



Summary of Plaintiffs' Brief

Submitted to the New York Court of Appeals of the State of New York

in CFE v. State of New York

January 31st, 2003

CFE v. State of New York is a case fundamentally about the meaning of two words in the Education Article of the State Constitution. That Article requires the Legislature to “provide for the maintenance and support of a system of free common schools, wherein *all* the children of this state may be *educated*.” This appeal turns on whether the word “all” includes the 1.1 million children in New York City, many of whom come to school disadvantaged by poverty and other circumstances not of their own making. And it turns on whether the word “educated” means something more than acquiring the skills and knowledge necessary to complete the eighth grade and to obtain menial employment.

After conducting a seven-month trial, the trial court concluded, in an exhaustive, 182-page opinion, that the New York City public school system had failed to provide the City’s children with the opportunity to obtain a sound basic education. The proof of this failure is overwhelming and permeates the trial record. It is found in the voluminous reports and records of the Legislature and State education officials detailing gross resource inadequacies that have persisted for decades: too many unqualified teachers; too many buildings with overcrowded classes and insufficient or non-existent libraries, laboratories and gymnasiums; and too many students denied the appropriate curriculum and remedial services they need to overcome the educational handicaps arising from their social and economic circumstances.

The proof of failure is also found in the voluminous data showing the New York City public school system's gross inability to educate its students: One-third of the system's elementary students are functionally illiterate; 40 percent of students who enter the ninth grade do not receive a high school diploma; and more than half of the City's high school graduates who attend the City University require extensive remedial education in basic English and math skills. The human toll exacted by this failure is staggering: ***Since 1986, more than 250,000 New York City students have failed to complete high school.***

On the basis of this substantial evidence of systemic failure, the trial court found that "the majority of the City's public high school students leave high school unprepared for more than low paying work, unprepared for college and unprepared for the duties placed upon them by a democratic society." The trial court concluded that virtually all New York City students have the ability to achieve academic success and graduate from high school, but that the New York City public school system has failed for decades to provide the resources necessary for all of its students to have the opportunity to do so. The trial court also held that the State must accept ultimate responsibility for this failure, both because the State has exercised pervasive control over virtually all aspects of the City's public schools and because the resource inadequacies in the public schools are causally linked to the State system of education finance.

Despite an overwhelming record of failure, the Appellate Division reversed the trial court's decision, with three justices joining in a majority opinion. It did so by eviscerating the command of the Education Article that "***all***" of the state's children be "***educated.***" It said 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. Having determined that ***no child of this State is entitled by constitutional right to anything more than an eighth grade***

education, the Appellate Division then ignored the gross record of educational failure because, under its eighth grade standard, students are not entitled to actually graduate from high school, they are not entitled to be prepared for college, and they are not entitled to anything more than menial work.

The Appellate Division also concluded that the command of the Education Article to educate “all” of the state’s children does not reach those who are disadvantaged by their economic and social circumstances. The Appellate Division put the blame for New York City’s educational failure on poor students and their families, accepting the premise urged by the State at trial that the failure of New York City’s students to learn is explained by their socioeconomic status, and not by the lack of adequate resources or other failings of the New York City public school system. It accepted this premise even though outside of the courtroom it is the official policy of New York State that “all children can learn, but children who have been placed at risk [of educational failure] by poverty, homelessness, poor nutrition, or inadequate care, often require special educational and support services to master basic competencies.”

If the opinion of the Appellate Division is allowed to stand, it will enshrine a hollow “standard” of education that shocks the conscience and is inconsistent with the prior rulings of the Court or Appeals. It is a standard abhorrent to the values and intent of the framers of the Education Clause, who understood that the fundamental purpose of public education is to promote the civic and material prosperity of the state and its citizens. This prosperity can only be assured, as the framers knew, if the public schools provide an opportunity for intellectual development and personal achievement.

The framers of our Constitution rejected the degrading and pessimistic view of the Appellate Division that public education is nothing more than preparation for the least

demanding of society's tasks. For, as the framers understood even in 1894, "[t]he public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before." The Appellate Division failed to even acknowledge this constitutional history, substituting its excuses for educational failure for the expectation of educational achievement embraced by the framers. This alone justifies reversal.

The Appellate Division opinion must also be reversed because it rests on the false and pernicious premise that the failures of the New York City public school system arise from the poverty and race of its students, rather than the lack of adequate resources. The overwhelming evidence at trial, much of it generated by the State and embraced by its experts at trial, established that all students in New York City, even at-risk students, can meet the State's learning standards if they are provided with adequate educational resources.

And, fundamentally, the opinion must be reversed because the overwhelming weight of the evidence supports the trial court's findings concerning the gross inadequacy of the educational resources provided by the New York City public school system and the gross educational failure of that system. The Appellate Division's invocation of a meaningless standard to reach a contrary result is a clear refusal to accept the premise of the Court's holding in *CFE I* that the Education Article has substantive meaning and that the children of this state may look to the courts to protect their rights under that Article.

When a child is subjected to succeeding years of poor teaching; dilapidated, unsafe and overcrowded facilities; empty or non-existent libraries and laboratories; insufficient remedial programs to overcome learning disadvantages; a dearth of guidance counselors, school nurses and other professionals; the absence of music, art and physical education programs; and too few books, computers and scientific equipment, that child has not had the opportunity to obtain a

sound basic education. Children in New York City have been denied this opportunity because of the collective and cumulative effects of inadequate resources.

When children face these conditions year after year, it is not surprising that one third of them cannot pass the most basic literacy tests in elementary school, that they score at the bottom of the state on social studies and science tests in junior high school and that they drop-out of high school in massive numbers.

The Court of Appeals now has the opportunity to say that the Education Article extends a promise of a something better to all of the state's children. It is of critical importance to *all* of the state's children that the Court condemns what has happened in the New York City public schools as a constitutional wrong.

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In seeking reversal, CFE asks the Court to issue an order which:

1. Declares that Art. XI, § 1 of 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 the following essential resources be provided:
 - A. Sufficient numbers of qualified teachers, principals and other personnel.
 - B. Appropriate class sizes.
 - C. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
 - D. Sufficient and up-to-date books, supplies, libraries, educational technology and laboratories.
 - E. Suitable curriculum, including an expanded platform of programs to help at-risk students by giving them "more time on task."
 - F. Adequate resources for students with extraordinary needs.
 - G. A safe, orderly environment.

2. Declares that the state education finance system violates Article XI § 1 of the New York State Constitution, and the regulations of Title VI of the Federal Civil Rights Act of 1964.
3. Directs the State to promptly take such action as may be necessary to provide all students with the opportunity to obtain a sound basic education in accordance with the following guidelines:
 - A. 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.
 - B. 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 students in all of its schools.
 - C. Establish a comprehensive accountability system that will 1) ensure that funds are efficiently utilized 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, stable funding that will promote effective long-term planning by school districts.
4. Orders the State within six months to initiate the studies and activities required by the remedial guidelines and directs the trial court to establish appropriate time lines for full implementation of the reforms needed to redress the constitutional violations herein and to retain jurisdiction over this matter until they have been corrected.