

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
Plaintiffs, : Index No.: 111070/93
v. : Special Referees:
THE STATE OF NEW YORK, *et al.*, : Hon. William C. Thompson
Defendants. : Hon. E. Leo Milonas
: John D. Feerick, Esq.
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STATEMENT OF PATRICIA ZEDALIS

Background and Qualifications

1. I am currently a consultant specializing in educational facilities planning. My clients include the Rockefeller Foundation, for whom I did research on school construction financing, four high-need school districts in New Jersey, for whom I updated capital plans, and two peer review panels for the Council of Great City Schools, which I assisted in evaluating the facilities programs at the Miami-Dade and Philadelphia public school districts.

2. From June 1996 until August 2001, I was Chief Executive of the Division of School Facilities of the New York City Board of Education, and the Executive Director of the New York City Educational Construction Fund. As Chief Executive, I was responsible for the operations of all of New York City's public school buildings, managed the Board of Education's real estate activities, and developed and oversaw the implementation of its capital plan. A true and correct copy of my resumé is attached hereto as Exhibit A.

3. Plaintiffs have requested that I provide testimony on their behalf with respect to the capital facilities aspects of their proposal for compliance with the Court of Appeals' order in *CFE II*. I have previously testified with respect to facilities issues during the trial phase of this case.

4. The testimony contained in this Statement is based on my knowledge and experience with New York City's school facilities and the State Building Aid system, as well as my work on the Facilities Task Force described below. As a consultant, I have also prepared research reports dealing with facilities and building aid issues in New York City and New York State as a whole. In 2002, as noted above, I was retained by the Rockefeller Foundation to prepare reports on how school construction is financed in New York and New Jersey, to provide an analysis of the impact of this financing on representative school districts, including New York City, and to document and evaluate alternative financing mechanisms and development vehicles. As a result of my work for the Rockefeller Foundation, I produced a report entitled "New York State Aid to School Districts for Construction," a true and correct copy of which is attached hereto as Exhibit B.

5. My testimony is also based on the following documents that I have reviewed that are part of the record of this case:

- The June 26, 2003 Decision and Order of the Court of Appeals ("*CFE II*")
- The June 15, 1995 Decision and Order of the Court of Appeals ("*CFE I*")
- The January 9, 2001 Decision and Order of the Supreme Court
- CFE Sound Basic Education Task Force Final Report
- Defendants' compliance proposal
- The City's compliance proposal
- The Department of Education Five-Year Capital Plan, February 2004 revision
- The Department of Education Five-Year Capital Plan, June 2004
- Witness Statement of Charles Szuberla

The opinions expressed in this Statement are stated to a reasonable degree of professional certainty.

The Sound Basic Education Facilities Task Force

6. In 2003 and 2004, I served as a member of the Sound Basic Education Facilities Task Force (the “Task Force”) convened by CFE to analyze New York City’s facilities needs and to formulate Plaintiffs’ capital facilities compliance proposal. The Task Force was composed of 22 outstanding professionals and academics with extensive experience in finance and facilities issues in New York City and New York State. A full list of the Task Force’s membership is set forth on page 142 of the Final Report of the CFE Sound Basic Education Task Force that has been submitted to the Panel by the Plaintiffs in this case.

7. The Task Force focused on two primary questions that overlap with questions 3 and 4 of the Panel’s Amended Order of September 22, 2004:

- (1) What is the cost of bringing New York State school facilities into compliance with the Court of Appeals’ decision in *CFE II* within the next five years?**
- (2) What, if any, changes to the current State building aid system are necessary to ensure that adequate capital funding exists for school districts each year?**

The Task Force’s answers to these two questions with regard to New York City are the basis for Plaintiffs’ capital facilities compliance proposal in this case.

8. The Task Force met in person three times between December 2003 and March 2004. We also interviewed and consulted with officials from numerous State and City agencies, including the New York City Department of Education (“DOE”) and School Construction Authority (“SCA”), and the State Education Department. The Task Force was able to achieve consensus on all of the recommendations in its report.

9. With regard to the first question, the Task Force addressed New York City and the rest of the state separately. As a result of my prior work on New York City, I was the lead Task Force member in computing the cost of bringing New York City facilities into compliance with the mandates of the Court of Appeals’ decision in *CFE II*. The full Task Force reviewed my analysis and formed a consensus on our final recommendations.

10. The Task Force also included a subcommittee on the state building aid formulas. I served on that subcommittee along with Charles Szuberla (Director, School Operations and Management Services, New York State Education Department), Daniel Porter (Deputy Director of the Rural Schools Association), Paul Seversky (Midstate Finance Consortium Group representative), Robert Lowry (Associate Executive Director of the New York State Council of School Superintendents), Bruce Feig (Chief Financial Officer of the New York City Department of Education), and Stephen Allinger (Executive Director of the Office of Intergovernmental Affairs of the New York City Department of Education). The full Task Force reviewed the subcommittees' recommendations and formed a consensus on its final recommendations.

Plaintiffs' Capital Facilities Compliance Proposal

11. Plaintiffs' capital facilities compliance proposal for New York City consists of two basic components: (1) a State-provided Building Requires Immediate Capital for Kids (BRICKS) fund of \$8.912 billion that will bring New York City facilities into compliance with the Court of Appeals' decision in *CFE II* within five years; and (2) necessary reforms of the inequitable Building Aid formulas that the State currently uses to reimburse school districts for their capital expenditures.

12. Both the BRICKS emergency fund and the reforms of the State building aid formulas proposed by the Plaintiffs are essential to remedying the constitutional violations identified by the Court of Appeals in *CFE II*. The two components are designed to complement one another, first by bringing New York City school facilities up to a constitutionally adequate level through an emergency infusion of funds specifically targeted to the deficiencies highlighted by the Court of Appeals, and then by ensuring that future capital needs are met by a fair and rational building aid formula that aligns funding with actual capital needs and costs.

A. The BRICKS Construction Fund

13. The BRICKS construction fund recommended by the Task Force provides \$8.912 billion in emergency capital funding for New York City in order to address and remedy within five years the facilities-related deficiencies identified by the Court of Appeals in *CFE II*. Specifically, the BRICKS proposal addresses the extensive overcrowding, unacceptably large class sizes, and insufficient laboratories, libraries, auditoriums, and access to technology that the Court of Appeals found currently exists in the New York City public school system and that directly contribute to the City's inability to provide the opportunity for a sound basic education.

14. The itemized recommendations contained within the BRICKS proposal utilized much of the basic information contained in the Children First Ten-Year Needs Assessment and Proposed 2005-2009 Five-Year Capital Plan issued by the Department of Education of the City of New York (the "Capital Plan"). By statute, the Department of Education is required to prepare five-year capital plans that detail the City's facilities needs for the coming five years. The Capital Plan relies on a Building Condition Assessment Survey (BCAS) conducted by outside engineers and architects who inspected each New York City public school facility to assess the condition of hundreds of building components. Both plaintiffs and defendants agreed at trial that the BCAS results from an earlier set of inspections were the most reliable measure of facilities conditions. The cost figures for each of the itemized recommendations in the BRICKS proposal were obtained using base cost analyses provided by the School Construction Authority. In addition, the Capital Plan relies upon long-term enrollment projections at different grade levels and evaluates their impact on the City's facilities. The impact of educational initiatives is also analyzed. After reviewing these analyses and confirming their reasonableness and accuracy, the Task Force adopted the same assumptions used by the SCA.

15. Significantly, however, the Task Force's BRICKS proposal is *not* the wholesale adoption of the Capital Plan recommendations. The Capital Plan identifies only those needs that

the Department of Education believes might be funded within the next five years, and it prioritizes funding based on considerations that include a range of factors that go beyond the specific capital funding items identified by the Court of Appeals. Although all of the work identified in the Capital Plan is necessary and the expenditures are required to maintain suitable facilities to support educational programs, the Task Force identified for the BRICKS proposal only work that is directly related to facilities needs identified in the Court of Appeals' decisions. The Task Force reviewed the Court of Appeals' decisions and the Capital Plan in order to provide a conservative estimate of the cost of compliance with the Court of Appeals' facilities mandates.

16. The Task Force reviewed the Court of Appeals' decisions and identified the following areas that require immediate remedial measures in order for New York City to be able to provide the opportunity for a sound basic education:

- (1) elimination of overcrowding;
- (2) class size reduction;
- (3) access to specialized spaces, such as libraries, laboratories, and auditoriums;
- (4) avoiding imminent additional overcrowding through preventive maintenance on facilities that are in such grave condition that they may be rendered unusable within five years; and
- (5) providing computers and necessary technology upgrades.

Part II of the Sound Basic Education Task Force Final Report that Plaintiffs have submitted to the Panel provides a full discussion of the elements of each of the Facilities Task Force's recommendations in each of these areas. Below, I summarize the salient parts of the recommendations in each area.

1. Elimination of Overcrowding

17. The BRICKS proposal contains two specific recommendations to address the City's longstanding overcrowding problem: (1) adding 66,000 new seats in 90 new schools by

the year 2012; and (2) adding an additional 2,200 seats to replace those lost from the elimination of mini-buildings that are currently between 15 and 20 years old. The Task Force analyzed enrollment projections and measures of current capacity in order to confirm DOE's estimate that 66,000 new seats are required to eliminate overcrowding by 2012. The DOE estimates the cost of providing these new seats through a combination of new construction and leasing to be \$3.81 billion in current dollars.

18. Significantly, DOE identified the required new seats based on projected enrollment in 2012 even though current enrollment is greater than projected 2012 enrollment and despite the uncertainties involved in such long-range projections that necessarily involve predications about children who have not even been born yet. The use of 2012 projections *minimizes* the amount of new construction required to address overcrowding over the next five years and has helped to *reduce* estimated costs – although at the cost of failing to provide sufficient seats for all of today's students.

19. The Capital Plan includes costs for seats required to replace 38 mini-buildings that are over 20 years old and all transportables located at 120 schools throughout the City. These structures occupy valuable open spaces that can be used for playgrounds and athletic fields, have limited useful lives, and are very costly to maintain as they age. The Task Force identified an additional 12 mini-buildings that are currently over 15 years old and will therefore need to be eliminated by 2009. The BRICKS proposal therefore includes a provision to eliminate these mini-buildings and to replace them with 2,200 new seats, all at the elementary school level. The cost for this provision is \$125.88 million (at \$57,219 per seat).

2. Class Size Reduction

20. The Task Force made three very conservative assumptions with regard to class size in order to minimize the costs. First, the Task Force took a conservative view of the Court of Appeals' findings with respect to class size and recommended that class sizes in New York

City be reduced only to the state average, even though New York City students could benefit from even smaller class sizes. These state average figures were the benchmarks used by both the trial court and the Court of Appeals in their class size discussions. The Task Force relied on latest-available data from the State Education Department contained in the 2003 655 Report that shows that the average class sizes in New York State are 20 students in grades K-5, 23 students in grades 6-8, and 24 students in grades 9-12.

21. Second, the Task Force minimized costs by using the enrollment projections for the year 2012, even though the reduced number of additional seats means that class size targets cannot be met in the intervening years. The use of 2012 projections rather than 2007 projections reduced by more than 50% the costs of the class size proposal.

22. Third, for grades K-8, the Task Force determined the number of additional seats on a borough-wide basis. The most accurate (and costly) measure of class size needs would review the need for additional seats on a school-by-school basis. At the Division of School Facilities, we would review capacity at the elementary and middle school levels by looking at regions within the Community School Districts so that open seats in one school could be used to alleviate overcrowding in a neighboring school. The Task Force analysis reviewed seats on a much higher level, considering seats on a borough-wide level. This review may significantly understate the need for additional seats to meet class size goals in some parts of the City because it is not feasible to fill elementary or middle school seats in one corner of a borough with students from a distant section of the same borough. Thus, the Task Force's results are a very conservative estimate of the necessary seats.

23. Applying this conservative methodology, the Task Force found the need for approximately 53,000 new seats for class size in addition to the Capital Plan's planned 66,000 new seats system-wide. These seats would cost a total of approximately \$2.72 billion.

24. **Grades K-3**: The Capital Plan includes approximately 28,000 new elementary school seats in order to create class sizes of 20 students in grades K-3. Because the Capital Plan includes the cost of these seats, the Task Force allocated no additional cost for K-3 class size reduction.

25. **Grades 4-5**: The Task Force determined that an additional 1,897 seats would be required in addition to what is called for in the Capital Plan to reduce class sizes in New York City in grades 4 and 5 to the state average of 20 students. At a cost of \$57,419 per seat, adding these seats costs \$108.92 million.

26. **Grades 6-8**: The Capital Plan currently calls for approximately 11,190 new seats at the middle school level. The Task Force determined that only 230 additional middle school seats are required in Staten Island to reduce middle school class sizes to the state average of 23 students. At a cost of \$64,617 per seat, the total cost of this additional capacity is \$14.862 million in current dollars.

27. **Grades 9-12**: Using 2012 enrollment estimates, the Task Force determined that an additional 50,662 seats are required throughout the City to reduce high school class sizes to the statewide average of 24. This figure is a conservative estimate because it assumes that the Capital Plan's 26,400 new seats for new buildings described as intermediate/high schools will all be used to relieve high school overcrowding. At \$51,321 per seat, these 50,662 additional seats will cost \$2.6 billion.

28. The professional judgment panels in the AIR/MAP cost analysis study recommended that class sizes in grades K-5 be reduced to 14 to 17 students, and also recommended expanded pre-kindergarten programs and expanded capacity in the elementary schools where new libraries are created. The Task Force estimated the cost of these recommendations to be approximately \$5.897 billion in current dollars. However, the Task Force did not include these costs in the BRICKS proposal because it did not believe that

sufficient capacity to meet these class size reduction targets could feasibly be constructed in New York City over the next five years.

3. Access to Specialized Spaces

29. The Court of Appeals' decision refers to the absence of usable auditoriums, libraries and laboratories at large numbers of the City's schools. Accordingly, the BRICKS proposal seeks to (1) restore access to specialized spaces that have been converted for other uses due to overcrowding, (2) ensure that students have access to adequate libraries, (3) provide adequate science laboratories in schools that either lack them altogether or require total upgrades, and (4) provide gymnasiums/auditoriums in schools that do not currently have such spaces.

30. **Restoring Specialized Spaces:** A number of auditoriums and gymnasiums in schools throughout the City have been converted into classroom space with temporary partitioning in order to alleviate overcrowding. Although the actual number is undoubtedly much higher, the Task Force was only directly aware of three schools that had lost all or a portion of their auditoriums and seven schools that had lost all or a portion of their gymnasiums to classrooms. It therefore considered only these 10 schools in its calculation of 1,000 additional seats (*i.e.*, 40 classrooms of 20 students each) required to restore these spaces to their intended uses. The cost of these seats is \$51.31 million (at \$51,309 per seat) with an additional \$19.04 million cost for renovations, bringing the total to \$70.35 million to restore these spaces.

31. **Libraries:** Providing all New York City students with access to adequate libraries requires both creating new libraries in schools that do not have them and upgrading existing inadequate libraries. (The cost of library renovations is discussed below under instrumentalities of learning.) The Task Force analyzed data provided by the School Construction Authority and determined that 125 schools do not have a library. Creating these libraries from existing school space would cost an average of \$1.118 million per school in renovations (the actual amount will vary per grade level), based on the SCA's conservative

estimate of \$200 average per square foot plus soft costs, for a total of \$105.2 million. In addition, DOE will need to create additional classroom capacity to replace seats lost to these new libraries in schools that otherwise lack sufficient seats. The Task Force's analysis demonstrated that this additional capacity will cost \$64.12 million. Accordingly, the grand total for creating libraries in schools that currently lack them is \$169.33 million in current dollars.

32. **Auditoriums**: Based on the 2003 BCAS, the Task Force found that 363 New York City schools do not have an auditorium. Because auditoriums require large amounts of space and additional building of this magnitude is not feasible for many of the City's schools, the Task Force limited its recommendation for new building in this area to the 38 schools that have neither an auditorium nor a gymnasium. Based on data received from SCA, the Task Force estimated the cost for these new auditoriums at \$179.74 million. For the remaining 325 schools that lack auditoriums but have gymnasiums, the Task Force recommended the purchase of equipment that can be used to temporarily convert the gymnasiums or lunchrooms into auditoriums for assemblies and other events. The Task Force conservatively allocated \$24.375 million (\$75,000 per school) for the equipment and any associated costs, such as additional maintenance and storage. Accordingly, the total cost of providing auditoriums at schools that currently lack them is \$204.12 million.

33. **Science Laboratories**: Based on data provided by the Department of Education and a survey performed by the Department of School Facilities, the Task Force determined that 64 high schools need additional laboratories or total upgrades to their existing labs to provide all of their students with an opportunity to meet the Regents Learning Standards. At a cost of \$2.63 million per school, providing these new laboratories and upgrades will cost \$168.25 million. In middle schools, however, the need is even greater, with 179 middle schools in serious need of comprehensive lab upgrades. The Task Force estimated the cost of these upgrades at \$210.95 million (\$1.8 million per school). In current dollars, the BRICKS proposal allocates

approximately \$85.4 million over the proposal contained in the DOE's Capital Plan for lab additions and upgrades.

4. Avoiding Additional Imminent Overcrowding

34. The 66,000 additional seats that the Task Force and the DOE found necessary to remedy current overcrowding in the City's schools assumes that existing capacity will continue to be available to students. Unfortunately, some school buildings in the City are in such an advanced state of deterioration that they are likely to be rendered unusable and closed to students within the next five years unless immediate repairs or renovations are performed. Those students would then need to be moved to other schools, further exacerbating the City's overcrowding problem. In order to avoid this, the Task Force recommended that the BRICKS proposal include funding for repairs and renovations to avoid additional overcrowding.

35. The Capital Plan proposes approximately \$10.5 billion to repair and replace building systems and to undertake exterior modernizations over the next ten years. To ensure that its recommendations for BRICKS funding were conservative, the Task Force considered only categories relating to insuring adequate heating and ventilation and to the exterior structural integrity of buildings in order to prevent leaks. Notably, the Task Force did not even include all components relating to "light, space, heat, and air," as identified in *CFE I*. As a result, in terms of current dollars, the Task Force proposal includes roughly 18 percent of the repair and renovation items contained in the Capital Plan.

36. **Exterior Modernizations**: In recent years, New York City had to close many classrooms and even top floors of buildings due to water penetration resulting from exterior deterioration. The Capital Plan recommends \$349.2 million in funding (\$295.5 million in current dollars) to make urgently needed exterior modernizations of windows, roofs, masonry and parapets at the 50 City schools in the worst condition, with ratings at or above 4.5 on a 5-point scale, where 5 is the worst rating. By contrast, the Board of Education in its previous five-

year plan funded work on some exterior components with a 3 rating, reflecting fair condition, but where there was a noted deficiency. The Task Force identified an additional 8 schools that also require immediate exterior repairs and recommends that an additional \$55.6 million in current dollars be allocated to the Capital Plan recommendation for repairs at these schools, for a total of \$351.1 million for exterior modernizations.

37. **Windows**: Operable windows are extremely important to creating an adequate learning environment through the provision of light and, in the warmer months, needed ventilation. In many New York City school buildings, windows are inoperable or drafty. The Capital Plan proposes window improvements at 104 schools at a cost of \$231.36 million in current dollars. The Task Force identified an additional 75 schools in which the windows received very low ratings in the BCAS survey. These 75 window projects will add an additional \$136.44 million to the Capital Plan recommendation, for a total of \$367.8 million in current dollars.

38. **Roofs**: The Capital Plan recommends funding to replace roofs at 64 schools based on the number of roofs that received a 4.5 or above on the BCAS survey at a cost of \$59.98 million in current dollars. The Task Force determined that roofs rated 4.0 and above should be replaced, because the only difference between a 4.0 and a 4.5 rating is the extent of existing leaks. All roofs that have leaks, however, create an imminent risk of causing additional overcrowding. Accordingly, the Task Force recommended allocating additional funding for 55 schools whose roofs require immediate repair. The additional cost of these repairs is \$55.72 million for a total of \$115.70 million in current dollars under the BRICKS proposal.

39. **Masonry**: Deteriorated masonry also permits significant water penetration. The Capital Plan recommends \$119.9 million in inflated dollars over the next five years for masonry repairs around the City. The Task Force recommended only that 19 schools with the worst masonry conditions receive funding for repairs at a cost of \$34.9 million in current dollars.

40. **Climate Controls and Heating Plant Upgrades**: Adequate heat and ventilation are necessary to provide students with a healthy environment in which they can learn. The Task Force agreed with the Capital Plan's recommendations that 175 schools need climate control repairs at a cost of \$59.7 million in current dollars and that 43 schools need heating plan upgrades at a cost of \$47.7 million in current dollars.

5. Instrumentalities of Learning

41. The Court of Appeals directly addressed libraries and computers in concluding that New York City students had insufficient instrumentalities of learning. The Task Force therefore included funding for these two instrumentalities of learning in its recommendations.

42. Current data indicates that 20 percent of the City's schools lack the technological infrastructure to provide students with internet access in classrooms. The Task Force therefore accepted the Capital Plan's recommendation for \$176 million to provide internet access in every classroom. The Capital Plan also recommended, however, that \$417.7 million be allocated to provide laptop computers to all students. The Task Force used a more conservative assumption: supplying New York City students with standard computers at the same student-to-computer ratio as in the rest of New York State. Based on data in the 2003 655 Report, an additional 72,053 computers are required to meet the state average in New York City at a cost of \$125.696 million in current dollars.

43. As part of the instrumentalities of learning provisions of the BRICKS proposal, the Task Force also analyzed the cost of upgrading existing inadequate libraries. Based on current data, approximately 350 schools require library renovations. This figure is net of schools that will receive library upgrades through any special programs. The Task Force determined that the cost of these renovations is approximately \$430,000 per school (\$300,000 for renovation costs plus \$130,000 for purchase of new books) for a total of \$150.5 million.

B. Reforming New York State's Building Aid Formulas For New York City

44. Once the BRICKS proposal has been implemented and New York City facilities are restored to constitutionally adequate conditions, New York City must have an assured and adequate funding level to maintain those facilities and to meet future capital needs. The current State building aid system is intended to provide a level of state funding assistance to enable local school districts to meet these capital needs. In practice, however, the Task Force found that the current formulas fail to provide adequate aid to urban districts, particularly New York City. This funding gap has been one of the primary reasons for the deplorable conditions and overcrowding found at many of the City's schools. As discussed above, the Task Force intends the BRICKS fund to remedy the past effects of this inadequate funding. In addition, the Task Force concluded that a number of reforms to the current system of building aid are required to ensure that New York City receives adequate levels of funding on an ongoing basis and to prevent the same kind of deterioration in the City's infrastructure that have marked the past several decades.

45. Charles Szuberla, the Director of School Operations and Management Services for the State Education Department, described for the Panel the current building aid system. I was present for his oral testimony before the Panel and have reviewed his written submission to the Panel. As Mr. Szuberla noted during his testimony, he served in his individual capacity as a member of the Task Force. His knowledge of the building aid formulas informed and influenced the Task Force's recommendations. My discussion here is intended to supplement Mr. Szuberla's testimony by identifying the problems with the current system that have contributed to the facilities inadequacies in New York City and to explain the reform recommendations of the Task Force.

46. **The Maximum Cost Allowance Has No Relationship to The Actual Costs of Construction in New York City and Should Be Updated and Simplified:** As Mr. Szuberla explained, State aid for a particular project is determined by applying a district's building aid

ratio to the lesser of (1) the actual cost of the project; or (2) the State-defined maximum cost allowance (“MCA”) for the project. The MCA is the number of building aid units (“BAU”) for the project, multiplied by the construction cost index in effect for the month the construction contract is signed (“CCI”), multiplied by a regional cost index (“RCI”). Mathematically, the formula for the MCA is:

$$\text{MCA} = \text{BAU} \times \text{CCI} \times \text{RCI}$$

The product of the MCA for the project and the district’s building aid ratio (“BAR”) determines how much State aid is provided for that project:

$$\text{State building aid for a specific project} = \text{MCA} \times \text{BAR}$$

47. Under the current building aid system, reimbursement of actual construction costs is capped at 5/6^{ths} of the MCA for an elementary school and 4/5^{ths} of the MCA for a high school or special education facility. The remaining portion of the cap is devoted to incidental costs, such as site acquisition, demolition, architecture and engineering, inspections, and fixtures and equipment. Despite the building aid ratios, these incidental costs are often about one third of the total project costs. Significantly, these cap ratios on construction versus incidental charges operate separately, so that if the construction costs of a school exceed the construction cap but the incidental costs are below the incidental cap, the district cannot apply the unused incidental cap space for construction costs and vice versa. In effect, there are two separate and independent caps.

48. The calculation of the MCA has a profoundly negative effect on New York City because it bears virtually no relationship to the *actual* cost of new construction in the City. Both the BAU and CCI are outdated and do not reflect contemporary educational and construction requirements. The base cost used to calculate the CCI was developed for school buildings built in the 1960s that do not reflect current standards and design. Even with the updated index factor used to calculate the CCI, the calculation does not correspond to the actual costs of building in

New York City or anywhere in the state. Indeed, as Defendant's witness Charles Szuberla testified, only once in a great while, for unique reasons, does a new school anywhere in the state fit within the MCA.

49. Similarly, the RCI is intended to balance out the inequities of construction costs in different parts of the state. In practice, however, despite the fact that New York City's RCI of 1.8753 is the highest in the state, the MCA falls far short of the actual costs to purchase a site and design and build a school in the City. The RCI only includes wage rates of a few professional trades and therefore fails to take into account significant additional costs for building in an urban environment like New York City, such as:

- The cost of land in New York City is the highest in the state and the RCI does not account for these real estate acquisition costs.
- Vertical construction costs more than construction on large, open parcels of land.
- The building aid formulas do not account for the extra costs associated with construction in congested urban sites with no on-site storage space for materials.
- New construction in the City often requires demolition and removal of existing structures to make way for the new school.
- The building aid formulas do not account for the extra cost of meeting City building codes, environmental regulation and standards.

50. Even applying the RCI, DOE revenue staff has estimated that the MCA for New York City is approximately \$17,000 per elementary school seat and is marginally higher for high school and special education. The actual cost per seat in New York City, however, is approximately \$40,000 just for hard construction costs, and not including incidental costs, such as land, design and professional fees, insurance, and other soft costs.

51. Using the hypothetical example provided by Mr. Szuberla illustrates these issues. According to Mr. Szuberla's example, for a typical elementary school of 550 students, the amount of state building aid as of June 2004 (with a New York City CCI of \$10,304) can be calculated as follows:

$$\text{MCA} = (919 \text{ BAU} \times \$10,304) \times 1.8753 = \$17,757,920$$

$$\text{State building aid} = \$17,757,920 \times .607 = \$10,779,057$$

$$\text{State building aid for construction costs} = \$10,779,057 \times 5/6 = \$8,982,547.50$$

$$\text{State building aid for incidentals} = \$10,779,057 \times 1/6 = \$1,796,509.50$$

In Mr. Szuberla's example, he assumed that actual costs per square foot in New York City would be approximately \$315 per square foot, and, at 130 square foot per student, he calculated the actual total cost of the school at \$21,656,250. Under this hypothetical scenario, the City would be responsible for approximately 50 percent of the cost of the school.

52. In reality, however, the Capital Plan assumes that construction costs *alone* are likely to be around the \$315 per square foot assumed by Mr. Szuberla's example, and this cost does not include incidentals, which often run well over \$150 per square foot, or a third of the total project costs. In fact, when incidentals are factored in, total project costs in the City have been as high as \$650 per square foot for some projects.

53. Even assuming for purposes of this example that construction in the City could be done at a conservative \$465 per square foot (\$315 for construction and \$150 for incidentals), the actual cost of the elementary school in the above example would be approximately \$33,247,500. In the example above, with construction costs of \$315 aidable only at 5/6^{ths} of the MCA, the actual reimbursement for those costs is \$8,982,547.50, leaving the City to pay the remainder of \$12,673,702.50, or 58.5 percent of construction costs, while the portion of State aid for incidental costs would cover only \$1,796,509.50 out of incidental costs of \$10,725,000. Even with this conservative estimate, despite New York City's BAR of 60.7% with the incentive, it would only receive approximately 33 percent in State aid for the project, leaving the City to cover the remaining two-thirds of the cost. In fact, however, data from SCA shows that the typical reimbursement rates for new construction in New York City have been closer to 25 percent.

54. As the discussion above illustrates, the MCA arbitrarily limits State aid for new schools because it does not reflect actual construction costs in New York State. While an MCA that reflected the actual cost of constructing schools could serve a useful cost-efficiency purpose (in addition to the cost-efficiency incentives inherent in requiring school districts to cover a portion of all capital construction costs), an MCA that is set well below the cost of efficient construction serves as an unnecessary disincentive to new construction and leaves a substantial burden on districts, such as New York City, that face overcrowding problems. The MCA should reflect actual costs for actual, current, schools.

55. The Task Force recommended calculating the MCA for New York City on the basis of a square-foot-per-pupil approach. Under this method, a square foot per pupil figure that reflects average class sizes and a reasonable complement of specialized spaces would be multiplied by a cost-per-square-foot that is based on a realistic and appropriate assessment of actual construction costs in the City, including soft costs. The Task Force determined that this approach would simplify the current system and make it substantially more transparent while at the same time ensuring that the MCA for New York City reflects the actual costs of the construction there.

56. **New York City's Building Aid Ratio Overstates Its Actual Ability to Pay:** Although New York City is a high-need district, its current BAR does not reflect the enormous needs of its students. A district's BAR is a function of both its property values and its resident weighted average daily attendance. Extremely high real estate values in Manhattan, particularly commercial properties, overwhelm the lower values in many of the City's poor neighborhoods. For example, the fair market value of property in Manhattan is \$168.8 billion, compared to a fair market value of \$38.8 billion in Staten Island and \$31.7 billion in the Bronx. Moreover, in contrast to the State's operating aid formulas, the BAR does not take into account local income levels, which has a particularly negative effect in high-need districts like New York City.

57. The current BAR formula assumes that all students have the same needs and that all districts with similar property wealth levels have the same ability to finance their capital expenditures. The reality in New York City, however, is that its students have extremely high needs and the City school district must compete with other municipal services for capital funding and is subject to restrictive debt limits. The result is a distorted view of New York City's ability to pay for its own capital needs. For building aid purposes, New York City is considered a single district of moderate wealth with a BAR before the 10% incentive of 50.7%. Moreover, to the extent that there is a correlation between student need and absenteeism, the use of weighted average daily attendance punishes rather than compensates districts with higher needs.

58. The Task Force's reform recommendation is to adjust the current property value index that is used to calculate the BAR by a measurement of the number of students enrolled in the district weighted to reflect the local level of poverty. This simple, straightforward reform will more closely align the BAR with students' actual need and their district's actual ability to finance capital construction.

59. **Partially Restore Pay-As-You Go Reimbursement.** Until a few years ago, the State had a sensible method of reimbursing cash outlays for construction projects within two fiscal years. This policy allowed certain projects to be completed more quickly and without added expenses of bonding. However, for districts with very high selected aid ratios, the rapid reimbursement, at up to 95% of outlay, provided little disincentive for spending. The State terminated the pay-as-you go program and currently reimburses building aid on a standardized amortization schedule, regardless of whether the district pays for the work in cash or through bonds. For New York City, all building aid reimbursement is paid over 30 years. The Task Force recommended reinstating the pay-as-you go program with reimbursement made over a five-year period. This revised term would appropriately encourage districts to use cash on hand for small or emergency projects without the risk of abuse.

60. **Reform the Lease Aid Program.** DOE has used leased spaces to alleviate some facilities overcrowding. The leasing of space is significantly less expensive and provides necessary seats more quickly than new construction. However, New York State currently provides building aid on rent payments for only the first 15 years of a lease. I understand that SED and DOE officials are engaging in discussions about this issue, and SED is attempting to determine whether it is a statutory issue or a regulation. Regardless, this arbitrary limit should be rescinded.

61. **Modify Statutory Bonding Restrictions on City School Districts.** New York City, like other New York State urban districts, is subject to a constitutional debt ceiling limitation that applies to all capital spending, including spending on educational facilities. In addition, state law prohibits excluding amounts to be received as building aid from debt ceiling calculations. The Task Force did not recommend the elimination of the constitutional debt ceilings. However, it recommended repeal of the statutory exclusion of building aid from the calculations. Repealing the statutory restriction is a low-risk method to provide New York City and other urban districts with more flexibility to incur debt and to leverage building aid to accomplish more necessary facilities work.