost region of the State would become \$1.8753 million for New York City.

28. In 1997, legislation was also enacted to provide a 10 percentage point increase in the State aid percentage for all school districts up to a maximum of 95 percent. This enhancement raised the State reimbursement rate the City currently receives to 60.7 percent.

29. As a result of these two enhancements, State reimbursement for New York City school construction was significantly increased.

Statements of Support for Continuation of Reimbursement Based Building Aid

30. Use of the State's existing reimbursement-based building aid formula is eminently workable and appropriate to address New York City school facility requirements. The Zarb Commission concluded that the existing building aid formula be continued, with modifications to

promote the effective use of State and local resources and provide realistic allowances for construction costs and student-based needs.

31. The Regents State Aid Proposal for 2004-05 also recommended continuation of the existing building aid formula, as modified to provide supplemental cost allowances for school site acquisition and demolition in New York City. The Regents also recommend reforms to promote greater efficiency in the financing and construction of school facilities and the creation of a new grant program to relieve severe overcrowding in New York City and support the identification of strategies for reducing school construction costs.

32. In addition, the May 6, 1998 advisory opinion from the court appointed monitor in the Yonkers School Desegregation case, stated its support for the existing building aid formula and process to address the capital facility needs of the Yonkers City School District for the following reasons:

(a) The State has an experienced, clear, and generally supportive process for facilities construction and aid. (b) There has been a liberalization of the process and outcomes by which the State awards building aid. (c) Testimony by C. Szuberla was quite forthright, documented, and convincing with respect to showing how the State can be simultaneously responsive to State standards, local interest, and the Court Order.