

COURT OF APPEALS OF THE STATE OF NEW YORK

..... X
CAMPAIGN FOR FISCAL EQUITY, INC., et al., :

Plaintiffs-Appellants, : New York County Clerk's
Index No. 93/111070

v. :

THE STATE OF NEW YORK, et al., :

Defendants-Respondents. :

..... X

**BRIEF OF THE PARTNERSHIP FOR NEW YORK CITY, INC. AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS**

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Attorneys for Amicus Curiae

Roberta A. Kaplan
Daniel R. Garodnick
David W. Wang

Of Counsel

Interest of Amicus Curiae

The Partnership for New York City, Inc. (“the Partnership”) is a non-profit organization that represents the New York City business community on public issues that affect business and the economy. Established in 1979, the Partnership strives to make New York City an attractive place to do business and to keep New York City at the cutting edge of business developments in the face of rapid technological changes and increasing global competition. The Partnership consists of a distinguished group of 200 partners, elected annually, who represent the top leadership of New York’s corporate, investment and entrepreneurial firms. (See 2003 Membership List of the Partnership for New York City, Inc.)¹ Together, the businesses affiliated with members of the Partnership employ approximately 397,000 people, representing fifteen percent of New York City’s for-profit workforce.

The Partnership works to improve New York City’s economic climate through public-private initiatives in job creation, educational reform, affordable housing, leadership training and neighborhood development. The Partnership also has been at the forefront in identifying and advocating policies and programs that improve the educational system and lead to a better-prepared workforce. (See Educational Reform Projects of the Partnership for New York City, Inc.)²

Preliminary Statement

The State Constitution’s guarantee of a “sound basic education”³ must equip New York City schoolchildren to participate fully in the modern workforce.

¹ The 2003 Membership List of the Partnership is attached hereto as Exhibit A.

² A list of the Educational Reform Projects of the Partnership is attached hereto as Exhibit B.

³ The Court of Appeals has interpreted the education provision of the New York State Constitution to require a "sound basic education." *Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 48 (1982). In 1995, the Court of Appeals held that a sound basic education consists of the “basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury.” *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 316 (1995).

Both lower courts agreed that one of the fundamental purposes of public education is to provide students with the opportunity to obtain gainful employment. However, the Appellate Division failed to recognize that employers' labor needs have changed dramatically since the time the education provision was introduced into the New York State Constitution at the close of the Nineteenth Century. In order to compete in today's economy, employers must have a workforce that possesses the minimal level of analytic reasoning, problem solving and communication skills well beyond the basic "reading, writing and arithmetic" standard of past generations. A "sound basic education" must take into account the demands that global competition and innovation in science and other fields place on employers' demand for a skilled labor pool. Indeed, that standard is likely to continue to rise as a result of global competition and innovation.

Unfortunately, the New York City public school system has failed to provide its students with the basic skills necessary to sustain employment. One-third of the system's elementary students are functionally illiterate, and forty percent of students who enter the ninth grade do not receive a high school diploma. Within the City University of New York (CUNY) system, where sixty percent of its incoming students are New York City public school graduates, approximately eighty-seven percent of first-year community college students and seventy-two percent of first year senior college students attending CUNY fail one or more of CUNY's remedial placement exams. (The City University of New York: An Institution Adrift: Report of the Mayor's Advisory Task Force on the City University of New York ("Mayor's Task Force Report"), Px 311 at 21-22.)⁴ As a result, the unemployment rate in New York City -- typically higher than the national average (*See* Testimony of Dr. Henry Levin ("Levin Test.") at 12080:5-

⁴ Citations to exhibits in the record are denoted by the prefix "Px" for Plaintiffs' exhibits, and "Dx" for Defendants' exhibits, followed by the exhibit number and, where appropriate, a page number of the exhibit.

19)⁵ -- reflects a mismatch of the jobs available in New York City with a labor pool that does not have the skills necessary to fill those jobs.

In short, an eighth grade education is simply not sufficient to prepare students to “hold a job” in New York. Accordingly, the Partnership disagrees with the Appellate Division’s decision that the New York State Constitution’s guarantee of a “sound basic education” requires nothing more than that schools provide the opportunity to learn at an eighth or ninth grade skill level. Moreover, as a matter of fundamental equality, New York schools must provide students with the opportunity to obtain and compete for all jobs at all skill levels. To maintain and deepen the talent pool that makes New York City a global capital of commerce, public schools must prepare students for higher education and the high-level jobs. At a minimum, the State has the obligation to ensure that the public schools provide students with the opportunity to obtain an adequate high school education that prepares them for competitive employment and for their civic duties.

The employers of New York City have a significant interest in the quality of education of its future employees. New York City’s employers compete in the global market. Their success is therefore largely dependent on having a skilled workforce with the necessary problem solving skills, creativity and “technical know-how” to adapt, innovate and grow to meet the needs of the global market. In a very real sense, employers are the ultimate consumers of public education. When workers’ skills are excellent, employers benefit, and when they are deficient, employers must spend money on training, recruit qualified individuals from outside New York City, or re-locate elsewhere to find employees with the requisite skills. If the graduates of the public school system have mastered the skills necessary to fully participate and contribute to New York City’s economy and civic life, businesses will thrive and grow, and thus New York City will maintain its stature as the global capital of commerce, culture and research.

⁵ Citations to the trial transcript are denoted by a reference to the specific page and line number of the transcript preceded by the name of the testifying witness.

This case presents the Court with the unique opportunity to chart a new course of success for New York City’s children, its economy and its future. The Partnership respectfully submits this memorandum to urge the Court to reverse the Appellate Division’s decision below.

ARGUMENT

I.

THE APPELLATE DIVISION FAILED TO RECOGNIZE THAT A SOUND BASIC EDUCATION IS AN EVOLVING CONCEPT

A. The Appellate Division Erred in Failing to Adapt New York’s Constitutional Standard to Modern Times

The Appellate Division failed to recognize that the education provision in the New York State Constitution must evolve to provide students with the skills to succeed in today’s work environment. *Ginsberg v. Purcell*, 51 N.Y.2d 272, 276 (1980) (“The Constitution is to be construed ... to give its provisions practical effect, so that it receives ‘a fair and liberal construction, not only according to its letter, but also according to its spirit and the general purposes of its enactment.’”) (quoting *Pfingst v. State*, 57 A.D.2d 163, 165, 393 N.Y.S. 2d 803, 805 (3d Dep’t 1977)); cf. Judith S. Kaye, *State Courts at the Dawn of a New Century: Common Law Courts Reading Statutes and Constitutions*, 70 N.Y.U. L. Rev. 1, 10 (1995) (“No one disputes our role – indeed our responsibility – to draw and redraw the bounds of socially tolerable conduct by explicitly adapting established principles to changing circumstances.”); Judith S. Kaye, *Contributions of State Constitutional Law to the Third Century of American Federalism*, 13 Vt. L. Rev. 49, 54 (1988) (“[I]nterpreting our constitution cannot stop with values of the past. It necessarily involves as well the community’s present values.”).

Without any support in the record, the Appellate Division concluded that “the skills required to enable a person to obtain employment, vote, and serve on a jury, are imparted between grades 8 and 9.” *Campaign for Fiscal Equity, Inc. v. State*, 295 A.D.2d 1, 8 (1st Dep’t

2002) (hereinafter “*CFE II*”). Thus, although the Appellate Division agreed that a “sound basic education” includes the opportunity to obtain the skills necessary to gain employment, *see CFE II*, 295 A.D.2d at 8; *see also Campaign for Fiscal Equity, Inc. v. State*, 187 Misc. 2d 1, 30-35 (Sup. Ct. New York County 2001) (hereinafter “*CFE I*”), there was nothing to support its conclusion that the State is only obligated to provide the minimum skills and knowledge necessary to secure the type of “low-level” work that would prevent a student from being “a charge on the public fisc.” *See CFE II*, 295 A.D.2d at 8. Not a single study, report, analysis, or piece of data provides any basis for a standard that would deny the students of New York the constitutional right to an education beyond that what is necessary to perform menial labor.

New York’s constitutional standard must afford students far more than an eighth grade education in order to succeed in the modern workforce. Although employers need workers at all skill levels, even low-skill jobs today require more education than they once did. While an elementary school education may have been sufficient for many jobs at the time that the Education Article was added to the State Constitution in 1894, it is far from adequate at the dawn of the Twenty First Century. Great innovations in technology have made a higher degree of education and training essential. Indeed, opportunities for less-educated workers are likely to keep declining, while “continued increases in the services sector will bring more good jobs to people with computer skills who are literate, can write, and are well-grounded in science and mathematics.” (Mayor’s Task Force Report at 17.)

The Framers of the Education Article included the provision to guarantee that public education would meet contemporary needs. In their report to the 1894 Constitutional Convention, the drafters explained that “[t]he public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before.” *4 Revised Record at Constitutional Convention of 1894*, at 695. The problems and challenges confronting this “rising generation” demand greater knowledge and skills to compete in the global economy. “If the meaning of the Education Article were to be frozen as of 1894,

when it was added to the State Constitution, the Article would cease to have any relevance. It is undeniable that the level of skills necessary to obtain employment in today's economy exceeds those required in 1894." *CFE I*, 187 Misc.2d at 16.

B. Had The Appellate Division Considered The Needs of a Modern Workforce, It Would Have Concluded That An Eighth Grade Education Does Not Allow New York City Public School Students to Adequately Compete in a Global Economy

This Court should recognize, as both lower courts did, that employment is a fundamental purpose of public education. However, this Court should make clear that schools must do more than prepare students for menial labor. And it should make clear that every student in this State should have the opportunity to graduate from high school. As a result, we endorse appellants' fundamental learning standard that:

The State has the obligation to ensure that the public schools provide students with 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.

(Plaintiffs-Appellants' Opening Brief at 22.)

Indeed, courts in other jurisdictions have recognized that a broad exposure to the social, economic, scientific, and political realities of society today is essential for students "to compete, contribute, and flourish in the twenty-first century." *See, e.g., Claremont Sch. Dist. v. Governor*, 794 A.2d 744, 746 (N.H. 2002); *Rose v. The Council For Better Educ.*, 790 S.W.2d 186, 212 (Ky. 1989). In *Rose*, the Supreme Court of Kentucky placed a detailed gloss upon that state's typically vague education clause. The Kentucky court held that the constitutional mandate that the state "provide for an efficient system of common schools throughout the State" meant that it must create a school system that has as its goal for each child the development of seven "capacities." *Rose*, 790 S.W.2d at 212. Two of the seven "capacities," held to be "minimum goals" for an adequate education, required training for children to choose and pursue life work intelligently and to compete favorably with their counterparts in surrounding states for

employment. *Rose*, 790 S.W.2d at 212, & n. 22.⁶ Four states – Arkansas, New Hampshire, Massachusetts, and Alabama – have already adopted the *Rose* standard. See *CFE I*, 187 Misc. 2d at 9; *Lakeview Sch. Dist. v. Huckabee*, 2002 Ark. Lexis 603 (Ark. Nov. 21, 2002); *Claremont Sch. Dist.*, 703 A.2d at 1359; *McDuffy v. Secretary of Executive Off. of Educ.*, 615 N.E. 2d 516, 554 (Mass. 1993); *Opinion of Justices*, 624 So.2d 107 (Ala. 1993).

In order to be prepared for competitive employment, students of New York also must have the capacity to pursue life work intelligently, and to compete favorably with their counterparts in surrounding states for jobs. Employers' labor requirements have changed – no longer relying on employees with lower order skills, they now require individuals with greater thinking or intellectual skills. (See Levin Test. at 12095:5-18.) The labor force also must have the skills to assume more responsibility for making decisions, customizing products and quality control. (*Id.* at 12096:2 – 12097:22, 12107:17-12108:2.) In other words, today's workers need to be capable of “analyzing problems, proposing solutions, communicating, working collaboratively and managing resources such as time and materials.” (1996 National Education Policy Statement, Px 1190 at 1; see also Levin Test. at 12099:4-10, 12107:17-12108:2.) Currently, ninety percent of all jobs “require at least a high school education and a level of technical skill in managing technology, text and various kinds of content specific competencies that we used to expect of only about 50 percent of the employees in 1950.” (Dr. Linda Darling-Hammond Test. (“Darling-Hammond Test.”) at 6460:5-13.) Fully ninety percent of the jobs currently available call for employees with better skills and abilities than jobs in the past. (*Some Gains But No Guarantees: How New York City's Employers Rate the Public Schools*, An

⁶ The remaining capacities were “(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage.” *Rose*, 790 S.W.2d at 212.

Opinion Research Report Conducted for the New York City Partnership (“Partnership Report”), Px 2182 at 9.)

1. New York City Employer Verizon Provides An Example of the Need For Increased Worker Skills

New York City cannot afford to have employers lose confidence in the skills of its public school graduates. Verizon, an employer of 43,000 people in New York State, provides a telling example of the greater needs for worker skills. The unrefuted testimony of Fredrick Salerno, the Chief Financial Officer of Verizon (formerly Bell Atlantic), and former member of the Education Policy Committee of the Partnership, evidences the need for skills greater than those provided in eighth grade.

The communications industry has become more competitive over the last decade as it has experienced significant technological change, including the introduction of digital and fiber optic equipment. (Testimony of Frederick Salerno (“Salerno Test.”) at 5678:14-5679:16.) As the technology has changed, the educational demands on Verizon’s employees also have increased. (*Id.* at 5674:4-17, 5679:17-5681:9.) In addition to increased sophistication required in the traditional telephone business, the company’s employees require higher level skills to work in computer maintenance, high-speed data services, Internet services and web-hosting services. (*Id.* at 5682:12-5683:17.)

Verizon’s workforce has adapted to meet these increased educational demands. About 9,000 of the company’s employees are in management positions, most of which require a college education. (*Id.* at 5671:24-5672:25.) The 33,000 craft positions, historically available to high school graduates, now have technical requirements that attract two and four-year college graduates. (*Id.* at 5674:18-5675:4.) Thus, high school graduates must now compete with college graduates for an increasing number of jobs at Verizon. (*Id.* at 5680:25-5681:25.)

Verizon’s predicament shows that New York employers are seeking employees with more than an eighth grade education. Those employers should be able to draw from New

York City's public school graduates to fill its jobs. If they cannot, they will be left to expend resources to train these ill-prepared students or search elsewhere to find skilled employees in order to compete in the global economy. *See CFE I*, 187 Misc. 2d at 17 (noting that high technology companies in New York City must often go outside New York City and State for employees with appropriate skills). Unless the school system produces appropriately skilled students, it will be difficult to recruit businesses to locate here, and current businesses gradually will move to other locations perceived to have a better talent pool.

2. City Employers Strongly Believe that the Public School System Needs to Meet High Standards

New York's employers have already concluded that the education being provided to many New York City students does not guarantee that a graduate has mastered basic skills. In July 1998, the Partnership issued a research report detailing how New York City's employers rate the public schools. (Partnership Report.) This Report was instrumental in highlighting the deficiencies in the City's public education system, prior to the introduction of higher high school course requirements and more rigorous graduation standards by the New York State Board of Regents in 1999. The Partnership Report's conclusions are still quite relevant to understanding the perils of low educational standards from the perspective of the business community.

The results of the Partnership Report were disturbing. Entitled *Some Gains But No Guarantees*, the report summarized the findings from a detailed survey of 450 New York City employers about the city's public schools and the young people graduating from them. The vast majority of New York City employers noted that a diploma from a New York City high school – let alone an eighth grade education – does not guarantee that a graduate has mastered basic skills. (Partnership Report at 6.)

Specifically, the Partnership report revealed the following:

- Almost 3 in 4 employers stated that students from city schools really lack the skills needed to succeed in the work world. (*Id.* at 7.)

- Employers gave low marks to public school graduates in areas such as grammar, spelling, basic math and their ability to write and speak English. (*Id.* at 8.)
- 59% of employers stated that grammar and spelling of people coming out of New York’s schools are poor. Another 30% said they are fair. (*Id.* at 9.)
- Marks for basic math skills and students’ ability to write and speak English well were similarly low. (*Id.*)
- With regard to 21st century skills, such as working with computers, public school graduates also did not make the grade. (*Id.* at 8.)

The business community must feel confident that the workforce being generated from New York City’s public schools has the skills necessary to do the work. Yet the Partnership Report revealed that employers are not optimistic when educational standards are low. Accordingly, the business community asks this Court to reject the low standards articulated by the Appellate Division below.

3. This Court Should Use The Regents Learning Standards For Minimum Skills As a Benchmark

In order to compete in the global economy, students must have the skills that accompany a high school diploma, as defined by the New York State Regents. The Regents’ minimum standards of educational quality and quantity are the appropriate benchmark for applying the standard for a sound basic education. These minimum standards, known as the Regents Learning Standards (“RLS”), specifically incorporate the skills that workers need to be competitive in the workforce, such as strong reasoning, communication, problem-solving, decision-making and information-gathering skills. (Levin Test. at 12107:17-12110:14, 12110:22-12117:13.) These standards are the official educational policy of the state, N.Y. Educ. L. § 207, and they have been firmly endorsed by the Legislature and the Governor. (*See* Governor George E. Pataki, *State of the State Address, “The Future Begins in New York,”* (January 5, 2000); Px 2552 at 2-3; Governor George E. Pataki, *2000-2001 Executive Budget,* (January 11, 2000), Px 2554 at 57, 60, 62-63.)

While both of the lower courts expressed concern that RLS might exceed the constitutional concept of a sound basic education, *CFE I*, 187 Misc. 2d at 11-12; *CFE II*, 295 A.D.2d at 9, this Court has recognized that it is appropriate to defer generally to “the State-wide minimum standard of educational quality and quantity fixed by the Board of Regents[.]” *Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 48 (1982); *see also Leandro v. State*, 488 S.E.2d 249, 259 (N.C. 1997) (trial court may consider “[e]ducational goals and standards adopted by the legislature ... for its determination as to whether any of the state’s children are being denied their right to a sound basic education.”); *Abbott v. Burke*, 693 A.2d 417, 427-28 (N.J. 1997) (holding that New Jersey’s educational “standards are consistent with the Constitution’s education clause”).

The RLS was developed after intensive deliberation among teachers, principals, academic experts and a broad section of citizens including business, industry and union representatives about the knowledge and skills students needed for employment and civic participation. (See Testimony of Dr. Thomas Sobol (“Sobol Test.”) at 1013:7-1015:8; *Learning-Centered Curriculum and Assessment for New York State*, Px 1948 at 8-9, 63-65.) The intent of the RLS included “[giving] our young people the skills and knowledge they need in order to be . . . people who can compete in an economy that is in the midst of a dramatic transformation.” (Testimony of Carl Hayden (“Hayden Test.”) at 1300:8-24.) As the record makes clear, the Regents have responsibly determined the level of skills and knowledge necessary to provide the opportunity to obtain competitive employment. That determination therefore is entitled to judicial deference. The Appellate Division’s decision reflects a form of judicial activism that usurps the Regents’ carefully considered standards, substituting instead its own meager interpretation of “sound basic education,” and thereby adopting a standard that deprives the State’s students of the right to obtain the skills necessary to compete.

II.

A SOUND BASIC EDUCATION INCLUDES GIVING STUDENTS THE OPPORTUNITY TO COMPETE FOR JOBS AT ALL LEVELS

As a matter of fundamental fairness, the public school system should provide students with the opportunity to compete for jobs at all levels, including those that require a college education, post-graduate training and the ability to learn new skills in the workplace.

Education is the key to individual opportunities for social and economic advancement and therefore must enable students to acquire the skills necessary to compete in the labor market. *See Brown v. Board of Educ. of Topeka, Shawnee County, Kansas*, 347 U.S. 483, 493 (1954) (explaining that education “is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”); *San Antonio Independent Sch. Dist. v. Rodriguez*, 411 U.S. 1, 115, fn. 74 (1973) (Marshall, J., dissent) (noting that education is “an essential step in providing the disadvantaged with the tools necessary to achieve economic self-sufficiency.”); *Serrano v. Priest*, 487 P.2d 1241, 1259 (Cal. 1971) (noting that public schools are “the bright hope for entry of the poor and oppressed into the mainstream of American society.”).

It is self evident that New York City will be more competitive in the marketplace when its students are able to compete for all jobs in a global economy. *See, e.g., Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997) (holding that a constitutionally adequate public education under state education clause should reflect consideration of “sufficient levels of ... skills to enable public school students to *compete favorably with their counterparts* in surrounding states”) (emphasis added); *Abbott v. Burke*, 693 A.2d 417, 428 (N.J. 1997) (“[A] constitutionally adequate education has been defined as an education that will prepare public school children for a meaningful role in society, one that will enable [public school children] to *compete effectively* in the economy”) (emphasis added). The framers of the Education Article understood the importance of education “not only for the intellectual but also for the material

prosperity of the State.” 4 *Revised Record at Constitutional Convention of 1894*, at 694. “The connection is manifest between the improvement and growth of [the state’s] schools and its material prosperity.” *Id.* at 697; *see also* 3 *Revised Record at Constitutional Convention of 1894*, at 732. With a highly skilled workforce, New York City is able to retain businesses that seek to relocate to other states and countries more able to meet their labor needs. (Salerno Test. at 5697:13-5698:5). In addition, businesses are far more likely to relocate to New York City if the public school system could offer a well-educated and skilled labor pool. Deepening the labor pool of those capable of filling knowledge-based jobs is essential to maintaining New York City’s status as the premier global city in the world. It is also the right thing to do for the students of this State.

Conclusion

For the foregoing reasons, the *amicus curiae* respectfully requests that this Court reverse the decision of the Appellate Division and give full effect to the Education Clause of the New York State Constitution for all public school students of New York.

Dated: March 10, 2003
New York, New York

Respectfully submitted,

Roberta A. Kaplan

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Attorneys for *Amicus Curiae*, The
Partnership for New York City, Inc.

Daniel R. Garodnick
David W. Wang

Of Counsel

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