

Campaign for Fiscal Equity, Inc.

SOUND BASIC EDUCATION TASK FORCE
Ensuring Educational Opportunity for All

FINAL REPORT

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PRELIMINARY STATEMENT

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Brown v. Board of Education of Topeka, 347 US 483, 493 [1954].

In the 50 years since the U.S. Supreme Court issued its landmark ruling in *Brown*, its vision of equal educational opportunity has paved the way for significant social change. Although important progress has been made, we nevertheless remain far short of achieving the goal of providing equal educational opportunities for all public school students. In the 1970s and 1980s, the black-white achievement gap was cut in half, demonstrating that when given a fair opportunity, minority children do succeed. Unfortunately, in recent years, as funding for poor, minority, and “at-risk” students has declined nationwide and locally, the achievement gap has again been widening.

In New York State full access to educational opportunity still eludes hundreds of thousands of students who attend schools in overcrowded classrooms with unqualified teachers and insufficient labs, libraries, and technology. For too many children, the promise of *Brown* remains unfulfilled. For these reasons, in 1993, the Campaign for Fiscal Equity, Inc. (CFE) filed a lawsuit against the state of New York to remedy these gross injustices.

CFE v. State of New York

In May 1993, CFE filed its claim that the state unconstitutionally underfunded New York City’s public schools. In June 1995 the New York Court of Appeals upheld CFE’s right to pursue its constitutional challenge. The case was remanded for trial to determine whether students in New York City were in fact being denied their constitutional right. In January 2001, following an extensive seven-month trial, Justice Leland DeGrasse of the New York State Supreme Court upheld CFE’s claim.

After a temporary reversal at the Appellate Division, CFE won a sweeping victory in June 2003 from the New York Court of Appeals, the state’s highest court. In an historic decision, the court affirmed the trial court’s basic decision and held that the constitutional right to a sound basic education requires that students receive a “meaningful high school education” that will provide them the necessary skills to be capable citizens and obtain competitive employment. To make this right a reality, the court ordered the State to accomplish the following by July 30, 2004:

- **One:** Determine the actual cost of providing a sound basic education;
- **Two:** Ensure that every school has the resources necessary for providing the opportunity for a sound basic education; and
- **Three:** Ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.*

In anticipation of a favorable court ruling, in 2002, CFE joined with the New York State School Boards Association and 33 other statewide education advocacy, parent, teacher, and business organizations, to sponsor the *New York Adequacy Study*, an extensive analysis that would determine the actual cost of providing a sound basic education in school districts around the state.

Last September, Governor George Pataki responded to the Court of Appeals’ order by appointing a 20-member Commission on Education Reform. CFE, as well as many other groups and individuals around the state, believed that the commission was not representative of the state’s educational community because it lacked representation from the legislature, the city of New York, the New York State Education Department, and education advocacy groups.

* *CFE v. State of New York*, 100 N.Y. 2d 893, 930 (2003). Technically, the Court of Appeals’ order applies only to New York City. Since the State Education Department has determined that constitutional deficiencies also exist in many other urban, suburban, and rural districts statewide, the task force proposals address the issues on a statewide basis.

To ensure that a set of well-researched policy proposals in each of the areas required by the Court of Appeals would be presented to the governor and the legislature, CFE convened a Sound Basic Education (SBE) Task Force composed of three separate working groups that addressed, respectively, operating aid reform, building aid reform, and accountability. Each working group was assisted by a panel of local and national experts and coordinated its work with the findings of the *New York Adequacy Study*.

The New York Adequacy Study

The *New York Adequacy Study*, undertaken by two independent national research firms, the American Institute for Research (AIR) and Management Analysis Planning, Inc. (MAP) is the most comprehensive costing-out study ever done. Nearly 60 superintendents, principals, teachers, school business officials, and special education directors from communities across the state participated extensively in the professional judgment panels that formed the core of the study. Their recommendations for greatly expanded pre-kindergarten programs, dramatically lowering elementary school class sizes, and extensive time on task and expanded services for secondary school students were then "costed out" by an independent team of national education economists. In a final review phase, input was also obtained from representatives of the governor and the legislature, as well as business leaders, parents, and school board members. The study determined that statewide an additional \$6.7 to \$9 billion (in 2004-2005 dollars) phased in over four years would be needed to provide all students a full opportunity to meet the Regents Learning Standards.

SBE Task Force Proposals: An Overview

Operating Aid: An Adequate Foundation for All

Under CFE's proposal, 39 of the current 50 formulas and grants in aid in the current state school finance system would be consolidated into a foundation amount, offering districts straightforward, predictable, and stable state funding. The foundation amount, derived from the *New York Adequacy Study* findings, would be adjusted for district enrollment, local levels of poverty, disability, and English language learners, geographic cost differences, and a small

school size factor. Responsibility for financing each district's "sound basic education" amount would be divided between the district and the state, based on the relative local ability to pay. Overall, CFE is proposing that the state share of education funding be increased from 49 percent to 55 percent (not counting federal aid). Under this plan the tax rates of most districts would stay about the same and in some cases would decrease. Once established, both the state and local shares would be mandated in order to ensure students' constitutional rights.

Building Aid: Adequate Facilities for All

CFE proposes to simplify and modernize the antiquated state building aid formula by factoring in student need and replacing its artificial and arbitrary elements with realistic up-to-date measures of construction costs, educational needs, and district wealth. CFE also recommends eliminating Wicks Law requirements to minimize unnecessary school construction costs, fully supporting leases as a less expensive and quicker way of creating schools, and allowing city districts to exclude state aid from their debt limit calculations.

Substantial additional aid is needed for New York City schools to remedy the severe overcrowding, unacceptably large class sizes, and lack of science labs, libraries, and access to technology found to be unconstitutional in the CFE decision. To address these specific needs, CFE is proposing a special one-time "BRICKS" construction fund that would provide \$8.9 billion to be phased in over the next five years for school facilities in New York City and an additional \$1 billion for high-need districts in other parts of the state.

A Constitutional Accountability System

Common sense, educational research, and the courts recognize that it is unrealistic and unfair to hold students, teachers, and schools accountable for meeting state standards, and penalize them for failure, without also requiring state and city officials to be accountable for providing the resources and conditions students need to succeed. CFE, therefore, is proposing a comprehensive accountability system that includes adequate funding, fair distribution of resources to every school, effective management of resources, outcome assessments, and rapid, effective consequences for poor performance. A single comprehensive district-wide "sound

basic education plan" (as well as complementary school-level plans) would replace the 125 plans and reports that school districts currently have to file. Concentrating school district planning on a single, highly transparent process, with mandated input from teachers, parents and other stakeholders will focus all funds and efforts on effective strategies for meeting the overarching goal of providing a meaningful opportunity for all students to meet the Regents Learning Standards. The State Department of Education would review and approve district plans, develop statewide information systems, and take action to assist failing schools. An Accountability Review Panel would identify current statutory, regulatory, and contractual impediments to constitutional compliance, undertake operational efficiency audits, and annually report to the governor, legislature, and public on the implementation of the new accountability system.

In sum, on the basis of the *New York Adequacy Study* and the Sound Basic Education Task Force proposals, CFE believes that the state must increase the present level of funding for education by an additional \$9.5 billion per year to provide all children their constitutional right to the opportunity for a sound basic education. The \$9.5 billion increase consists of the prime recommendation of the *New York Adequacy Study* (\$7.2 billion in 2001-2002 dollars, \$7.7 billion in 2004 dollars), \$800 million to cover funding shortfalls in state aid in recent years and to implement an equitable state/local sharing formula, and \$1 billion to provide the facilities required to support the educational programs that afford all children an opportunity for success. These additional annual funding requirements should be phased in over a four-year period.

As *Brown* showed 50 years ago, education is the very foundation of our democracy. When children are denied their basic right to an adequate education, it is the responsibility of the adults in our society to right that egregious wrong. The remedy in *CFE v. State* provides the blueprint for a fair and adequate public school system for all children in New York State. The proposals of the Sound Basic Education Task Force provide the materials to build that system. The governor and legislature need to move promptly now to get the job done before one more child loses his or her chance at the American dream.

THE NEW YORK ADEQUACY STUDY: A SUMMARY

In his January 2001 decision, Supreme Court Justice Leland DeGrasse held that the “threshold task” that the state must perform to develop a constitutionally acceptable funding system is to ascertain, to the extent possible, “the actual costs of providing a sound basic education in districts around the State.”¹ The court’s mandate was automatically stayed, however, when the governor filed his notice of appeal shortly after the trial court decision. Until the Court of Appeals affirmed the trial court’s order and reiterated the requirement that a costing-out study be undertaken, the state was under no legal obligation to do so.

Justice DeGrasse’s holding that an objective costing-out study is the critical first step in establishing a fair, needs-based funding system caused education advocates, policy analysts, political leaders, newspaper editorial boards, and other concerned citizens to call for the immediate mounting of a statewide costing-out study. As the *Westchester Journal News* put it, “such logical analysis has been sorely missing in a state whose school funding is distributed through a Byzantine formula manipulated by political deal-making.”² Responding to this call, the Atlantic Philanthropies indicated that they would provide substantial funding if a credible, objective study were organized.³

In October 2002, CFE, working with NYSSBA and the Business Council of New York State, retained the American Institutes for Research (AIR) and Management Analysis and Planning (MAP), two of the leading national organizations that have conducted costing-out studies in a number of other states throughout the country, to carry out an adequacy study in New York State. AIR and MAP jointly undertook a pilot study to adapt and extend the methodologies that they and others have used in other states to the unique circumstances of

¹ *CFE v. State of New York*, 187 Misc. 2d 1, 115 (S.Ct. N.Y. Co, 2001).

² “Appreciated Research: Educated Coalition Goes Where Albany Has Not Cared,” *The Journal News*, December 16, 2002.

³ Once the study was organized, The Ford Foundation and the Bill & Melinda Gates Foundation agreed to provide the additional necessary funds to complete the study.

New York State. The report that resulted from that pilot study was then shared with representatives of 33 other statewide education advocacy, business, union, civic and parent groups—organized as the Council on Costing Out—who then helped to refine the methodology. The full study, known as the *New York Adequacy Study*, officially commenced in March 2003.

The *New York Adequacy Study* is the most comprehensive costing-out study ever mounted in the United States. It uses each of the four predominant methodologies that have been used in the 27 other states that have undertaken such studies.⁴ The four approaches are professional judgment, successful schools,⁵ expert judgment, and the econometric analysis. The core of the study, however, was an extensive professional exercise in which approximately 60 New York educators, organized in 10 separate panels (two from New York City, two “other urban,” two suburban, two rural, and two special education) developed prototypical educational models at the elementary, middle, and high school levels, with variations for differing proportions of students from poverty backgrounds, students with disabilities, and English language learners. This educational model is the first in New York State to directly confront the critical issue of the precise level of resources needed to provide *all* students in the state the opportunity to meet the Regents Learning Standards.⁶

The educational model that was recommended on a virtual consensus basis by the representative group of the outstanding educators on the study’s panels places a heavy emphasis on early childhood education, calling for greatly expanded pre-kindergarten and

⁴ For specific information on the various costing-out methodologies and costing out studies that have been conducted in other states, see <http://www.schoolfunding.info/research/costout.htm>.

⁵ The AIR/MAP team attempted to compare spending patterns and levels in a pool of “successful schools” with the patterns and levels set forth in the educational model developed through the professional judgment process. However, when they attempted to apply a consistent and rigorous definition of a “successful school” (one that “beats the odds” when considering the socioeconomic background of its students and does so consistently over a four-year period), they concluded that the number of schools in New York State that met the definition was too small to be statistically significant. The “successful schools” they had identified were, however, used as sources for recruiting outstanding educators to participate as panelists in the professional judgment exercises.

⁶ The Regents Learning Standards, which virtually all students in the state must meet in order to obtain a high school diploma, are the current operational definition of a “meaningful high school education.” Although in theory some other standard might also meet constitutional requirements, so long as these standards are in effect, the state is constitutionally obligated to provide the level of resources needed to provide all students the opportunity to meet them.

kindergarten services and very small classes at the K-5 level. The model assumes that over 95 percent of special education students will attend their neighborhood schools and that the vast majority of these students will spend most of the day in general education classes.⁷ At the middle and high school levels, moderate class sizes are recommended, together with expanded support services and extensive after school and summer school programming.

Once the model was formulated by the educators, it was reviewed and critiqued by a number of leading national experts in special education, educators of English language learners, and those working with students from poverty backgrounds. It was also critiqued by a panel of New York State “stakeholders,” including representatives of the business community, parents, school board members, legislative leaders, and representatives from the governor’s staff and the governor’s commission. The research panel then “costed out” the exact number of dollars required to provide this type of education in each school district in the state. The costing-out process was carried out by determining the precise number of children from poverty backgrounds, children with disabilities, and English language learners in each school. The researchers also assessed the size of every school in the state and assigned a per-pupil allocation to each school based on the aforementioned factors. The total amount assigned to each school district was then adjusted in accordance with a geographic cost index, based on the costs of hiring comparable teachers and other personnel in different parts of the state.

The final report of the *New York Adequacy Study*, issued by the AIR/MAP team on March 30, 2004, found that New York City and 517 other districts around the state are not currently spending at the level necessary to provide all of their students with the opportunity to meet the Regents Learning Standards, while 163 districts are spending at or above that level.⁸ The consultants concluded additional statewide spending in a range of \$6.2 billion to \$8.4 billion (or \$6.7 billion to \$ 9 billion in 2004-2005 dollars⁹) would be necessary to bring these

⁷ The *New York Adequacy Study* is the first in the country to directly calculate the costs of special education inclusion programs. The presence of large numbers of special education (and ELL) students in general education classes was one of the justifications for the recommendations for class sizes of 14-16 at the K-5 level.

⁸ A copy of the report is available at <http://www.cfequity.org>.

⁹ The *New York Adequacy* figures were adjusted to account for estimated yearly cost increases and inflation rates. The inflation rate used was 1.073 and was derived from the NYS Division of the Budget’s (DOB) published forecast of a "Composite CPI of New York," a weighted average of the CPI for the New York metropolitan area and the national CPI-U for the rest of the state. The DOB's forecasts of this variable for 2003 through 2007 (and

517 districts up to the requisite constitutional level. The *New York Adequacy Study* contains extensive data regarding all of the recommendations of the professional judgment panels, the detailed methodologies used to cost out those recommendations, and a range of alternative approaches that might be considered in a final operating aid proposal. In other words, the final report demystifies the school funding process and provides a range of fully transparent data and options that the governor, the legislature, and the public may consider in making final funding decisions.

Part 1.

AN ADEQUATE FOUNDATION FOR ALL:

Reforming New York State's
System for Providing Operating Aid
to Local School Districts

EXECUTIVE SUMMARY*

Currently, state aid for education in New York State is distributed through over 50 separate and unnecessarily complex formulas and grants-in-aid. The approach recommended in this proposal consolidates 39 of these current categories into a single foundation allocation, while increasing the percentage of the state share and providing districts with predictability and transparency in the way their schools are funded. Its main components are as follows:

1. A COMPREHENSIVE FOUNDATION AMOUNT

Virtually all school district educational expenses, except for transportation, facility construction costs, debt service, and high cost public and private special education placements, would be encompassed by a single, comprehensive sound basic education foundation amount (“the SBE foundation amount”). BOCES aid, textbook, library and computer aid to private schools, teacher centers, and special grants that are not part of local districts’ basic educational operations would be funded separately through the State Education Department (SED).

2. ADJUSTMENTS FOR STUDENT NEED AND LOCAL COST FACTORS

Each district’s SBE foundation amount would be based on a statewide average foundation amount per pupil adjusted by (a) a needs index reflecting poverty, disability levels, numbers of English language learners, and a small school size factor; and (b) a geographic cost of education index. Both of these indices are derived from the results of the *New York Adequacy Study*.

3. DIVISION OF RESPONSIBILITY BETWEEN LOCAL SCHOOL DISTRICTS AND THE STATE

The responsibility for financing each district's SBE foundation amount would be divided between the local district (or local municipality in the case of the Big

* This proposal for operating aid reform is based on the final report of the *New York Adequacy Study*, released on March 30, 2004. It replaces and revises the Campaign for Fiscal Equity’s preliminary proposal for operating aid reform, dated March 1, 2004, which was based on the preliminary report of the *New York Adequacy Study*.

Five urban districts) and the state government on the basis of the district's relative "ability to pay" as measured by poverty-weighted property and income wealth ratios. No district would receive less state funding than it received during 2003-2004.

a. MANDATORY LOCAL CONTRIBUTION

Each local school district would be expected to make a defined contribution to the financing of its SBE foundation amount based on an "ability to pay" formula. For districts whose students are not making satisfactory progress toward meeting the Regents Learning Standards, the local contribution would be mandatory. Local districts would be free to make a local contribution greater than this defined minimum to provide educational opportunities above the SBE adequacy level.

b. MANDATORY STATE CONTRIBUTION

The state would be required to provide the difference between the foundation amount and the amount generated by the local share and base-year federal aid. Under this proposal, the overall result would be that state share of total statewide educational expenditures would rise from the current 47 percent to 52 percent. The state share of total revenues excluding federal aid would increase from 49 percent to 55 percent.

4. FOUR-YEAR PHASE-IN / FOUR-YEAR STABLE FUNDING

Initially, the new Adequate Foundation for All Plan should be phased in over a four-year period, with approximately 25 percent of the incremental allocation for each district added each year. To promote stability and long-term planning by school districts, the state should formally adopt a four-year funding plan setting forth in advance the amount each school district will receive for each of the following four years, subject only to annual inflationary increases or adjustments for extraordinary unforeseen events. The foundation amount and the educational need and cost indices should be reviewed and reconsidered

during the third and fourth years of the four-year period, on the basis of a new costing-out study.

In sum:

A DISTRICT'S STATE FUNDED OPERATING AID =

- (a) The Statewide Per Pupil SBE Foundation Amount TIMES
- (b) The District's Enrollment TIMES
- (c) The District's Educational Need Index Factor TIMES
- (d) The District's Geographic Cost Index Factor LESS
- (e) The District's Local Operating Aid Contribution
(Based on the District's Relative Poverty-Adjusted Property Wealth and Income Wealth Per Pupil)

The foundation approach described in this proposal is the most effective means for implementing the Court of Appeals' constitutional mandate. The Court of Appeals' decision requires that the resources that students actually need for the opportunity for a sound basic education be made available to students in every school. Accordingly, now that the *New York Adequacy Study* has identified the amount of funding that is actually needed, the best route to constitutional compliance is to ensure that this SBE amount is actually made available to all students in all schools, and that the state's education finance system is reformed in accordance with the fair funding principles set forth in this report.

AN ADEQUATE FOUNDATION FOR ALL: REFORMING THE STATE’S SYSTEM FOR PROVIDING OPERATING AID TO LOCAL SCHOOL DISTRICTS

New York’s Current Funding Formulas

Currently, state aid for education in New York State is distributed through over 50 separate formulas and grants-in-aid. Unnecessarily complex and administratively burdensome, the current state education finance system has suffered from years of modifications built upon prior modifications. The complexity of the system has also allowed great inequities to arise in the tax burdens shouldered by residents of different districts. The approach recommended in this proposal would consolidate most of these funding streams into a single foundation allocation, while increasing the overall state share of total education funding and determining individual districts’ local shares through a fair, wealth-based formula. This method would make educational funding fair, comprehensible, and transparent, while also providing districts with needed predictability and stability in planning for school operations.

The glaring deficiencies of New York State’s education finance system have been decried repeatedly. In the last 30 years, four special task forces (known as the Fleischmann, Rubin, Salerno, and Moreland Act Commissions) have all issued voluminous reports. The Office of State Comptroller has also issued a series of reports on educational finance, offering many suggestions for reform, while the New York State Board of Regents regularly makes recommendations for major changes to the system. These studies have consistently concluded that the current system:

- involves numerous complex formulas that fail to meet any reasonable test of transparency and that sometimes operate at cross purposes;
- contains too many categorical grant programs and other expenditure restrictions;
- is unfair to pupils and taxpayers in school districts with lower than average revenue-raising capacity and/or higher than average needs;

- includes some formulas that discourage cost efficiencies;
- fails to provide adequate consideration to students with special needs; and
- does not recognize regional and/or local cost differences.

Extensive evidence regarding the actual workings of the state education finance system was presented to the court during the trial in *CFE v. State*. After reviewing this evidence, the trial court held that:

The evidence demonstrates that the state aid distribution system is unnecessarily complex and opaque. It is purportedly based on an array of often conflicting formulas and grant categories that are understood by only a handful of people in State government. Even the State Commissioner of Education testified that he does not understand fully how the formulas interact.

However, more important than the formulas' and grants' needless complexity is their malleability in practice. The evidence at trial demonstrated that the formulas do not operate neutrally to allocate school funds---at least with respect to annual increases in State aid. Rather the formulas are manipulated to conform to budget agreements reached by the Governor, the Speaker of the State Assembly, and the Senate Majority Leader.¹⁰

The Court of Appeals agreed “with the trial court’s description of the existing education funding scheme as needlessly complex, malleable and not designed to align funding with need.”¹¹ Furthermore, it specified that to determine whether state aid bears a “perceptible relation” to student needs, relative costs, local ability to pay, and the impact of the statewide State Tax Relief Program (STAR) must accurately be taken into account.¹²

¹⁰ *CFE v. State of New York*, 187 Misc.2d 1, 83 (S.Ct, N.Y. Co, 2001).

¹¹ *CFE v. State of New York*, 100 N.Y.2d 1, 61 (N.Y., 2003).

¹² *Ibid*, p. 57-63.

Several years ago, CFE, together with the New York State School Boards Association (NYSSBA), the League of Women Voters, the Schuyler Center for Analysis and Advocacy (SCAA), and approximately 200 statewide and local organizations, conducted an extensive multi-year series of public engagement meetings throughout the state.¹³ These meetings resulted in a virtual statewide consensus that the present archaic funding system, which the governor himself has called a “dinosaur” that should be placed on the “ash heap of history,”¹⁴ must be replaced with a new education funding system. This new system should

- be based on an objective analysis of the actual cost of providing all students the opportunity for a sound basic education;
- provide sufficient state resources, coupled with a reasonable local effort, calibrated to local revenue-raising capacity, to assure that every student has the opportunity for a sound basic education;
- consider the extra resources necessary to meet higher educational standards and to educate students with special needs;
- be simple, rational and “transparent”;
- provide sustained and stable funding that will promote long-term planning by schools and school districts;
- allow and encourage school districts to raise and spend funds above the threshold for sound basic education; and
- take local cost differences into account.

CFE presented these principles for reform to the court. Most of them were adopted by the trial court and included in the specific remedies that have now been ordered by the Court of Appeals.¹⁵ The foundation funding proposal that will be described in the following pages

¹³ See Campaign for Fiscal Equity, *Blueprint for Better Schools* (Fall, 1999).

¹⁴ George Pataki, *State of the State Address* (January 3, 2001).

¹⁵ The trial court’s order explicitly included virtually all of the fair funding principles that had been endorsed by the statewide public engagement meetings. Most of these were specifically affirmed by the Court of Appeals, with the notable exception of the trial court’s references to “transparency” and “sustained and stable funding.” The Court of Appeals, though decrying the complexity of the present system, declined to specifically order “transparency” since it knew of no practical way for a court to assess compliance with such an order. It also declined to include “sustained and stable funding” because, as applied to New York City, such a reference might be read to refer to specific fiscal dependency issues that it was not prepared to address. See *CFE v. State of New York*, *supra*, 100 N.Y. 2d at 59-61.

incorporates all of these fair funding principles in a dynamic, comprehensive statewide funding reform. The proposed foundation approach will satisfy both the court’s immediate mandates and the need for a broad statewide political consensus for a state education finance system that will “ensure an effective, efficient and accountable system...that provides all public school students with the opportunity to acquire a sound basic education.”¹⁶

The Advantages of a Foundation Approach

Historically, most states have purported to include a foundation amount that would guarantee sufficient funding for each child to obtain an adequate education as a basic building block of the state’s education finance system. These foundation programs typically required local school districts to levy taxes at a rate aimed at generating enough revenue to fund a basic education, with the state supplementing the amount actually raised by poor districts when their tax base did not yield the predetermined foundation level.¹⁷

Traditionally, however, no real methodology was used to determine what the foundation amount should be. Instead, legislatures tended to establish the foundation amount based on the amount of funding they were willing to allocate for educational services with little regard for actual needs. Moreover, the foundation amounts that were established tended to erode dramatically over time because of budget pressures, competing political priorities, and inflation. For example, in New York State the current foundation amount is about \$4,000 per

Although the Court of Appeals’ order does not explicitly mandate “transparency” and “sustained and stable funding,” the order certainly does not preclude these broad principles and, in fact, the judges appear to encourage transparency and stability, even though they question whether these obviously desirable goals are susceptible to specific enforcement by the courts. CFE thinks it indisputable, as a matter of sound public policy, that any reformed state education finance system must be readily comprehensible to the public and that it promote stability and long-term educational planning.

¹⁶ George Pataki, Executive Order No. 131, § 5 (b) (2003).

¹⁷ The idea of the foundation program originated with a proposal to a New York State Educational Finance Inquiry Commission. See George D. Strayer and Robert M. Haig, *Financing of Education in the State of New York* (1923), p.173-74. See also, James W. Guthrie, Walter I. Garms and Lawrence C. Pierce, *School Finances and Education Policy: Enhancing Educational Efficiency, Equality and Choice* (2d ed. 1988), p. 133-137 .

pupil, even though the average expenditure is \$11,584 per pupil, with districts comprising the bottom 10 percent spending approximately \$9,662 per pupil.¹⁸

The emergence of the standards-based reform and education adequacy movements have transformed the possibilities for utilizing the foundation approach as a valid means for ensuring an adequate education for all students. Explicit state standards and sophisticated costing-out methodologies that have been developed in recent years can establish and update a fair and adequate foundation level. Once the level of funding needed to provide all students an adequate education is identified, that amount can (and should) become the foundation upon which the entire state education finance system is built.

The foundation approach is clearly the most effective means for implementing the Court of Appeals' constitutional mandate in *CFE v. State of New York*, as both the New York State Board of Regents and the Governor's Commission on Education Reform recognized by calling for dramatic new foundation approaches.¹⁹ The Court of Appeals' decision requires that the amount of resources that students require for an opportunity for a sound basic education, as determined by an objective costing-out study, must actually be made available for students in every school. Accordingly, now that the *New York Adequacy Study* has identified the amount of funding that is actually needed to provide all students the opportunity for a sound basic education, the best route to constitutional compliance is to ensure that this SBE amount is made available for all students in all schools. To accomplish this, the state's education finance system should be reformed in accordance with the fair funding principles set forth in this report.

¹⁸ The New York State Education Department, *New York: The State of Learning, A Report to the Governor and the Legislature on the Educational Status of the State's Schools* (2003). (Figures are for 2000-2001, the latest audited figures published by the State Education Department as of 2003). New York State currently uses a percentage equalizing approach, which incorporates a foundation amount as a component of its operating aid formula. Since operating aid is only one of approximately 50 formulas and grants in aid in the overall system, the impact of the foundation base is substantially diluted.

¹⁹ See the New York State Board of Regents, *School Aid Proposal for 2004-2005* (January 2004) and the New York State Commission on Education Reform (the Zarb Commission), *Final Report* (March 2004).

An Adequate Foundation for All: A Specific Foundation Approach for New York State

We believe, therefore, that the most logical and appropriate way to construct a proper funding system for New York State is to accept the results of the *New York Adequacy Study* as the basic foundation for statewide funding and guarantee that the amount identified by the study for each district is actually made available for students in that district. Although the entitlement amount is based on the prototypical educational models in the study, districts would not be required to spend their allotted funds precisely in accordance with the model. They should, however, be required to develop a comprehensive sound basic education plan that will explain how they intend to spend the funds in order to ensure that all of their students will have the opportunity for a sound basic education. They should also be held accountable for adhering to that plan.²⁰

CFE's Sound Basic Education Task Force, working with the Fiscal Policy Institute, has developed an Adequate Foundation for All Plan, which will implement the findings of the *New York Adequacy Study* as follows:

1. A COMPREHENSIVE FOUNDATION AMOUNT

Virtually all school district educational expenses, except for transportation, facility construction costs, debt service, and high cost public and private special education placements,²¹ would be encompassed by a single, comprehensive sound basic education foundation amount (“the SBE foundation amount”). BOCES aid, textbook, library and computer aid to private schools, teacher centers, and other special grants that are not part of local districts' basic educational operations, would be funded separately through the State Education Department (SED).

²⁰ Specific recommendations for such an accountability approach are set forth in Part III of this report.

²¹ This category includes both public and private special education placements and replaces the current high cost public and private excess cost aid.

2. ADJUSTMENTS FOR STUDENT NEED AND LOCAL COST FACTORS

Each district's SBE foundation amount would be based on a statewide average foundation amount per pupil adjusted by a) a needs index reflecting poverty, disability levels, numbers of English language learners, and a small school size factor; and b) a geographic cost of education index. Both of these indices are derived from the results of the *New York Adequacy Study*.

3. DIVISION OF RESPONSIBILITY BETWEEN LOCAL SCHOOL DISTRICTS AND THE STATE

The responsibility for financing each district's SBE foundation amount would be divided between the local district (or local municipality in the case of the Big Five urban districts) and the state government on the basis of the district's relative "ability to pay" as measured by poverty-weighted property and income wealth ratios. No district would receive less state funding than it received during 2003-2004.

a. MANDATORY LOCAL CONTRIBUTION

Each local school district would be expected to make a defined contribution to the financing of its SBE foundation amount based on an "ability to pay" formula. For districts whose students are not making satisfactory progress toward meeting the Regents Learning Standards, the local contribution would be mandatory. Local districts would be free to make a local contribution greater than this defined minimum to provide educational opportunities above the SBE adequacy level.

b. MANDATORY STATE CONTRIBUTION

The state would be required to provide the difference between the foundation amount and the amount generated by the local share and base-year federal aid. Under this proposal, the overall result would be that the state share of total statewide educational expenditures would rise from the current 47 percent to 52 percent. The state share

of total revenues excluding federal aid would increase from 49 percent to 55 percent.

4. FOUR-YEAR PHASE-IN / FOUR-YEAR STABLE FUNDING

Initially, the new Adequate Foundation for All Plan should be phased in over a four-year period, with approximately 25 percent of the incremental allocation for each district added each year. To promote stability and long-term planning by school districts, the state should formally adopt a four-year funding plan setting forth in advance the amount each school district will receive for each of the following four years, subject only to annual inflationary increases or adjustments for extraordinary unforeseen events. The foundation amount and educational need and cost indices should be reviewed and reconsidered during the third and fourth years of the four-year period, on the basis of a new costing-out study.

In sum, under the Adequate Foundation for All Plan, each district's state education operating aid for all purposes except transportation, facilities, and high cost public and private special education placements would be determined by one single formula that would work as follows:

A DISTRICT'S STATE FUNDED OPERATING AID =

- (a) The Statewide Per Pupil SBE Foundation Amount TIMES
- (b) The District's Enrollment TIMES
- (c) The District's Educational Need Index Factor TIMES
- (d) The District's Cost Index Factor LESS
- (e) The District's Local Operating Aid Contribution
(Based on the District's Relative Poverty-Adjusted Property Wealth and Income Wealth Per Pupil)

The proposed Adequate Foundation for All Plan is consistent with the innovative foundation approach recommended by the Regents in their *2004-2005 State Aid Proposal*. The present proposal, although philosophically similar to that of the Regents, is more comprehensive, in that it incorporates 39 funding streams in the basic foundation (compared with the Regents' 29) and uses the specific findings of the *New York Adequacy Study* in its

methodology for determining each district’s SBE foundation amount. Furthermore, for districts whose students are not meeting state standards, the local share is mandated, not merely “expected” in this proposal; no district’s state aid would be reduced, and the increase in funding and increased state share would be phased in evenly over a four-year period, in contrast with the seven-year period proposed by the Regents.²²

The Comprehensive Foundation Amount

A comprehensive foundation funding approach that enables school districts to plan effectively to provide a sound basic education for all their students should include virtually all basic operating funds in a single foundation allocation. The few funding streams that must be maintained outside the basic foundation should be clearly identified and strongly justified. Since all of the educational resources needed to provide students the opportunity for a sound basic education were included in the prototypical models recommended by the *New York Adequacy Study*, with the stated exceptions of transportation, facility construction costs, debt service, and high cost public and private special education placements, the amount proposed for each district here would be similarly comprehensive.

This base per-pupil foundation amount would cover 39 existing computerized aids and grant programs under this plan. These would include all basic educational expenditures of each local district except for building aid,²³ transportation, high cost public and private special education placements, and prior year adjustments. High cost public and private special education placement aid is defined as extraordinary special education expenditures for in-district or out of district placements that exceed \$30,000 per pupil per year (cost adjusted). All other public and private special education expenditures would be covered by the basic needs index that includes a weighting for the percentage of students in special education.

²² The Zarb Commission recommends combining 22 existing aid categories into one major basic operating aid block grant, combining three other categories into a supplemental needs aid category, and four existing funding streams into a new instructional materials aid category. The Zarb Commission does not recommend any changes in local funding efforts other than extending New York City’s current maintenance of efforts requirements to the big four urban districts. See Zarb Commission, *Final Report*.

²³ A small category of additional building aid, known as “building reorganization incentive aid,” promised in the past to school districts agreeing to consolidate, would also be continued, as would minor maintenance aid.

Prior year adjustment aid, which, in effect, is delayed reimbursement for state aid that was obligated, but not paid, for past years, would also continue to be a state obligation to certain local school districts.

BOCES aid, which is a special program for encouraging cooperation in the delivery of regional services, should be continued, but it should be classified as a state incentive program, administered through SED, and operating outside the basic district foundation allocation. Special services aid to cover services equivalent to those provided by BOCES should be provided to New York City and the Big Four urban districts. BOCES, and the Big Five urban districts should also administer textbook, library, and computer aid to parents of private school students.²⁴ Textbook aid and computer aid for public schools would be encompassed by the basic operating aid foundation formula. Teacher centers, which are regional facilities that promote professional development, should continue to be funded through SED. In addition, grants for special purposes, such as Roosevelt aid, Office of Mental Health and Office of Mental Retardation and Developmental Disabilities students, and incarcerated youth, which serve specific statewide purposes, should also be funded and administered through SED, outside of the foundation funding allocations. A full list of the current formula aids and grants to be covered by the foundation amount is detailed in **Figure 1.1**.

²⁴ Historically, textbook, library and computer aids were distributed through local school districts in order to avoid possible constitutional separation of powers concerns. The U.S. Supreme Court's recent decision in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) has obviated these concerns and will permit the more logical direct funding of private school services by the state recommended in the text.

Figure 1.1 CURRENT FORMULA AIDS AND GRANTS TO BE COVERED BY THE FOUNDATION AMOUNT

| <p align="center">NEW YORK STATE’S CURRENT AID FORMULAE (All Separate Funding Streams)</p> | <p align="center">CFE’S PROPOSAL</p> |
|---|---|
| <p>Academic Support Aid Categorical Reading Programs Class Size Reduction Aid Comprehensive Operating Aid Computer Hardware Aid Computer Software Aid (Public) County Vocational Education and Extension Boards (CVEEB) Early Grade Class Size Reduction Educationally Related Support Services Aid Extraordinary Needs Aid Full Day Kindergarten Conversion Aid Gifted and Talented Aid Grants for Overcrowded Schools Improving Pupil Performance Grants Learning Technology Grants Library Materials Aid (Public) Limited English Proficiency Aid Magnet Schools Aid Minor Maintenance & Repair Aid Operating Aid Operating Growth Aid Operating Reorganization Incentive Aid Operating Standards Aid Regular Private Excess Cost Aid Regular Public Excess Cost Aid School Tax Relief Program Shared Services Savings Incentive Small City Aid Summer School Aid Tax Effort Aid Tax Equalization Aid Tax Limitation Aid Teacher Support Aid Teacher-Mentor Intern Teachers of Tomorrow Textbook Aid (Public) Transition Adjustment/Adj. Factor Tuition Adjustment Aid Universal Prekindergarten Aid</p> | <p align="center">CATEGORIES CONSOLIDATED INTO A SINGLE BASE SBE FOUNDATION AMOUNT</p> |
| <p>Building Aid Building Reorganization Incentive Aid High Cost Special Education Placement Aid Prior Year Adjustments Transportation Aid</p> | <p align="center">ADDITIONAL DISTRICT FUNDING NOT ENCOMPASSED BY THE SBE FOUNDATION AMOUNT</p> |
| <p>Library, and Computer Aids Private School Textbook, Special Statewide Grants (Roosevelt, OMH/OMR Pupils, BOCES Aid Incarcerated Youth, etc.) Teacher Centers Urban Special Services Aid</p> | <p align="center">REGIONAL SERVICES OR STATEWIDE FUNDING PROGRAMS ADMINISTERED BY SED</p> |

Adjustments for Student Need and Local Cost Factors

The base per pupil foundation amount for 2001-2002, as determined by the final results of the *New York Adequacy Study*, was \$6,273 for early childhood development programs, \$7,751 for Pre-K programs, \$10,072 for K-5 elementary programs, \$ 9,889 for 6-8 middle school programs, and \$10,443 for high school programs. These statewide per pupil amounts are the statewide SBE foundation amounts used as the starting point for the determination of each district's actual SBE foundation amount in this proposal. As in the *New York Adequacy Study*, and the *Regents 2004-2005 State Aid Proposal*, the district allocations here are based on student enrollment, and not daily attendance.²⁵

Consistent with the Court of Appeals' mandate that "funding should align with need," the *New York Adequacy Study* provided substantial extra resources for schools with large numbers of students from poverty backgrounds (defined as students eligible for free and reduced price lunch under applicable federal regulations).

The professional judgment process organized by the AIR/MAP team developed prototypical educational service models for schools of different sizes at different levels (K-5, 6-8, and 9-12) with different mixes of poor and disabled students and English language learners. After determining what it would cost to operate such schools (with their different mixes of size as measured by enrollment, poverty, disability, and English language learners) in an average cost district in New York State, the AIR/MAP team used econometric methods to develop an equation for each educational level (K-5, 6-8, and 9-12). These equations related the costs involved in operating such schools in a manner that would provide all of their pupils with the opportunity to receive a sound basic education to the variations that exist among them in terms of size and the incidence of poverty, disability, and English language learners. The AIR/MAP team then applied these equations to every school in New York State to determine the sound Basic education resources requirement for each school. All of the study's calculations were based on 2001-02 school data, the most recent year for which detailed financial, demographic, staffing, and other data are available for all of the state's public

²⁵ The enrollment approach is also consistent with the Court of Appeals' indications that state funding should be based on enrollment rather than attendance. See *CFE v. State*, 100 N.Y. 2d at 927.

schools. Thus, the study’s results are in terms of the resources that would have been necessary in that year, in 2001-2002 dollars.

The econometric equations developed by the AIR/MAP team used four variables: ENR representing the school’s size in terms of enrollment; %POV representing the percent of a school’s pupils eligible for free or reduced price lunch;²⁶ %SPED representing the percent of a school’s pupils with Individual Education Plans (IEPs); and, %ELL representing the percent of pupils evaluated as being limited English proficient.

For elementary schools, for example, each school’s per pupil sound basic education revenue requirement was estimated to equal \$10,072 TIMES the following equation divided by 100:

$$110.38 - (0.0954 * ENR) + (0.00004 * ENR^2) + (58.184 * \%POV) + (6.9231 * \%POV^2) + (97.239 * \%SPED) + (17.855 * \%ELL)$$

Under this equation, the average or normative amount per pupil (\$10,072) would be necessary for an elementary school with the following characteristics:

| | |
|--|-------|
| Enrollment (ENR) | 558 |
| Poverty Incidence (%POV) as determined by eligibility for free or reduced price lunch | 34.2% |
| Special Education Incidence (%SPED) as determined by the percent of pupils with IEPs | 9.8% |
| English Language Learner incidence (%ELL) as determined by the percent of pupils evaluated as being limited English proficient | 0.9% |

²⁶ Twenty-four school districts do not operate free and reduced price lunch programs. These districts did not have any poverty weightings in the AIR/MAP analysis. For these districts, the State Education Department should add an additional poverty weighting based on relevant data from the U.S. Census Bureau.

For a school with these characteristics, the total SBE revenue requirement would be \$5,620,200 and, as indicated above, the SBE revenue requirement per pupil would be \$10,072. The following tables shows the sensitivity of the funding requirement to changes in two of the need variables, % POV and %SPED, if the size of the school and the percent of limited English proficient students remained constant.

Table 1.1 ESTIMATED TOTAL REVENUE REQUIREMENT FOR ELEMENTARY SCHOOLS WITH 558 PUPILS AND 0.9% ENGLISH LANGUAGE LEARNERS WITH THE FOLLOWING MIXES OF POVERTY AND SPECIAL EDUCATION

| <u>%POV ></u> | <u>0%</u> | <u>17.1%</u> | <u>34.2%</u> | <u>51.3%</u> | <u>68.2%</u> | <u>85.3%</u> |
|-------------------------|-------------|--------------|---------------------|--------------|--------------|--------------|
| <u>%SPED</u> | | | | | | |
| <u>0% ></u> | \$3,920,765 | \$4,491,320 | \$5,084,629 | \$5,700,694 | \$6,331,910 | \$6,993,218 |
| <u>4.9% ></u> | \$4,188,550 | \$4,759,105 | \$5,352,415 | \$5,968,479 | \$6,599,695 | \$7,261,003 |
| <u>9.8% ></u> | \$4,456,335 | \$5,026,890 | \$5,620,200 | \$6,236,264 | \$6,867,480 | \$7,528,788 |
| <u>14.7% ></u> | \$4,724,121 | \$5,294,675 | \$5,887,985 | \$6,504,049 | \$7,135,265 | \$7,796,573 |

Table 1.2 ESTIMATED PER PUPIL REVENUE REQUIREMENT FOR ELEMENTARY SCHOOLS WITH 558 PUPILS AND 0.9% ENGLISH LANGUAGE LEARNERS WITH THE FOLLOWING MIXES OF POVERTY AND SPECIAL EDUCATION

| <u>%POV ></u> | <u>0.0%</u> | <u>17.1%</u> | <u>34.2%</u> | <u>51.3%</u> | <u>68.2%</u> | <u>85.3%</u> |
|-------------------------|-------------|--------------|---------------------|--------------|--------------|--------------|
| <u>%SPED</u> | | | | | | |
| <u>0.0% ></u> | \$7,026 | \$8,049 | \$9,112 | \$10,216 | \$11,348 | \$12,533 |
| <u>4.9% ></u> | \$7,506 | \$8,529 | \$9,592 | \$10,696 | \$11,827 | \$13,013 |
| <u>9.8% ></u> | \$7,986 | \$9,009 | \$10,072 | \$11,176 | \$12,307 | \$13,492 |
| <u>14.7% ></u> | \$8,466 | \$9,489 | \$10,552 | \$11,656 | \$12,787 | \$13,972 |

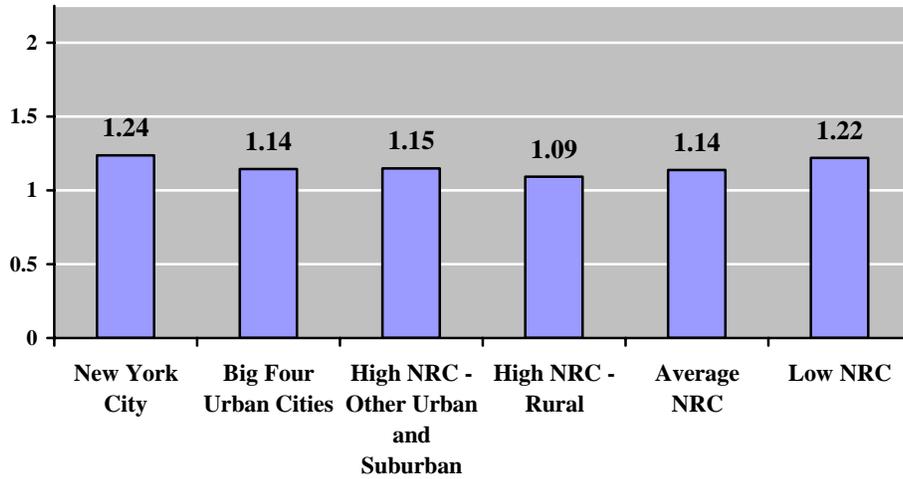
After calculating the resource requirements for every school, the AIR/MAP team then combined these estimates for all of the schools in each of the state's 680 major school districts, and added in factors for district-level administrative costs, district-level special education costs, and the cost of providing expanded pre-K and early childhood development programs for children eligible to receive free or reduced price lunches under the federal guidelines for this purpose. The result was the *New York Adequacy Study's* estimate of the resources necessary at the district level to meet the court's adequacy standard throughout the state.

The equations used to estimate each district's resource requirements are detailed and school specific, but they result in the specification of district-level per pupil revenue requirements. The variations in those district-level per pupil revenue requirements serve, in turn, as the basis for an Educational Need/Scale Index (EN/SI) for each of the state's 680 school districts.

The district foundation amount was also adjusted in accordance with the geographical cost index developed for the *New York Adequacy Study*. That analysis determined how much more or less it costs to recruit and employ comparable school personnel in different geographic locations throughout the state of New York. Using 1.00 as the cost to recruit teachers in the lowest cost district, the range of comparative costs among different school districts throughout the state was as follows in **Figure 1.2**.²⁷

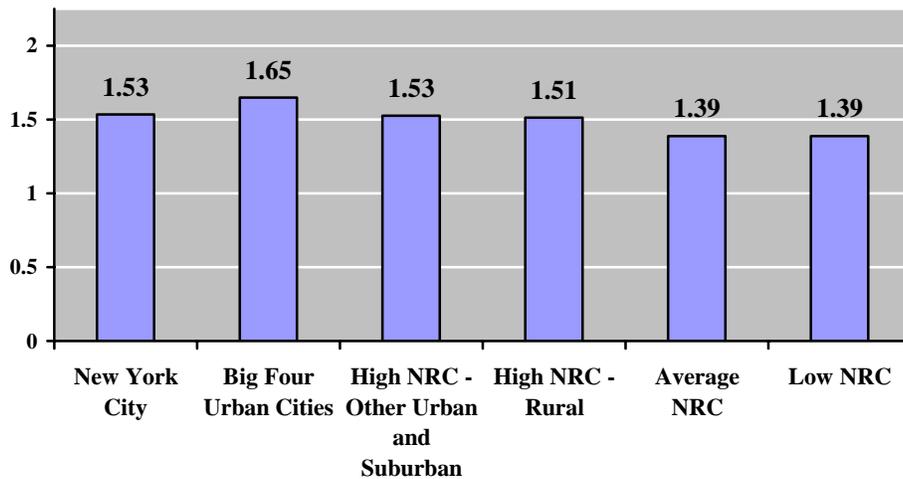
²⁷ In the *New York Adequacy Study*, the index was described in terms that used 1.0 as the statewide figure. Although precisely the same index is being used here, it has been converted into a scale that uses 1.0 as the minimum range figure to conform to the approach used in the *Regents 2004-2005 State Aid Proposal*.

Figure 1.2 Geographic Cost of Education Index, Weighted Averages by Needs to Resource Capacity of the Districts



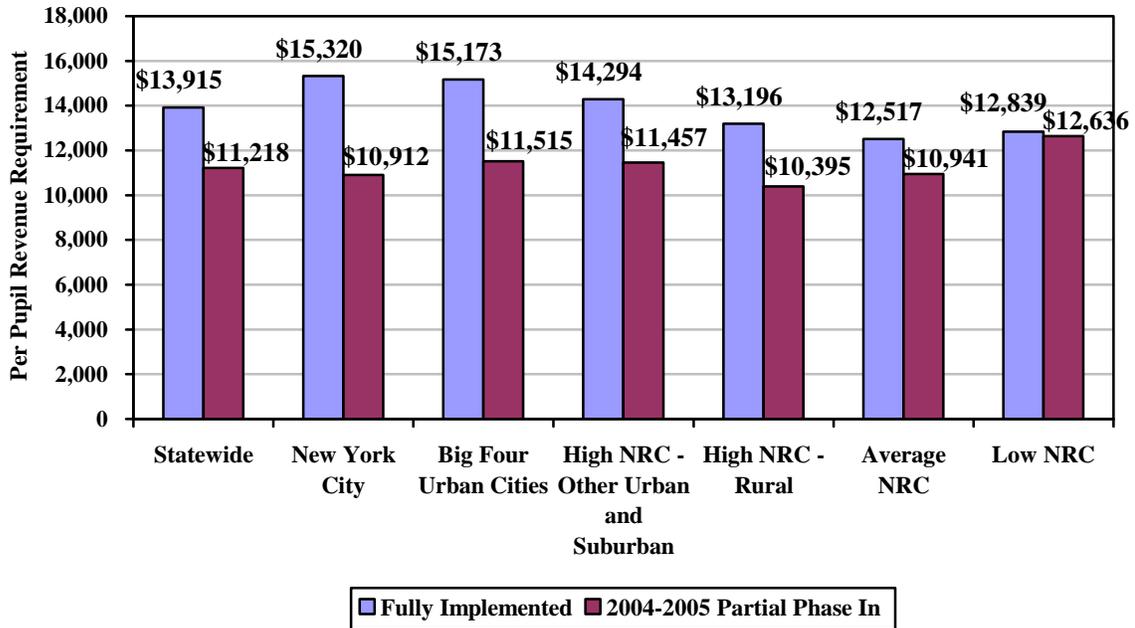
The Educational Need/Scale index follows in **Figure 1.3**:

Figure 1.3 Educational Need/Scale Index, Weighted Averages by Needs to Resource Capacity of the Districts



Applying the need/scale index and the geographic cost index to the foundation amounts determined by the *New York Adequacy Study* results in the following per pupil need requirements by needs to resource categories for the first year (2004-2005) and the final year of an assumed four-year implementation period:

Figure 4. Per Pupil SBE Revenue Requirement by Needs to Resource Category*



* Not including transportation, capital facilities, construction costs, debt service, high cost public and private special education placements, and BOCES aid. The figures are based on the *New York Adequacy Study's* targeted pre-k and early childhood development program enrollment figures.

Mandatory Local Share

Each local school district should contribute a percentage of its sound basic education (SBE) funding requirement, determined on the basis of the district's relative "ability to pay" as measured by its poverty-adjusted property and income wealth ratios. For a district with a property and income wealth ratio equal to 1, the state would cover 48 percent of the portion of the SBE funding requirement that is not covered by federal aid. For a district with the median poverty-weighted property and income wealth ratio (.81), the state share would be 59.4 percent. No district would receive less state aid than it received during 2003-2004.²⁸

²⁸ The State Education Department (SED) currently uses the Combined Wealth Ratio, an average of two ratios: (a) the ratio of the district's property wealth per pupil to the statewide average property wealth per pupil and (b) the ratio of the district's income per pupil to the statewide average income per pupil. The proposed poverty-adjusted ratio would adjust each of the per pupil amounts used in the Combined Wealth Ratio to reflect the incidence of

In contrast with the Regents’ proposal, which identifies “an expected” local share for all districts, and statutory schemes used in some other states, which withhold varying amounts of state aid if the identified local share is not contributed, the local contribution identified here would be a mandate for all districts whose students are not making satisfactory progress toward meeting the Regents Learning Standards according to SED’s System of Accountability for Student Success. Without a mandatory local match, the constitutional requirement to provide children in every district and every school with the full amount of resources they need for the opportunity for a sound basic education would not be met.

The required local contribution could be met by property taxes alone or by a combination of revenue sources.²⁹ This mandatory local share obviates the need for complex maintenance of effort provisions for New York City or other districts.

poverty in each district. In this proposal we use the percentage of K-6 students eligible for free or reduced price school lunch as a measure of poverty and increase the pupil count by 60% for each poor student. As indicated in footnote 26, free and reduced price lunch percentages were not available for 24 districts in the AIR/MAP study, and for an additional 8 districts free and reduced price lunch percentages were not included in the database accompanying the governor’s 2004-2005 School Aid Proposal. (Including free and reduced price lunch percentages or equivalent factors for those districts would increase slightly the amount of state aid required by this proposal.) The pupil count is based on student enrollment. The following is a comparison of the poverty-weighted combined wealth ratios used in this proposal, with that used in the current formulas:

| | <i>SED Average CWR</i> | <i>CFE Average Poverty Weighted CWR (60%)</i> |
|-------------------------------------|------------------------|---|
| Statewide | 1.163 | 1.378 |
| Median | .708 | 0.814 |
| New York City | 1.004 | 0.846 |
| Big Four Urban Cities | 0.547 | 0.468 |
| High NRC – Other Urban and Suburban | 0.608 | 0.585 |
| High NRC – Rural | 0.498 | 0.518 |
| Average NRC | 0.867 | 1.002 |
| Low NRC | 2.855 | 3.621 |

²⁹ Local school districts would be free to use current revenues from property taxes, sales taxes (to the extent that schools receive a share of local sales taxes), consumer utility taxes and other revenues such as interest earnings as well as the contributions from fund balances to fund their share of educational expenses.

The required local contribution has two basic variables:

REQUIRED LOCAL CONTRIBUTION =

48% of the district's SBE revenue requirement (not covered by base year federal aid or tuition received from other districts) prorated up or down based on the district's relative property and income wealth.

The formula proposed here does not impose an upper limit on spending. The *New York Adequacy Study* found that 163 school districts were already spending at or above their SBE revenue requirement levels, while 517 were below and would need to spend more to reach the adequacy level. In addition, many districts (including 30 of the 163 districts that are already spending at or above the SBE level) would receive additional state aid that could be used to reduce local property taxes or spend at a higher level. The operating aid proposal set forth in this report is designed to establish a fair method for allocating funding responsibility between the state and its local school districts in addition to ensuring that all districts have sufficient resources to provide all pupils with the opportunity for a sound basic education.

The amount that local school districts would need to contribute to the state foundation amount under this proposal is summarized in **Table 1.3**:

| Table 1.3 REQUIRED LOCAL CONTRIBUTION PER PUPIL BY NEEDS TO RESOURCE CATEGORIES | | | |
|--|---|--|---|
| | Estimated Local Contribution per Pupil 2001-2002 | Required Local Contribution per Pupil 2004-2005 | Required Local Contribution per Pupil, Fully Implemented |
| Statewide Average | \$5,333 | \$5,481 | \$6,056 |
| New York City | \$4,362 | \$4,832 | \$6,240 |
| Big Four Urban Cities | \$2,808 | \$2,754 | \$2,610 |
| High NRC - Other Urban and Suburban | \$4,151 | \$4,025 | \$3,648 |
| High NRC - Rural | \$2,918 | \$2,893 | \$2,831 |
| Average NRC | \$5,633 | \$5,771 | \$6,060 |
| Low NRC | \$9,967 | \$9,572 | \$9,595 |

The Mandatory State Share

The Court of Appeals has made clear that “the state remains responsible...[for securing] its citizens their constitutionally-mandated rights.”³⁰ Once the local districts have contributed their appropriate local share of the district’s foundation requirement, and applicable federal funding has been taken into account,³¹ the state must contribute the remainder of the requisite foundation funding in order to ensure that all students are receiving the resources necessary to provide them the opportunity for a sound basic education.

Currently, the state government provides 47.3 percent of all K-12 educational expenditures in the state (including payments for the School Tax Relief Program, or STAR), the federal government 5.8 percent, and local districts provide 46.9 percent.³² Such an extensive reliance on local resources—which primarily means reliance on local property taxes—is generally considered undesirable. Local property taxes, as currently administered, are highly regressive and inequitable, due to the great differences that exist among school districts in their per pupil property tax bases and the many arbitrary and irrational practices involved in local assessment practices. For this reason, in most other jurisdictions, the state government bears a higher proportion of overall state funding than currently is the case in New York.³³

Accordingly, we believe that the state should fund most of the increase in funding required to bring all districts in the state to the adequacy levels called for by the *New York Adequacy Study*. An additional state contribution is also required to compensate for the shortfalls in state funding over the past three years, which have resulted in higher local taxes in some districts, or in some cases a reduction in the level of services in effect in 2001-2002, the base year used in the *New York Adequacy Study*. Combining these increases with the simple,

³⁰ *CFE v. State*, 100 N.Y. 2d at 922.

³¹ The present proposal assumes that all federal funds currently received by local school districts in New York State will be applied to the foundation amount, except funds received from the Medicaid, WIA, JTPA, School Lunch and Adult Education programs. Any future increases in federal aid would not be applied to the foundation amount. Federal IMPACT aid and Federal Payments in Lieu of Taxes will be credited to the local mandatory contribution.

³² New York State Education Department, *Analysis of School Finances in NYS School Districts* (December 2003), Table 3.

³³ Statistics available from the National Center for Education Statistics at <http://www.nces.ed.gov>.

fair system for local contributions described above will result in a small measure of local tax relief to taxpayers in a number of heavily taxed local districts and small increases in a limited number of other districts, consistent with their fair share responsibilities under the formula.

Overall, under this proposal the state would increase its aid to education by the end of the four-year period by \$8.5 billion per year. The proposal includes a hold harmless provision that will prevent any district from receiving less in state operating aid and STAR payments than it now receives. The amount of additional state aid needed to provide hold harmless protection is relatively small. The total cost of providing hold harmless aid is about \$750 million for 2004-2005, which represents approximately a 3.5 percent increase in the amount of basic operating aid under this proposal. About 28 percent of all school districts (189 out of 680 school districts) would be eligible for hold harmless aid if the proposal were fully implemented in 2004-2005 (in 2004-2005 dollars and terms).

Four-Year Phase In

The increased funding proposed in the Adequate Foundation for All Plan should be phased in through equal installments over a four-year period, assuming that an additional 25 percent of the total increase will be provided to each district each year for the next four years. The total amount of additional state aid needed to implement the levels of service recommended by the AIR/MAP team and to reform New York's school funding system in the ways recommended in this report would total approximately \$8.5 billion if fully implemented in 2004-2005. Using the four-year phase-in approach described above would require an estimated \$2.132 billion increase in the first year (2004-2005). These numbers are based on the level three recommendations of the *New York Adequacy Study* (\$7.2 billion), trended forward to 2004-2005 (\$7.7 billion) using the New York State Budget Division's Composite CPI for New York.³⁴ The additional \$800 million in costs is needed to rectify the shortfall in state aid to education did between 2001-2002 and 2003-2004 and to implement the equitable state/local

³⁴ See New York State, *2004-2005 Executive Budget*, Appendix II, page 198.

sharing formula proposed in this report.³⁵

A summary of the results of the proposed changes in state and local shares, for the 2004-2005 school year (the first year of the four-year phase-in period), assuming a state aid increase of \$2.132 billion is as follows in **Table 1.4**.

| Table 1.4 STATE AID AND LOCAL CONTRIBUTION BY NEED RESOURCE CATEGORY 2004-2005 SCHOOL YEAR (IN MILLIONS) | | | | | | |
|---|--------------------------------------|---|-------------|----------|---|----------------------------------|
| | Total SBE State Aid: 2003-2004 | Total Proposed SBE State Aid: 2004-2005 | \$\$ Change | % Change | Total Required Local SBE Contribution: 2004-2005 | State Share of State/Local |
| Statewide | \$13,490.3 | \$15,622.0 | \$2,132 | 15.8% | \$16,521.1 | 48.6% |
| New York City | \$4,896.5 | \$6,019.9 | \$1,123 | 22.9% | \$5,429.0 | 52.6% |
| Big Four Cities | \$928.1 | \$1,109.8 | \$182 | 19.6% | \$395.2 | 73.7% |
| High NRC - Other Urban/ Suburban | \$1,351.0 | \$1,606.7 | \$256 | 18.9% | \$960.4 | 62.6% |
| High NRC - Rural | \$1,124.9 | \$1,303.4 | \$179 | 15.9% | \$541.2 | 70.7% |
| Average NRC | \$4,000.8 | \$4,390.3 | \$390 | 9.7% | \$5,244.0 | 45.6% |
| Low NRC | \$1,189.0 | \$1,191.9 | \$3 | 0.2% | \$3,951.3 | 23.2% |

Four years is an appropriate phase-in period. It fairly balances the urgent need to ensure all children their constitutional right to the opportunity for a sound basic education with the practical need for time for planning and implementation to ensure that the additional funds are spent efficiently and effectively. A new costing-out study should be undertaken during the 2006-2007 school year so that new foundation amounts, needs index factors, and cost index factors can be put into place during the 2007-2008 school year for use in setting state and local budgets for the ensuing four years. Similar studies should be undertaken during the third year of every four-year budget cycle. These periodic studies would review the implementation of

³⁵ This total figure also accounts for 68,000 students enrolled in charter schools who are not included in the AIR/MAP pupil count.

the new system and reconsider funding needs in light of future educational needs and conditions.

A summary of the results of the proposed changes in state and local shares, when the plan is fully implemented is set forth in **Table 1.5** (in 2004-2005 dollars).³⁶

| <p align="center">Table 1.5 STATE AID AND LOCAL CONTRIBUTION BY NEED RESOURCE CATEGORY FULLY IMPLEMENTED, IN 2004-2005 TERMS AND DOLLARS (IN MILLIONS)</p> | | | | | | | |
|---|--------------------------------------|--|----------------|----------|--|----------------------------------|--|
| | Total SBE State Aid: 2003-2004 | Total Proposed SBE State Aid: Fully Implemented | \$\$ Change | % Change | Total Required Local SBE Contribution: Fully Implemented | State Share of State/Local | |
| Statewide | \$13,490.3 | \$22,017.4 | \$8,527 | 63.2% | \$18,254 | 54.7% | |
| New York City | \$4,896.5 | \$9,390.0 | \$4,494 | 91.8% | \$7,012 | 57.2% | |
| Big Four Cities | \$928.1 | \$1,655.1 | \$727 | 78.3% | \$374 | 81.6% | |
| High NRC - Other Urban/ Suburban | \$1,351.0 | \$2,373.8 | \$1,023 | 75.7% | \$870 | 73.2% | |
| High NRC - Rural | \$1,124.9 | \$1,839.0 | \$714 | 63.5% | \$530 | 77.6% | |
| Average NRC | \$4,000.8 | \$5,558.9 | \$1,558 | 38.9% | \$5,507 | 50.2% | |
| Low NRC | \$1,189.0 | \$1,200.6 | \$12 | 1.0% | \$3,961 | 23.3% | |

To promote stability and long-term planning by school districts, the state should formally adopt a four-year funding plan setting forth in advance the amount each school district will receive for each year of the four-year period, subject only to annual inflationary increases on adjustments for extraordinary unforeseen events. The foundation amount and educational need and cost indices should be reviewed and reconsidered at least every four years, on the basis of a new costing-out study. This amount should be included in the local real

³⁶ An appropriate adjustment should be made each year after 2004-2005 to incorporate average salary, fringe benefit, and inflationary costs in other areas to ensure that the full level of services recommended by the *New York Adequacy Study* is fully maintained.

property tax report cards that school districts are required to publish in conjunction with their annual budget processes.

Part 2.

ADEQUATE FACILITIES FOR ALL:

Reforming New York State's System
for Providing Building Aid to School Districts
and for Meeting Schools' Urgent Capital Needs

EXECUTIVE SUMMARY

In recent years, a growing body of research has affirmed what public school parents, educators, and dedicated advocates have long understood: schools that are overcrowded, deteriorated, or that lack science labs, computers, libraries, and auditoriums seriously impede student learning. Recognizing this link, the Court of Appeals in *CFE v. State of New York* held that the state constitution requires all schools to provide minimally adequate facilities, and it found that aspects of the current infrastructure in New York City schools fall far short of meeting this requirement.

New York State's building aid program has helped many districts improve their educational infrastructure over the last decades, with the glaring exception of New York City and certain other urban districts. Current building aid formulas reimburse New York City for approximately 25 percent of the actual costs of a new school, compared with reimbursement rates of over 70 percent for some other high-need districts in the state. This substantial funding gap was clearly a major cause of the overcrowding and other constitutional violations identified in the 2003 *CFE* decision. Moreover, New York City, as well as other urban and small city districts are unable to take full advantage of building aid because of constitutional debt limitations and other factors, such as high construction costs.

In recent years, court mandates in education adequacy cases have resulted in substantial increases in state-level support for local building needs in other states. Indeed, as a result of court orders, Arizona now pays 100 percent of new school construction costs, as does New Jersey for its high-need districts. The Court of Appeals' decision in *CFE v. State of New York* has also now made clear that extensive facilities deficiencies in New York City constitute a major constitutional violation that requires prompt corrective action.

Therefore, in response to the Court of Appeals' order, we propose reforms to New York State's current system for providing building aid and call for the immediate establishment of a new "Building Requires Immediate Capital for Kids" (BRICKS) construction fund for New York City. This new fund will compensate for past state funding inequities and, over a five-

year period, remedy the specific constitutional violations identified by the Court of Appeals (i.e., extensive overcrowding, unacceptably large class sizes, and the lack of sufficient laboratories, libraries, auditoriums, and computers). This BRICKS program would give students in New York City access to reasonable class sizes and essential spaces like science labs and libraries comparable with their counterparts across the state. Based on our extensive analysis of New York City’s capital plan and its facilities needs, the cost for such a BRICKS program would be approximately \$8.912 billion for New York City and an additional approximately \$1 billion for similar projects in other high-need districts around the state. Assuming that these amounts would be bonded and amortized over a 30-year period, at a current interest rate of 5 percent, the total annual cost of the BRICKS fund would be \$641 million by the end of a five-year period. Assuming that the reforms to the building aid formulas we recommend will increase annual building aid allocations by the end of the five-year period by about \$350 million, the total annual increase in state funding from the package of statewide reforms we recommend would be approximately \$997 million.

1. REFORMS TO THE CURRENT BUILDING AID FORMULAS

A. Update and Simplify the Maximum Cost Allowance

The current state system for calculating building aid is based primarily on a “building aid unit” method and construction cost index devised in the 1960s that fail to account for current construction costs, class sizes, special education supports, and other ancillary services. They should be updated. Another key component is a regional cost index, which is tied to average construction costs in a way that minimizes the real range of costs among the counties and recognizes only the labor component of the “hard” construction costs. This index should be also revised to incorporate the full range of items that affect school construction and to reflect fully the cost differences around the state.

In addition, the special needs of New York City—severe urban density, land scarcity, and high construction costs—require utilization of an updated square foot option that would fairly calculate the current square foot needs per student and reasonable square foot construction costs in the city. Basing building aid on realistic construction costs and up-to-date

educational needs, these reforms would allow for equity, simplicity, and predictability for New York City and for all other districts throughout the state.

B. Eliminate Wicks Law Requirements

School districts should be exempted from the time-consuming and costly administrative burden of the Wicks law, which requires multiple construction contracts for public projects. In addition to increasing construction costs by 10 percent to 30 percent statewide, the law increases the time required for construction projects, slowing down needed school improvements and creating greater disruption to students and staff.

C. Replace “Select-Aid” and the “10% Incentive” with a 5-Year Wealth Aid Ratio

Under the current “selected building aid ratio” provision of building aid, districts automatically receive the highest level of state reimbursement based on the district’s lowest level of wealth since 1981-82, even if the district has grown much wealthier during that time. We propose a gradual five-year phasing-out of this archaic provision, to be replaced by a district wealth ratio that averages property valuations over a five-year period. The phase-out of “select-aid” should only be applied prospectively, and not to projects already in the pipeline.

The 10 percent incentive, which was added to each district’s aid ratio in 1998, has no relation to actual student needs, and has resulted in distorted building aid incentives. The incentive was substantially cut back in 2000; it should now be totally eliminated. All projects currently benefiting from the 10 percent incentive and those projects already in the pipeline should, however, continue to receive the benefit.

D. Create a New Needs-Based Building Aid Ratio

The current building aid ratio for computing state aid reimbursements is based solely on school districts’ relative property wealth. It should be revised to include a needs-based index that considers the additional facility needs of districts with large numbers of students from poverty backgrounds.

E. Partially Restore Pay-As-You Go Reimbursement

In 2001, the state eliminated its two-year reimbursement policy for pay-as-you-go capital outlays and now reimburses districts on a 30-, 20-, or 15-year basis. By providing only long-term reimbursements, the state has made it difficult for districts to use operating funds for urgent construction projects. We propose reinstating pay-as-you-go funding, with a five-year reimbursement schedule, to enable districts to upgrade school facilities in a more timely and cost-efficient manner.

F. Reform Lease Aid

Since leasing is often a less expensive, more flexible, and faster way to meet facilities' needs than new construction, long-term leases need to be supported for their full term. The current arbitrary 15-year maximum lease reimbursement should be eliminated. In addition, administrative processing of lease approvals and payments should be automated and streamlined to provide greater service and certainty to districts.

G. Modify Statutory Bonding Restrictions on Urban School Districts

New York City and other urban districts throughout the state are subject to constitutional debt ceiling limitations that impede their ability to advance the necessary local funds for school construction projects. These limitations are exacerbated by the statutory prohibitions on excluding state funds for building aid from local debt ceiling computations. Although we are not at this time proposing any amendments to the constitutional debt ceilings themselves, we call for the repeal of the additional statutory restrictions on excluding building aid receipts from debt limit computations, which are especially onerous for small city school districts.

2. THE BRICKS CONSTRUCTION FUND

These building aid reforms will help strengthen the equity and long-term effectiveness of state aid for school facilities. However, an intensive program must be quickly mounted to eliminate the extensive overcrowding and other serious constitutional violations identified in the Court of Appeals decision. Therefore, we recommend the immediate establishment of a

new “Building Requires Immediate Capital for Kids” (BRICKS) construction fund to remedy, over a five-year period, the specific constitutional violations in the New York City schools identified by the Court of Appeals—extensive overcrowding, unacceptably large class sizes, and insufficient laboratories, libraries, and access to technology. To the extent that other high-needs districts share these needs, we believe they should also qualify for funding under BRICKS.

Based on our detailed analysis of facilities needs, CFE recommends BRICKS funding for New York City in the amount of \$8.912 billion (see **Table 2.1**).

TABLE 2.1 BRICKS FUNDING RECOMMENDATIONS FOR NEW YORK CITY

| | | |
|--|--------------|---|
| Overcrowding | | |
| New capacity in the New York City capital plan | 66,000 seats | \$3.81 billion |
| Eliminating 15-20 year old mini-buildings | 2,200 seats | \$125.88 million |
| Class Size Reduction | | |
| K-3 class size reduction to 20 | 28,014 seats | Included in \$3.81 billion for new capacity |
| 4-5 class size reduction to 20 | 1,897 seats | \$108.92 million |
| 6-8 class size reduction to 23 | 230 seats | \$14.86 million |
| 9-12 class size reduction to 24 | 50,662 seats | \$2.60 billion |
| Access to Specialized Spaces | | |
| Restoring specialized spaces from overcrowding | 1,000 seats | \$70.35 million |
| Creating libraries at schools without one | 125 schools | \$169.33 million |
| Creating auditoriums at schools without one | 363 schools | \$204.12 million |
| Ensuring functional labs in all high schools | 64 schools | \$168.25 million |
| Ensuring functional labs in all middle schools | 179 schools | \$210.95 million |
| Avoiding Imminent Additional Overcrowding | | |
| Exterior modernizations | 58 schools | \$351.10 million |
| Windows | 179 schools | \$367.80 million |
| Roofs | 119 schools | \$115.70 million |
| Exterior masonry | 19 schools | \$34.90 million |
| Climate controls | 175 schools | \$59.70 million |
| Heating plant upgrades | 43 schools | \$47.70 million |
| Instrumentalities of Learning | | |
| Wiring the final 20% of unwired classrooms | | \$176.00 million |
| Purchase of new computers | | \$125.70 million |
| Library upgrades | 350 schools | \$150.50 million |
| Total: | | \$8.912 billion |

Although other high-need districts throughout the state do not confront systemic overcrowding or larger than average class sizes, they do have some shortages of science labs, libraries, and auditoriums. We estimate that an additional \$1 billion will be required for these projects in other high-need districts.

To ensure that the building aid reforms and the BRICKS grant program provide the educational opportunities to which students are constitutionally entitled, it is essential that all of the increased funding provided for school facilities actually be spent on school facilities, and that it not, as presently is the case in New York City, be treated as another revenue stream in the city's general fund. In addition, all high-need districts should be required to adopt comprehensive capital plans and report on cost containment procedures.

INTRODUCTION

In recent years, a growing body of research has affirmed what public school parents, educators, and dedicated advocates have long understood: schools that are overcrowded or deteriorated, that fail to meet health and environmental standards, or that lack science labs, computers, libraries, and auditoriums, make it difficult for students to learn and hard for teachers to teach.³⁷ At the same time, it has become clear that much of the nation's educational infrastructure, which consists largely of buildings constructed during the 1950s, are nearing the end of their useful lives and cannot adequately meet the needs of the larger school populations of the 21st century, especially in light of contemporary knowledge and standards for healthy school environments.

Recent estimates of the price tag for bringing all of the nation's schools up to good overall condition reach as high as \$266 billion.³⁸ Facility needs are particularly acute in New York City, where more than half of the buildings are over 58 years old and "were built in an era when there was no need for computers, summer school or more than rudimentary laboratory equipment."³⁹ In 1992, it was estimated that the total cost of meeting the city's capital facilities needs was \$25 billion.⁴⁰

³⁷ Healthy Schools Network, "The Healthy and High Performance School in New York State," 2004; Jack Buckley, Mark Schneider, and Yi Shang, "The Effects of School Facility Quality on Teacher Retention in Urban School Districts," National Clearinghouse for Educational Facilities (February 2004); Mark Schneider, "Linking School Facility Conditions to Teacher Satisfaction and Success," National Clearinghouse for Educational Facilities (August 2003); Glen Earthman, "Prioritization of 31 Criteria for School Building Adequacy," Virginia Polytechnic Institute and State University (January 2004); Glen Earthman, "Review of Research on the Relationship between School Buildings, Student Achievement, and Student Behavior," Virginia Polytechnic Institute and State University, July 1996; J. Howard Bowers and Charles Burkett, "Physical Environment Influences Related to Student Achievement, Health, Attendance, and Behavior," *CEFP Journal* (July/August 1988), p. 33-34

³⁸ Faith E. Carmpton, David C. Thompson, and Janis M. Hagey, "Creating and Sustaining School Capacity In the Twenty-First Century: Funding a Physical Environment Conducive to Student Learning," *Journal of Education Finance* 27 (Fall 2001), p. 641.

³⁹ *CFE v. State of New York*, 187 Misc. 2d 1, 45 (S. Ct., N.Y. Co. 2001), aff'd 100 N.Y. 2d 893 (2003).

⁴⁰ *Ibid.*, p. 40.

Traditionally local school districts have borne most of the financial burden for K-12 capital outlays. In recent years, however, states have begun to take a substantially more active role in helping local districts finance capital projects, in many instances in response to specific mandates from state courts. Specifically, 17 states have revised their capital funding methods in response to lawsuits.⁴¹ Courts in Alaska, Arizona, New Jersey, Ohio, Wyoming, and elsewhere have expressly determined that adequate facilities are an important component of the state's constitutional responsibility.⁴²

Under court order, a number of these states have been called upon to dramatically increase their support for school construction and renovation. In Ohio, the governor and state assembly passed a 12-year program calling for the commitment of \$10 billion in state funding, and from 1998 to 2002 the state authorized \$2.7 billion for school construction. In Arizona, nearly \$1.5 billion was appropriated in three years, from 1999 to 2001, for building and renovating schools. In New Jersey, \$8.6 billion was authorized in legislation in 2000 for the purposes of school construction -- \$6 billion for the state's 30 most needy districts (the "Abbott districts"). If the state of New York were to follow the experience of these other states, based on its enrollment it would need to increase its *annual* support for school facilities by \$1.7 billion.⁴³

New York State's building aid program has helped many districts improve their educational infrastructure over the last decades. However, New York City and certain other urban districts have been the glaring exception to this pattern. For example, under the current building aid formulas, New York City is reimbursed for only approximately 25 per cent of its actual new school construction costs, compared with reimbursement rates of over 70 per cent

⁴¹ Tennessee's Office of Educational Accountability, *School Capital Funding* (August 2002), p. 6.

⁴² American Civil Liberties Union of Maryland, *Funding for Educational Facilities*, (March 2003).

⁴³ Subsequent to litigation, the average annual per pupil increase for school facilities in the aforementioned states is \$541. If New York targeted its resources to high-need districts in the way some of these other states have, it would spend even more. For example, New Jersey allocated \$8.6 billion over 10 years for school facilities, but \$6 billion was earmarked for facilities in the state's 30 high-need districts, which enroll 281,701 students (\$21,299 per high-needs student); if New York were to provide the same per pupil increase in funding for its high-need districts which educate 1,571,320 students, it would allocate \$33.3 billion each year just for the high-need districts, \$22.2 billion of which would go to New York City.

for some other high need districts in the state. This substantial funding gap was clearly a major cause of the overcrowding and other constitutional violations identified in the 2003 Court of Appeals order in *CFE v. State*. Moreover, New York City, as well as other urban district and small cities are unable to take full advantage of building aid because of constitutional debt limitations and other factors such as high construction costs.

The Court of Appeals' decision in *CFE v. State of New York* also made it clear that adequate facilities are an integral aspect of the opportunity for a sound basic education, and that extensive facilities deficiencies in New York City constitute a major constitutional violation that requires prompt corrective action. Specifically, the court held that all students in the state are entitled to "minimally adequate physical facilities and classrooms which provide enough light, space, heat and air to permit children to learn,"⁴⁴ and that the constitutional rights of students in New York City are presently being violated by overcrowding, excessive class sizes, and the encroachment of ordinary classroom space into what otherwise would be specialized spaces such as libraries, laboratories, and auditoriums.⁴⁵

Therefore, in response to the court order, we propose revisions of the state's current system for providing building aid⁴⁶ and call for the immediate establishment of a new "Building Requires Immediate Capital for Kids" (BRICKS) construction fund for New York City. This new fund will compensate for past state funding inequities and, over a five-year period, remedy the specific constitutional violations identified by the Court of Appeals in regard to New York City (i.e., extensive overcrowding, unacceptably large class sizes, and the lack of sufficient laboratories, libraries, auditoriums, and computers). This BRICKS program would give students in New York City access to reasonable class sizes and essential spaces like

⁴⁴ *CFE I*, 86 N.Y. 2d at 317; *CFE II*, 100 N. Y.2d at 907.

⁴⁵ *CFE II*, 100 N.Y. 2d at 907-913.

⁴⁶In other states where court orders have required facilities financing improvements, reforms have included conducting a statewide evaluation of the condition of all schools and determining a funding level necessary to bring all current buildings up to adequacy standards and to construct a additional buildings or additions as necessary. *CFE* is not, at this point, recommending such extensive statewide reforms. The present proposal takes an approach that is both more modest and more immediate: it recommends maintaining, but improving New York's existing building aid formula, while also remedying the immediate constitutional violations that were specifically identified by the Court of Appeals.

science labs and libraries comparable with their counterparts across the state. Based on our extensive analysis of New York City’s capital plan and its facilities needs, we believe this BRICKS program for New York City would cost approximately \$8.91 billion.

The record in the trial did not include information regarding the inadequacies of facilities in other districts throughout the state. However, this proposal is based on the premise that the constitutional right to the opportunity for a sound basic education applies statewide, and, therefore, urgent capital funding requirements in other high-need districts must also be met. Accordingly, to the extent that similar urgent needs exist in other school districts around the state, they also should be met through immediate BRICKS funding. We propose that the State Education Department (SED) establish a BRICKS application process for high-need districts. Although we did not assess the precise costs for high-need districts outside New York City, we estimate that the total costs of eligible projects in these districts would be approximately \$1 billion. This figure reflects our analysis of data from the Building Conditions Assessment Surveys and numerous meetings with stakeholders statewide including staff at SED.

REFORMING NEW YORK STATE’S BUILDING AID FORMULAS

Building Aid: A Descriptive Overview

Most districts in the state of New York pass bonds to pay for the construction and renovation of school facilities. Requiring the approval of local voters, these bonds enable districts to borrow money to provide a basic educational infrastructure for their students. In the Big Five districts (Buffalo, New York City, Rochester, Syracuse, and Yonkers), the school systems have no independent ability to pass bonds. The school districts are “dependent” on the city government and compete with other municipal needs – fire, police, transportation – for city funding. These districts, and all other urban districts, also have state-mandated debt limits that prevent them from borrowing more than a certain amount of money (10 percent of the value of total property wealth in New York City, 9 percent in the other “Big 4,” and 5 percent in small city districts). As in most states, most districts in New York, regardless of their

location, are unable to pay for 100 percent of their school facility needs; as a result, funding for school facilities, though primarily a local burden, involves a partnership with the state.

New York State provides financial support to school districts for capital construction through its building aid reimbursement program, managed by SED. This program, which has been in effect since the 1960s, has provided consistent capital funding for all school districts and is a significant item in the state budget. Three years ago, total building aid statewide amounted to \$1.6 billion. In recent years, that amount has been reduced. For the current year, building aid is budgeted at \$1.17 billion and, for 2004-2005, the governor has proposed a building aid budget of \$1.36 billion. The state's level of reimbursement under building aid is determined by the type of project, eligible project costs, and a district's building aid ratio (BAR). BARs are structured to provide greater funding to districts with lower property values.

To be eligible for building aid, a project must fit into one of the eligible categories and be approved by SED. Before granting approval, SED evaluates the need for a project and particularly scrutinizes the district's current use of space, its enrollment projections, the proposed curriculum, the resulting program needs for space, and floor plans. SED then calculates the amount of building aid that a specific project in a district could receive based on a project's eligibility, costs, state-rated capacity for the building (i.e., building aid units), the construction and regional cost indices in effect when the construction contracts are signed, and the district's building aid ratio.

Projects eligible for building aid include (1) construction of a new school or building addition; (2) acquisition of property for instructional use; (3) major health and safety repairs that are not maintenance work; (4) alterations to an existing building required by an addition or by conversion of the building to another educational use, such as turning an administrative building into a school; (5) capital improvement projects or general reconstruction of individual major elements of an existing building; and (6) emergency work that meets the criteria for a capital improvement project. Administrative buildings do not qualify for building aid, but school bus garages are eligible.

The project costs that SED will consider for building aid include (1) construction costs on a construction contract that exceeds \$10,000; (2) site purchase; (3) site improvements, such as grading; (4) professional fees, such as fees for design work by architects and engineers; (5) initial costs for furniture, fixtures, and equipment; (6) interest on eligible costs; (7) insurance during construction; and (8) general administrative costs.

Building aid is calculated by taking the maximum cost allowance for the project and multiplying it by the district's BAR. The maximum cost allowance (MCA) is the lesser of (1) the project's actual costs, or (2) the number of building aid units (BAUs) for the project *multiplied* by the construction cost index (CCI) that is in effect the month that the construction contract is signed *multiplied* by the regional cost index (RCI).

There are basically three methods the state uses for assigning building aid units (BAUs) to a project. All are aimed at determining the capacity of a building. For elementary schools, the calculation is based on SED-established space standards. For example, SED assigns 27 BAUs to each 770 square-foot classroom used for grades 1 through 6. BAUs for the various spaces that will be created by the project are then totaled, though no BAUs are assigned for ancillary spaces. For secondary schools, a pupil station or teacher station method is used that essentially assigns predetermined square foot caps and pupil/teacher ratios for classrooms and includes some ancillary space. A third method for calculating BAUs is based on a predetermined statewide square foot allowance per pupil for different kinds of buildings. For example, a K-6 building allows 85 square feet per pupil, whereas 100 square feet per pupil is allowed in a K-9, 7-9 or K-12 building, and 125 square feet per pupil for a 7-12 or 10-12 building. Although these calculations are the most transparent and include the entire square footage of a school building including auditoriums, gymnasiums, and other common spaces, the square footage standards are so low that one of the other approaches is almost always more advantageous to a district.

The construction cost index (CCI) attempts to provide a per pupil base cost for construction. The CCI, established by statute many decades ago, created a base cost of \$6,375 per building aid unit, which is then adjusted based on when the construction contract was executed. For example, the index in September 2003 was 128.7, bringing the adjusted base

cost to \$8,205. Adding the 20 percent allowance for incidentals (e.g., design), \$1,641 for construction contracts executed during September 2003, brings the base construction cost for an elementary school to \$9,846. This number would then be multiplied by the BAUs for the school. The construction cost allowances are higher for secondary schools and special education students.

The regional cost index was developed in the late 1990s to attempt to account for differences in construction costs in different parts of the state. It adjusts for the difference in construction labor costs between the heavily developed urban/suburban areas of the state and the more rural counties. The most recent regional cost index for New York City is 1.8753, for Nassau and Suffolk Counties 1.6779, and for Westchester County 1.5712. These counties have the highest indices in the state. This index is multiplied by the maximum cost allowance, and the result is a “regionally adjusted maximum cost allowance.” A number of counties have indices lower than 1.0. In these instances the state treats the index as a 1.0.

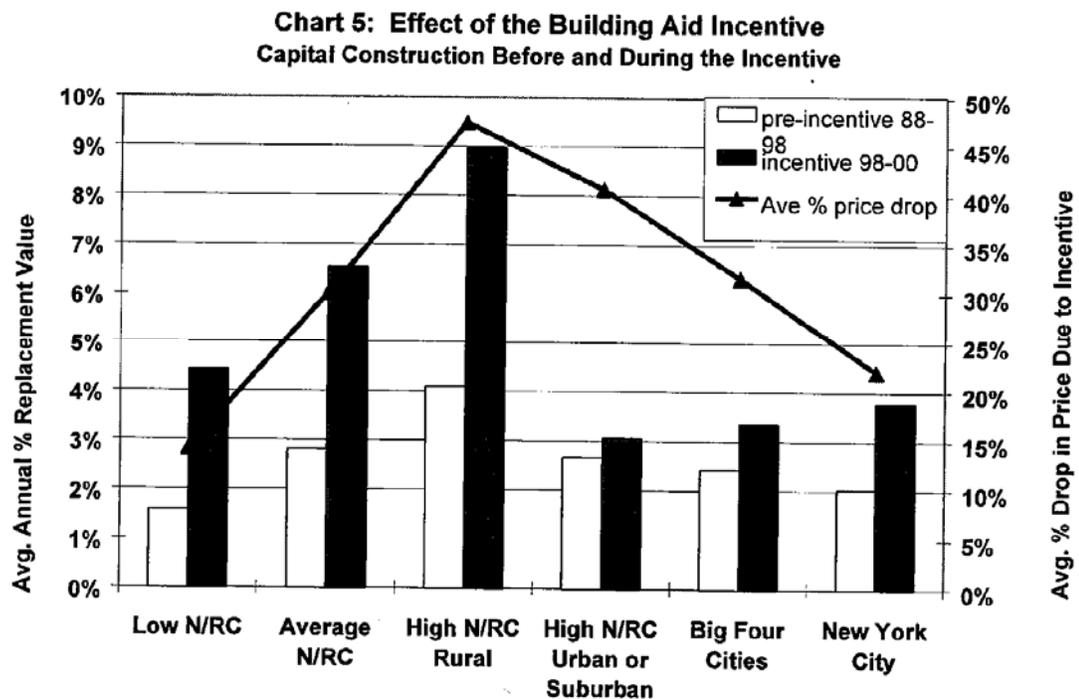
The building aid ratio (BAR) is specific to each district and attempts to capture a district’s ability to pay. The BAR is calculated annually based on a full property valuation divided by the resident weighted average daily attendance. Calculated in relation to the state average, this wealth-equalizing feature of the formula results in the state’s share of expenses increasing as a district’s property wealth decreases.⁴⁷ For a district of average property wealth per pupil, the state’s share is 49 percent. Building aid ratios range from 10 percent for the most property-wealthy districts to 95 percent for those that are the most property poor. Again, the state uses the BAR as the percentage of the maximum cost allowance/actual project costs (whichever is less) for which it reimburses districts.

In applying the BAR, the state permits school districts to utilize the highest level of state reimbursement to a district over the past 20 years, even if a district’s ability to pay changed substantially since its “select year.” Moreover, from 1998 to 2000, the state put into place an incentive in which 10 percentage points were automatically added to the selected

⁴⁷ New York State Education Department Research Monograph, “*School District Responses to Building Aid Incentives*,” (April 2002).

BAR for all districts in the state, with a maximum reimbursement cap of 95 percent. The “10 percent incentive” was given to districts in addition to their “selected building aid ratio,” which resulted in a building bonanza in many districts around the state. According to SED, during these years, only 57 of the 680 districts in the state used their current year’s aid ratio, and, in several cases, the difference between a district’s current year ratio and its “select year” was more than 40 percent.⁴⁸

Although the incentive spurred school construction throughout the state, the workings of the formula, combined with constitutional debt ceiling limitations, limited the impact of the program on the urban districts, which have the oldest building stock, and especially on New York City, as illustrated by the following SED chart.⁴⁹



⁴⁸ Ibid., p. 3.

⁴⁹ Ibid., p. 12.

SED considers a 3 percent capital replacement rate, which allows buildings to be replaced on average every 33 years, to be appropriate.⁵⁰ During the 10-year period prior to the incentive, New York City's average annual replacement rate was 2.04 percent.⁵¹ Notwithstanding this low percentage, New York City has invested \$15.6 billion in its school buildings since 1990. Although its rate was above 3 percent during the brief incentive years, the rate for rural schools during that time was 9 percent, triple the target figure, and for average need districts almost 7 percent, more than double the target figure.

New York City and other urban areas were not able to take full advantage of the incentive program and generally have not been able to take full advantage of the building aid program. One reason is that constitutional debt limits, which apply only to city school districts, limit their ability to put up the local share that is necessary to advance a project. New York City is constitutionally limited to a total municipal debt ceiling of 10 percent of the value of its property wealth. Moreover, education projects must compete with all other municipal needs for the bonding capacity permitted by these limits, and state building aid may not be deducted in calculating the debt-limit ceiling. The Big Four cities are limited to 9 percent of full value, while small city school districts are limited to 5 percent.

Due to the rapid increase in project approvals and the significantly increased levels of building aid, the incentive was modified in 2000, the year that declining revenues dramatically changed the state's fiscal situation. Although the 10 percent incentive was not totally eliminated, districts now must choose between their current year aid ratio plus the 10 percent incentive or a select year. This change has negated the advantage of the incentive for many districts.

The state has enacted other restrictions in the past two years to limit its building aid payments. The state will now provide building aid only on an amortization schedule based on a statutorily determined useful life of a project -- 30 years for new schools, 20 years for school additions, generally, and 15 years for a capital improvement project. Prior to 2001, the state

⁵⁰ Ibid., p. 8.

⁵¹ Ibid., p. 17.

would reimburse a district in the next year for any cash outlays used to pay for more affordable capital projects. By moving to only providing long-term reimbursements, the state has created a disincentive for districts to take on easily completed capital work with operating funds. That work will now take longer, cost districts more because interest will have to be paid on bonds, and may be jeopardized in districts that cannot get local voter support for school facilities projects. In addition, building aid for long-term leases, especially important in New York City where it provides a means for rapidly adding seats in overcrowded areas, artificially caps actual aidable costs by setting the maximum lease term at 15 years. Aid is also capped by the limits on the level of rental payments the state will fund.

Principles for Reform of Building Aid

Although the state building aid program has provided support for the capital construction of schools in a way that has benefited many districts, the current “spend-to-get” system has prevented urban districts with state-mandated debt limits such as New York City and resource-poor districts from undertaking the capital projects required to meet the needs of their students. Furthermore, the building aid formulas are complex, based on out-of-date indices that reflect school building standards from 40 years ago and incomplete measures of district wealth, and are not structured to meet actual student needs. Although New York City has one of the highest proportion of students from poverty backgrounds in state, it has on average had only 25 percent of the value of its new school projects funded (despite a BAR of approximately 62 percent).⁵² This substantial funding gap was clearly a major cause of the overcrowding and other constitutional violations identified in last year’s Court of Appeals’ order. Overall, New York State’s current building aid system is not predictable, transparent, or need-based, and burdens school districts with unnecessary costs and difficulty in undertaking long-range planning.

However, since many school districts around the state have benefited and continue to benefit from the state’s building aid reimbursement approach, we do not recommend scrapping the system entirely. However, we believe that the following modifications, combined with the

⁵² New York City Department of Education, “*Addressing Inequities in State Building Aid*,” (October 2003).

“catch-up” requirements of the BRICKS program described in the next section, are necessary to make the system more equitable to New York City and other school districts, and to render it more rational and predictable for all districts.

An equitable formula for aid to school buildings statewide is crucial to providing appropriate school facilities and healthy environments in which all students can receive the opportunity for a sound basic education. Therefore, state building aid reimbursement should be

- attuned to student needs and to the actual building costs of the facilities necessary to provide the opportunity for a sound basic education;
- rational, fair, simple, and understandable;
- focused on providing steady and sustainable state support;
- sufficiently flexible to address the needs of all districts; and
- prospective and phased-in gradually to ensure continuity and to avoid harmful consequences to district facilities planning efforts that depend on building aid to ensure the completion of multiyear projects.

Proposals for Reform of Building Aid

We believe these principles can be implemented by revising the existing building aid statutes and regulations in the following ways:

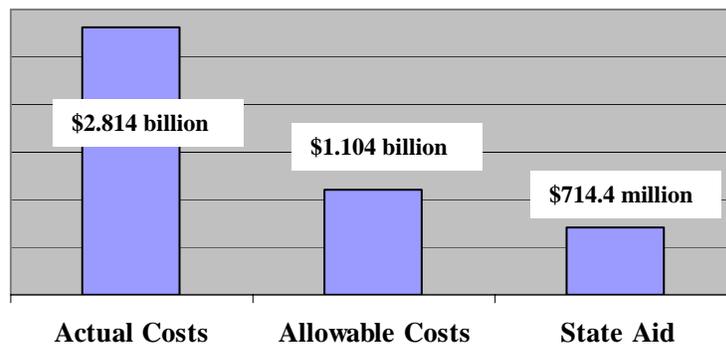
1. Updating and Simplifying the Maximum Cost Allowance

The maximum cost allowance (MCA) for new schools does not reflect the true costs of a project, particularly for new school construction. Based on an SED survey of new schools built around the state (outside of New York City), an average of 22 percent of the costs was not eligible for reimbursement because it exceeded the maximum cost allowance.⁵³ This means that districts are receiving reimbursements based on approximately 78 percent or less of their

⁵³ New York State Education Department (December 2003).

actual project costs. The exact reimbursement, once a district's BAR is applied (10 percent to 95 percent), could be anywhere between 8 percent and 74 percent. In New York City, new schools receive total reimbursement from the state of approximately 25 percent of actual costs (see Figure 2.1).⁵⁴

Figure 2.1 NEW CONSTRUCTION IN NEW YORK CITY RECEIVED ONLY 25% STATE REIMBURSEMENT FROM JULY 1, 1998 THROUGH JUNE 30, 2003



Moreover, the current SED formula favors renovation over new construction. It is much easier for a renovation project to stay below the cost allowance not only because the costs are lower but also because components of a renovation project can be individually evaluated (i.e., each “project” at a school can be evaluated against the maximum cost allowance). A new school, however, is considered one “project” that is compared against a single application of the maximum cost allowance. This policy exacerbates the overcrowding problem in New York City, since it provides a financial disincentive for school districts to build new schools.

The main problems with the current method for calculating the maximum cost allowance are that its core components, the building aid unit and the construction cost index, are outdated and do not reflect contemporary educational and construction requirements. For example, ancillary spaces in elementary schools do not receive BAUs (and therefore are not eligible for state aid), even though they have had to create additional space for special education, counseling, remedial tutoring, and other support services to meet new educational standards, particularly for students from poverty backgrounds, English language learners, and

⁵⁴ New York City Department of Education, *Addressing Inequities in State Building Aid*, (October 2003).

students with disabilities. Clearly, the current building aid unit formulas, which were established 40 years ago, need to be updated to take into account current educational standards, class sizes, and needs for ancillary space.

The construction cost index is similarly problematic. The base cost was developed decades ago for school buildings that do not reflect current standards and design. Although the state attempts to update the base cost using an index factor, the calculation still does not reflect current building needs for new schools statewide. As a result, the costs of most new schools statewide significantly exceed the maximum cost allowance.

A third major component of the maximum cost allowance is the regional cost index, which is tied to average construction costs in a way that minimizes the real range of costs among the counties, particularly in high cost counties in the New York metropolitan area. Furthermore, the index only recognizes the labor component of the construction costs and does not take into account increases in other costs, such as materials, construction methods, and overhead. This index should be expanded to incorporate the full range of items that affect school construction and be fully reflective of cost differences across the state.

Although updating the BAU formulas and revising the regional cost index will substantially aid most school districts in the state, these revisions will still not fairly meet the needs of New York City, which has unique facilities challenges and high relative costs. New York's construction base costs differ dramatically from those anywhere else in the state because of the significantly higher costs for purchasing land, building vertically often on awkward sites, off-site storage, more frequent deliveries, city congestion, and so on. Getting the current BAU concepts to work for New York City is like trying to fit a square peg in a round hole.

Accordingly, we recommend that a new square foot per pupil option to calculate the maximum cost allowance be developed for New York City. A square foot approach would be based on the premise that schools should have sufficient classrooms to provide at least average class sizes, as well as a reasonable complement of specialized spaces such as libraries, science labs, auditoriums, indoor and outdoor space for physical activity, a cafeteria complex, and

support spaces for students and staff. The State Education Department should provide reasonable guidelines on facilities needs and the size requirements for specific spaces based on actual contemporary needs, which are consistent with the comprehensive sound basic education plans it has approved.⁵⁵ Based on these needs and guidelines, SED should develop a square foot per student figure for each grade level.

The second factor in a square foot method is cost per square foot. An average square foot figure for New York City should be determined by realistic and appropriate technical and educational standards for school buildings, the design approach, the furnishings and equipment, site conditions, and current marketplace realities. Establishing a reasonable square foot reimbursement cost factor would, of course, require SED to review building plans for New York City projects, a procedure it now undertakes with all aidable building projects around the state, except for those in New York City.

In addition to costs for construction – the “hard costs” of the project – the approved square foot reimbursement figure will also have to include the “soft cost” components such as land, design, fees for other professional consultants, administration, and financing. Some of these costs are easily verified because they are linked to construction costs, but other items, such as land acquisition and in some cases environmental cleanup of the site, are harder to determine. Estimating land values is particularly difficult in New York City because the city’s enormous size results in wide variations in acquisition costs and costs for environmental cleanups, where necessary. Accordingly, land costs that do not exceed fair market value based on appraisals should be accepted as legitimate for these purposes.

In sum, the proposed square foot option would reduce the maximum cost allowance to two components – a reasonable number of square feet per student and a reasonable cost per square foot. This simple formula will eliminate the cumbersome compiling and labeling of building aid units and the separate calculations of construction base costs and the regional cost indices required by the current system. Once an appropriate method is developed for New York City, it should be analyzed for its applicability to other urban areas and perhaps as an

⁵⁵ See the detailed proposal for comprehensive educational plans set forth in Part III of this proposal.

option for school districts statewide (for some districts with small enrollments primarily in rural areas, an adjustment for smaller schools would have to be built into the formula).

Updating the method for calculating the maximum cost allowance and developing a square foot reimbursement option for New York City, and possibly other districts, would provide fair and equitable building aid reimbursements. These reforms would also allow New York City and other districts to determine the levels of state aid they could expect to receive for anticipated projects, thus rationalizing and promoting long-range facilities planning.

2. Eliminating Wicks Law Requirements

When most school districts undertake a construction project exceeding \$50,000, they must comply with the Wicks Law (a limit set in 1912 and never adjusted under General Municipal Law, section 101). Wicks requires that four or more separate contracts be awarded, instead of one for a general contractor. This mandate increases construction costs by 10 percent to 30 percent,⁵⁶ puts school districts in the position of managing school construction – coordinating the work of all the separate contracts, and resolving construction disputes -- and often results in construction delays. Wicks was adopted more than 90 years ago to prevent corruption and protect the rights of subcontractors. Laws passed more recently, including prevailing wage and prompt payment requirements, now provide many of the intended protections of Wicks without requiring the complicated coordination and increased costs associated with having multiple contractors. New York is currently the only state in the nation to impose this type of requirement.

Currently, New York City, Buffalo, and Niagara Falls have received special exemptions from the Wicks Law. The enormous outstanding need statewide for school construction and renovation argues for a statewide exemption for all school districts. To ensure that contractors deal fairly with their subcontractors, we propose that all general

⁵⁶ PricewaterhouseCoopers LLP study for the School Construction Authority, “Impact of the Wicks Law on Public Construction in New York City,” (March 1999); New York State School Boards Association, “Impact of Wicks Law – Final Report,”(March 1991); State Budget Division, “*Fiscal Implications of the Wicks Law Mandate*,” (May 1987).

contractors be required to state and verify the amounts they will be paying each of their subcontractors.

3. Replacing Select Aid and the 10 Percent Incentive

The selected building aid ratio, which permits districts to choose the most advantageous base year between 1981-82 and 1999-2000 for calculating their building aid ratio (BAR), is a hold harmless variation for which there is no rational justification. Our proposals for reform of other aspects of the building aid formula should provide compensating benefits for many of the districts that currently benefit from this provision.

To provide the support districts need due to changes in wealth in a meaningful, but rational manner, we propose a gradual five-year phasing-out of the selected building aid ratio, to be replaced by a district wealth ratio that averages property valuations over a five-year period. This system would ensure that state support responds to district wealth fluctuations that may last for more than one year (e.g., in the case of a major business closing its factory in a smaller community) but would not arbitrarily spend limited state dollars. The phase-out of “select-aid” should only be applied prospectively and not to projects already in the pipeline.

The 10 percent incentive, which has no relation to actual student needs, was substantially cut back in 2000; it should now be totally eliminated. In order to ensure continuity and stability of funding, all projects currently benefiting from the 10 percent incentive and those projects already in the pipeline should, however, continue to receive the benefit.

4. Creating a New Need-Based Building Aid Ratio

The current building aid ratio, based solely on local property wealth, fails to take into account the ability of a district to raise taxes and the needs of the students it must serve. The current BAR presumes that all students have the same needs and that all districts with similar property wealth have an equal ability to obtain capital funds. In fact, both of these assumptions often prove to be untrue. For example, the Big Five school districts have heavy concentrations of poor students, who require more extensive services (and therefore more extensive facilities),

and yet these districts have no ability to issue bonds; they must cope with highly restrictive debt ceiling limits and they must compete with the needs of other municipal services for capital funding. New York City has a building aid ratio of a moderate wealth district, in spite of a very high concentration of high-need students. Many other districts also have substantial pupil needs, eroding tax bases, and difficulties in gaining local voter support for bonds, especially when there is no assurance for local voters about the precise level of state reimbursement.

Based on the Court of Appeals' directive that funding should be aligned with need, we recommend providing a student need multiplier to allow a general realignment of building aid resources to support student needs. The current formula divides the full-assessed valuation of property by the resident weighted average daily attendance (RWADA). We propose that the current property value index should be adjusted by a measurement of the number of students enrolled in the district weighted to reflect the local level of poverty.⁵⁷ This method for determining a district's ability to pay (i.e., property wealth divided by a student enrollment factor adjusted for poverty) is a more appropriate measure and will better ensure that students have the facilities resources they need for the opportunity to a sound basic education.

5. Partially Restore Pay-As-You Go Reimbursement

Until a few years ago, the state would reimburse districts within the next two fiscal years for cash outlays for construction projects. The prompt reimbursements received through this approach provided funds that could be used for additional capital projects if the funds remained earmarked for that purpose. It also meant that some critical projects could be completed more quickly. However, the legislature eliminated this procedure a few years ago as part of the policy of standardizing amortization terms and interest rates for state reimbursement on building aid.

We recommend a partial reinstatement of the pay-as-you-go capital reimbursement program. Instead of amortizing payments of capital expenditures, the state should reimburse districts over a five-year period. Districts statewide would benefit from a more rapid

⁵⁷ A standard and appropriate measure is the number of students receiving free and reduced price lunch. For the few districts that do not provide lunch, an alternative census-based poverty figure could be used.

reimbursement of pay-as-you-go funds, which would more appropriately encourage districts to use cash on hand for small or emergency capital projects without the additional financial burdens and time delays that ensue with bonding. All other applicable elements of building aid would remain, such as eligibility of projects, maximum project costs, and aid ratios.

6. Reforming the Lease Aid Program

Long-term leases need to be supported for their full term. The current arbitrary 15-year maximum lease reimbursement term should be eliminated. It makes no financial sense to aid the capital improvements to a leased space for 30 years and to aid the rent payments for only 15 years. New York City's experience has been that leasing is less expensive than new construction, more flexible, and often provides new facilities faster. The lease aid program should sufficiently support New York City and other districts that use leasing. Additionally, administrative processing of lease approvals and payments needs to be automated and streamlined to provide greater service and certainty to districts. SED needs to be given the resources to do this.

7. Modifying Statutory Bonding Restrictions on City School Districts

As discussed earlier, New York City and other urban districts throughout the state are subject to constitutional debt ceiling limitations that impede their ability to advance the necessary local funds for school facility projects. These limitations are exacerbated by the provisions of Local Finance Law section 121.20 that prohibit city school districts from excluding amounts to be received as state building aid from the debt ceiling computations for city school districts. Although we are not at this time proposing any amendments to the constitutional debt ceilings themselves, we believe that the additional statutory restrictions on excluding building aid receipts in debt limit computations should be repealed.

Repeal of these statutory restrictions is of particular importance to small city school districts, where building aid receipts constitute a significant proportion of total debt obligations and removal of the statutory prohibition could leverage a significant increase in capital projects. In the mid-1980s, the legislature took a significant step toward making governance in small city school districts similar to that in non-city districts by requiring school budgets of

small cities to be approved by the voters. In light of that change, continuation of statutory debt ceiling limitations that do not apply to non-city districts is inequitable and unwarranted.

* * * * *

Although the number of variables involved in these building aid recommendations precludes a precise estimate of the cost associated with these proposed reforms, we anticipate that the largest increase in state reimbursements that will stem from the proposal will come from our recommended changes to the maximum cost allowance (MCA). We estimate that our proposals for reform of the MCA will annually generate \$200 million in additional building aid for New York City and \$100 million for districts in the rest of the state. The other proposed reforms, especially those regarding pay-as-you-go funding, lease aid, and Wicks exemptions, are likely to generate additional projects that we estimate will result in another \$50 million in building aid increases statewide. For initial discussion purposes, therefore, we assume that the total cost to the state for building aid reforms we propose will be an additional \$350 million per year in state building aid reimbursement, to be phased in over a five-year period.

THE “BUILDING REQUIRES IMMEDIATE CAPITAL FOR KIDS” (BRICKS) CONSTRUCTION FUND

Historically, New York State’s “spend-to-get” building aid formula has impeded the ability of the state’s resource-poor and urban districts with state-mandated debt limits from undertaking the capital projects required to meet their students’ urgent needs. For example, from 1998-2000, despite its disproportionately high student needs, New York City received only about 25 percent of all state building aid funds.⁵⁸ Although the State Education Department recommends a 3 percent annual school building replacement rate, for years New York City’s rate barely exceeded 2 percent.⁵⁹

As a result of these long-standing capital funding inequities, as the Court of Appeals specifically found, many schools in New York City are severely overcrowded, and many of them lack laboratories, libraries, auditoriums, and other basic educational facilities. These extensive constitutional violations require prompt remedial action. Once the immediate constitutional violations are addressed, ongoing capital needs of New York City’s schools, like those in other districts, can adequately be met through the revised building aid program described in the previous section. But before it can take full advantage of these reforms, New York City requires – and is constitutionally entitled to – an immediate state-funded “catch-up” program that can bring its capital stock up to a minimally acceptable adequacy level.

Accordingly, we propose that New York State meet the capital facilities mandate of the Court of Appeals’ order through a special “Building Requires Immediate Capital for Kids” (BRICKS) program. This Marshall Plan approach would establish a substantial, dedicated state fund to finance a rapid capital construction program that will address New York City’s most urgent facilities needs. To the extent that other high-needs districts experience the severe

⁵⁸ New York State Education Department, see also Zarb Commission, *Final Report*, p. 45.

⁵⁹ New York State Education Department Research Monograph, *School District Responses to Building Aid Incentives*, (April 2002).

overcrowding or lack of specialized spaces identified by the Court of Appeals in the *CFE* decision, those urgent needs should also be addressed by the BRICKS program.

New York City's immediate facilities needs are enormous. Although the Court of Appeals' decision made it clear that substantial efforts must be made to meet the identified capital funding needs, the court did not identify with precision how quickly overcrowding must be eliminated, how far class sizes have to be reduced, or how many new libraries, laboratories, and other such facilities must be constructed. Therefore, reasonable people may differ about how extensive the BRICKS program for New York City needs to be in order to meet the constitutional mandate.

The BRICKS program we are proposing takes a conservative approach to the city's funding needs. We have carefully examined the city's current five-year plan proposal, the decisions of the trial court and the Court of Appeals, as well as the voluminous record compiled in *CFE v. State of New York*. Based on that examination we have identified and determined approximate costs for only those high priority items that we believe to be indisputably covered by the Court of Appeals' order. In this constitutional compliance category, we include

- 1) construction that will add new buildings and new capacity to eliminate current overcrowding;
- 2) reduction of class sizes to levels consistent with legislative policy and the court's indications that class sizes in New York City should roughly be equivalent to average class sizes in the rest of the state;
- 3) restoring laboratories, libraries, and auditoriums in buildings that currently lack such facilities;
- 4) infrastructure improvements to existing buildings that are needed to avoid imminent loss of facilities that would result in additional overcrowding; and
- 5) providing computers and necessary technology upgrades to ensure access to technology comparable to that in schools in the rest of the state.

Based on our extensive analysis of facilities needs, CFE recommends that the BRICKS program be funded by the state at \$8.912 billion for New York City.⁶⁰ This amount should be paid out over a five-year period. Pending a similar analysis of needs in other high-need districts, we also roughly estimate that an additional \$1 billion will be needed for BRICKS projects in the other high-need districts. All eligible projects would be based on a capital plan approved by SED. Given current amortization rates, the anticipated annual cost to the state for this program would be approximately \$647 million.

There is another group of projects that arguably are also required for compliance with the Court of Appeals' order, which we have not included in the BRICKS funding proposal. These projects include further reduction of class sizes to the levels proposed by the educational prototypes described in the *New York Adequacy Study* and a substantial increase in pre-kindergarten programs, which also was recommended by that study.⁶¹ The *New York Adequacy Study* called for K-5 classes of no more than 16 students, full day kindergarten for four-year old students and half-day programs for three year olds. Increased programming of this type – as well as the additional support services, and extended day programs recommended by this and other studies – is necessary for all students to receive the opportunity for a sound basic education.

All of these reforms clearly will require substantial additional capital facilities in New York City and in many other districts throughout the state. Nevertheless, since it has not yet been determined that additional adequacy funding will, in fact, be used for these specific items, we have not included these needs in the immediate BRICKS funding proposal. We would expect that once the extent of these needs is confirmed, the state will approve additional facilities expansions for class size reduction⁶² and pre-kindergarten⁶³ programs in New York City and other districts through a reformed and expanded building aid program.

⁶⁰ In current 2003 dollars, as are all amounts from the New York City five-year capital plan included in this proposal.

⁶¹ See <http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf>

⁶² Based on data provided by SCA, we have analyzed the additional capacity needed - beyond the capital plan - at the elementary, middle and high school levels on a borough basis to achieve the *maximum* elementary class size recommendations of the *New York Adequacy Study* (i.e. class sizes of 16 in grades K-5). Even with declining enrollments, by 2012 all boroughs would need the following additional number of seats beyond what is in the

BRICKS for New York City

1. ELIMINATION OF OVERCROWDING

The New York City Department of Education's (DOE) proposed Five Year Capital Plan sets forth DOE's detailed plans to provide for the facilities needs of New York City's public schools for the period 2004-2009 and beyond.⁶⁴ Although the plan covers a broad range of capital needs and is not organized in a manner that specifically responds to the constitutional mandates of the Court of Appeals, it does include proposals for reducing overcrowding and class sizes and providing other spaces and items that are responsive to the court's order. Accordingly, our analysis relies on relevant information in the capital plan but supplements that information, as necessary, to develop a specific BRICKS proposal that is directly responsive to the court order.

In 2003, 38.9 percent of New York City's elementary schools, 35.9 percent of its middle schools and 59.7 percent of high schools were overcrowded.⁶⁵ As a result, nearly 40 percent of elementary and middle school students and an astonishing 73.8 percent of high

capital plan to reduce class size to 16 in kindergarten through grade 5: the Bronx (17,225 seats), Brooklyn (20,630 seats), Manhattan (794 seats), Queens (22,033 seats), and Staten Island (6,224 seats). It is worth noting that due to expected decreases in enrollment, the 2012 need for 66,906 seats is less than the 2007 need for 84,908 seats, and even less than the 2003 need for 114,428 seats. Using the 2012 estimated need of 66,906 seats, it would cost an additional \$4.172 billion (\$62,356 per seat in 2003 dollars) beyond what is in the capital plan to achieve class sizes of 16 in grades K-5.

⁶³ Assuming that a full-day program would attract more students, and that DOE would house half of the 60,000 students eligible to enroll based on recent birth rates, we project an increase of 17,000 seats (beyond the 13,000 that already exist) is needed for the pre-kindergarten program for four year olds. The cost to build these additional 17,000 seats is \$992.59 million (\$58,387 per seat in 2003 dollars). Based on the experience of the half-day program for four year olds when it began with an initial enrollment of 10,000 in the late 1990s, and assuming that a program for three year olds would grow more slowly, at perhaps 1,000 students annually, we project that the short-term need for seats for a half-day program for three year olds would not exceed 10,000. Although greater analysis is needed to determine parental reaction to this initiative and the potential role of outside providers, the cost to build 10,000 seats for a pre-kindergarten program for three year olds is \$584.462 million (\$58,446 per seat in 2003 dollars).

⁶⁴ References in the text are to the plan as revised in February 2004, after public review. The School Construction Authority (SCA), a New York State public benefit corporation, is the agency that manages public school construction in New York City. While DOE is required by statute to prepare five-year capital plans, SCA performs all of the planning functions to create the capital plan and implements the projects approved in the plan.

⁶⁵ New York City Office of the Mayor, *Mayor's Management Report, Fiscal 2004 Preliminary*, (January 2004), p. 20 http://www.nyc.gov/html/ops/downloads/pdf/2004_mmr/0104_mmr.pdf

school students were attending an overcrowded school. The results of this overcrowding are double sessions in some high schools, unacceptably large class sizes, and a lack of specialized spaces – gyms, libraries, auditoriums, computer rooms –in many school buildings.

The proposed capital plan aims to end overcrowding, reduce class sizes to 20 in grades K-3, and eliminate many undesirable temporary learning spaces such as portable trailers by creating 66,000 seats in 90 new schools. DOE estimates \$3.81 billion will be needed to create these seats through a combination of new construction (70 percent of the new seats) and leasing (30 percent of the new seats). The 90 new buildings and leases contained in the project include 13 small elementary schools, grades K-3 or K-8, totaling 5,636 seats; 54 primary/intermediate schools, many of which will be grades K-8, totaling 33,568 seats; and 23 intermediate/high schools, many of which will be grades 6-12, totaling 26,400 seats.

Our analysis has confirmed the validity of this basic approach to eliminating overcrowding. DOE’s analysis was based on two fundamental considerations: enrollment projections and measures of current capacity. Although the capacity analysis shows that the majority of students in the system are currently attending unacceptably overcrowded facilities, a projected long-term trend of enrollment declines, which was fully taken into account, minimized the amount of new construction that is required and has kept facility cost estimates within a reasonable range that can be accomplished over the coming five-year period. (Of course, if the enrollments do not decline as projected, the goals that DOE has set will not be fully met.)

DOE’s enrollment projections are based on reports from demographic consultants.⁶⁶ They show a long-term trend of declining enrollment. The official enrollment count for New

⁶⁶ Eunice and George Grier study for the New York City Department of Education, “Enrollment Projections 2003 to 2012 New York City Public Schools,” (July 2003). These projections are based upon the “cohort survival methodology,” used by many school districts to project enrollments. DOE and SCA state that the projections have been within 1 percent accurate historically citywide over the last 15 years. The “cohort survival is a simulation model that reproduces the way in which pupils enter, leave, and move through the school system – grade by grade and year by year – using recent data on enrollments and births.” The model is built upon almost all the factors that can affect enrollments, including migration within the city, in-migration from outside the city, movement out of the city, births, transfers, long-term absences, and dropouts. New housing data (including number and size of units as well as economics of the units – subsidized, middle income, and luxury units) is also incorporated into the data.

York City schools for the 2002-03 school year was 1,091,717 students. The number of enrolled students peaked in 2000 at 1,105,030, after increasing annually for 12 years, and has now been declining slightly in each of the last two years.⁶⁷ The report notes that, “total enrollments – including elementary, middle and high schools as well as citywide special education – are now projected to continue downward until at least 2012 – when they will fall below the one million mark for the first time since 1992.”⁶⁸ Staten Island is the only borough not expected to have declining elementary school enrollment. The Bronx and Staten Island are the only two boroughs that will have high school enrollment increases between 2002 and 2007, and only Staten Island will have more enrolled high school students by 2012.

The plan’s capacity analysis is based on DOE annual surveys of its school buildings to determine “the size, function, and use of each room in every school building.”⁶⁹ This information allows a capacity to be calculated for each building, which is then compared with the number of students enrolled in that building. If the number of students enrolled in the building exceeds the capacity of the building, the utilization of the building exceeds 100 percent and the building is deemed “overcrowded.”

In many seriously overcrowded buildings, educators may use art and music rooms, science labs, and other specialized spaces as general classrooms. The utilization analysis used in the proposed capital plan restores these specialized spaces to their intended purpose to determine the overcrowding of a particular school. Although this may make some buildings look more crowded than they currently seem, DOE’s intention is to create enough new space to restore the specialized spaces to their original purpose, an approach that is fully consistent with the Court of Appeals’ order.

⁶⁷ Not all of these students attend DOE owned or leased facilities; a significant number of students are in other facilities, such as community organization buildings and hospitals. The totals also include GED and home school students.

⁶⁸ *Grier Report*, p. 2.

⁶⁹ A building-by-building analysis of the number of students enrolled and the capacity is contained in the annual report issued by the NYC Department of Education/School Construction Authority, “Enrollment–Capacity–Utilization, 2002-2003 School Year,” (September 2003).

In 2002, six community school districts (CSDs) had overall utilization rates exceeding 100 percent for elementary and middle school spaces: CSDs 6, 10, 11, 20, 24, and 29. Even though all of these districts have received a number of new schools since 1991, they still remain chronically overcrowded. Another six CSDs have utilization rates district-wide between 95 percent and 100 percent: CSDs 9, 22, 26, 27, 30, and 31. Even though overall enrollments are projected to decline citywide, a number of these districts are expected to remain overcrowded. At the high school level, all five boroughs are currently overcrowded, with the worst overcrowding in the Bronx and Queens. High school overcrowding has become more severe as the large cohort of students that peaked in 2000 in the elementary schools moves through the system.

In a number of districts, even those that are overcrowded, there may be vacant seats in individual buildings. However, for a number of reasons using open seats within a district may not always be possible. For example, it is not feasible for a first grade student in overcrowded eastern Queens to occupy an available seat in a section of the northern Bronx that is more than an hour away. Even within a single district, available seats are generally spread throughout the school in individual classes and not in specific blocks. As a result, there are often not enough vacant seats in one building to be able to add a new school or new grade or to consolidate classes to create empty classrooms. There may also be other obstacles that prevent the transfer or re-zoning of students between schools within a district, such as geographic barriers like major roadways.

DOE/SCA used the enrollment projections and capacity analyses to calculate the number of new seats that it included in its capital plan. Determining the need for new seats at the elementary and middle school levels was accomplished by examining school capacities in each geographic region of each school district to identify overcrowding. The analysis was done for 2003, 2007, and 2012 and included the following goals: (1) building seats in all districts that are currently overcrowded or have overall utilization rates over 95 percent;⁷⁰ (2)

⁷⁰ This includes many of the districts that have enrollment growth over the next 10 years. CSDs 2 and 21 are not now overcrowded or above 95 percent utilization but their enrollments are projected to grow sufficiently to warrant additional new seats. However, CSD 2 continues to have significant middle school capacity that offers opportunities for new organizations and middle school class size reduction.

reducing class size to 20 in kindergarten through third grade; and (3) removing some of the temporary learning spaces. The need for additional pre-kindergarten space, in accordance with current enrollment trends, was also included in the calculations for elementary schools undertaken by DOE/SCA.⁷¹

For high schools a similar analysis was done on a borough and community school district level. Although many students travel outside their CSD to attend high school, the analysis shows some areas of significant overcrowding. As a result, DOE is proposing to build new high schools in some of the neighborhoods that are traditionally overcrowded, even though there may be some available seats in underutilized buildings elsewhere in the borough. DOE also made some adjustments for capacity that it expects to lose through restructuring to create multiple school organizations in some large high school buildings.⁷²

The capital plan proposes to eliminate a number of temporary learning spaces, including all transportables (two classroom trailer-type units) and temporary mini-buildings (often built in school play yards) that are older than 20 years. This is an important initiative to provide permanent space for students, especially since the temporary spaces cut students off from main school buildings and occupy valuable open space. Also, the costs to maintain these temporary structures beyond their useful life are high. Most of the mini-buildings date from the early 1970s. The transportables date back only to 1995, but they are makeshift trailer structures that should be eliminated as soon as possible.

A total of 7,430 students are housed in the 38 mini-buildings over 20 years old, and the transportables located at 120 schools across the city house an additional 20,975 students. However, there are 24 other mini-buildings that are less than 20 years old that DOE is not proposing to replace with permanent capacity, even though 12 of these structures are over 15

⁷¹ As a result of leveling off of pre-kindergarten enrollment in the last few years, DOE projections were modified on a district basis to reflect recent district trends. These analyses do not include capital needs that would result from the *New York Adequacy Study*'s proposal for expanded pre-kindergarten services, which have been endorsed by New York City Mayor Bloomberg, "No time like the present to invest in our future," address at PENCIL's Principle for A Day Town Hall Meeting (March 31, 2004).

⁷² DOE/SCA reduced the available capacity in 2007 by 2,000 seats in both Manhattan and the Bronx and 2,250 seats in Brooklyn. No adjustments were made for Queens and Staten Island.

years old. CFE believes that these 12 mini-buildings (with a total of 2,195 seats) should also be eliminated and provisions made for creating an additional 2,200 seats necessary to house their students.⁷³ The cost to replace these 2,200 seats, all at the elementary level, is estimated at \$125.88 million (\$57,219 per seat).

In sum, for purposes of this analysis, CFE accepts DOE's premise that the 66,000 new seats proposed in the capital plan need to be created and in place no later than 2012.⁷⁴ For BRICKS purposes, we would also include an additional 2,200 seats to eliminate 12 additional mini buildings at a cost of \$125.88 million.

2. CLASS SIZE REDUCTION

New York City continues to have unacceptably large class sizes at all levels, significantly larger than the state average and even other high-need districts. Largely in response to the state's class size reduction initiative, from 1999-00 to 2002-03, average class sizes in kindergarten through third grade in New York City dropped from 25 to under 22.⁷⁵ State class size reduction funds paid only for the additional teachers needed to create smaller class sizes, not for the necessary physical space. Accordingly, unacceptably large class sizes in the early grades continue to exist throughout the city, primarily in overcrowded districts. However, large class sizes are not restricted to the early grades. During the 2002-03 school year, 60 percent of middle school students in New York City were in classes of 28 or more and 49 percent were in classes of 30 or more.⁷⁶ The same year, despite middle schools being the most underutilized buildings citywide, CSDs 6, 10, 11, 20, 22, 24, 29, and 30 were overcrowded at the middle school level and CSDs 9, 26, 27, and 31 were at 96 percent to 100 percent utilization. To alleviate these large classes in part, New York City provided some

⁷³ Additional space is needed, especially since most of these seats will be lost in three overcrowded districts – 450 seats in CSD 6, 1,000 in CSD 10, and 750 in CSD 24.

⁷⁴ Questions about identifying sufficient sites to create the 90 new schools are outside of the purview of this proposal.

⁷⁵ New York City Independent Budget Office, *K-3 Class Size Drops, But 77,500 Children Still in Classes with Over 25 Students* (September 19, 2002).

⁷⁶ New York City Independent Budget Office, *Despite Free Space in Some Middle Schools, Many Packed Classrooms* (October 31, 2003).

funding in 2003-04 to hire additional teachers in grades 5-8, though funding for additional space was not provided.

Of the 66,000 new seats in the capital plan, approximately 28,000 are elementary school seats (5,636 in small K-5 schools and 22,378 of 33,568 seats in K-8 schools assuming each grade level has the same number of students). These seats would create class sizes of 20 in kindergarten through third grade. The court decisions in *CFE v. State* repeatedly discussed the need to reduce class sizes in New York City in terms of comparisons with class sizes at each schooling level in the rest of the state. We believe, therefore, that the Court of Appeals' holding that "large class sizes negatively affect student performance in New York City schools"⁷⁷ requires that class sizes in the city be reduced, at least to the average class sizes in the rest of the state. These class sizes, according to the latest audited SED figures, are approximately 20 in grades K-5, 23 in grades 6-8, and 24 in grades 9-12.⁷⁸

The capital plan already includes funds to reduce class sizes to 20 in grades K-3. **Table 2.2** shows the number of additional seats needed to reduce class sizes to 20 in fourth and fifth grades as well.

Table 2.2 ADDITIONAL SEATS NEEDED TO REDUCE NYC GRADES 4-5 CLASS SIZES TO 20

| Borough | 2003 | 2007 | 2012 |
|----------------|---------------|---------------|--------------|
| Bronx | 11,198 | 4,801 | - |
| Brooklyn | - | - | - |
| Manhattan | - | - | - |
| Queens | 21,999 | 12,891 | - |
| Staten Island | 3,985 | 2,839 | 1,897 |
| TOTALS | 37,182 | 20,531 | 1,897 |

⁷⁷ *CFE v. State of New York*, 100 N.Y. 2d at 912

⁷⁸ New York State Education Department, *New York: The State of Learning, A Report to the Governor and the Legislature on the Educational Status of the State's Schools, Statewide Profile* (2003), p. 34 and *Statistical Profile*, (2003), p. 3.

In sum, using a 2012 estimated need of 1,897 seats, it would cost an additional \$108.92 million (\$57,419 per seat) beyond what is in the capital plan to achieve class sizes of 20 in grades K-5.⁷⁹

Since middle schools are the most underutilized buildings in the city, and middle school enrollments are projected to decrease over the next nine years, our analysis of middle school requirements on a borough-wide basis shows a limited need for additional space. Since the capital plan proposes 11,190 seats at the middle school level, (presumably one-third of the total K-8 seats), we see a need for only 230 additional middle school seats in Staten Island to meet the need for average class sizes of 23.⁸⁰ The cost of these seats is \$14.862 million (\$64,617 per seat).

Reducing class sizes to 24 in high schools will require significant additional capacity beyond what is outlined in the capital plan because of the pervasive overcrowding in New York City high schools. Additional seats are needed in all five boroughs, as shown in **Table 2.3**.

Table 2.3 ADDITIONAL NYC HIGH SCHOOL SEATS NEEDED TO REDUCE CLASS SIZES TO 24

| Borough | 2003 | 2007 | 2012 |
|----------------|----------------|----------------|---------------|
| Bronx | 20,226 | 25,052 | 10,443 |
| Brooklyn | 26,826 | 26,285 | 11,045 |
| Manhattan | 16,735 | 17,588 | 9,305 |
| Queens | 31,729 | 28,445 | 16,233 |
| Staten Island | 5,275 | 5,315 | 3,648 |
| TOTALS | 100,791 | 102,685 | 50,662 |

⁷⁹ This analysis may understate the actual need because it estimates the need for additional elementary school seats on a borough basis only; a district-by-district analysis is needed to determine more precise capacity requirements. Furthermore, if enrollments do not decline as predicted, the need for additional capacity could be greater.

⁸⁰ Due to the recently announced middle school restructuring to create K-8 organizations, our analysis has reduced the capacity in each borough by 10 percent for any potential inefficiencies in creating different organizations and the need for more support spaces. Additionally, our analysis was conducted on a borough basis only; there may still be a need for additional seats in a number of overcrowded districts, which this analysis does not identify.

Since high school overcrowding is so severe, especially relative to the city's middle schools, this proposal assumes that all the seats in the capital plan dedicated to new intermediary/high schools (26,400 seats for grades 6-12) will be dedicated to relieving high school overcrowding. Nonetheless, by 2012, 50,662 seats beyond those projected in the capital plan will still be needed to achieve high school classes of 24, at a total cost of \$2.6 billion (\$51,321 per seat).

In sum, we believe that the class size reductions required by the Court of Appeals' order will cost a total of \$2.725 billion to pay for 1,897 elementary seats, 230 middle school seats, and 50,662 high school seats beyond what is in the capital plan.

3. ACCESS TO SPECIALIZED SPACES

A. Restoring Specialized Spaces

Consistent with the explicit concerns of the Court of Appeals, it is clear that additional capacity is also needed to ensure that specialized spaces, such as gymnasiums and auditoriums that have been conscripted into classrooms to address overcrowding, are restored to their intended use. Aside from denying students adequate facilities for physical education, carving up gymnasiums into classrooms creates substandard learning spaces because the typical partitioning, which does not fully ascend to the double high ceiling height of a typical gymnasium, allows noise to permeate between classes. Although no database identifies the actual number of converted gymnasium spaces in New York City's schools, based on anecdotal evidence, CFE has concluded for the purposes of this analysis, that 1,000 temporary seats must be replaced in 40 classrooms to restore these valuable specialized spaces.⁸¹ The cost to build these 1,000 seats – 60 percent in elementary schools and 40 percent in high schools – is \$51.31 million (\$51,309 per seat). To then restore the spaces, three auditoriums and seven gymnasiums, to their original purpose would cost an additional \$19.04 million. In

⁸¹ We are aware of approximately 10 schools that have lost all or a portion of their auditoriums or gymnasiums to classrooms. Our estimate is based only on those 10 schools, although undoubtedly there are others in the huge New York City school system.

all, \$70.35 million is needed to restore these spaces and ensure that new capacity is created to avoid additional overcrowding.

B. Libraries

Given the court’s clear findings concerning the inadequacies of libraries in New York City’s schools, CFE believes additional allocations must be made to ensure all students have access to an adequate library in their school (i.e., creating a new library at schools that do not presently have one and upgrade inadequate libraries). Although the DOE capital plan does not specifically include libraries, based on SCA data, it appears that 110 elementary schools, eight intermediate schools, and seven high schools currently lack libraries.⁸² Presuming that libraries can be created from existing space in buildings that lack them,⁸³ and based on renovation costs supplied by SCA of \$200 per square foot (plus soft costs), the cost of creating a new library at each of the 125 schools is \$105.2 million (\$1.188 million per school).⁸⁴ This approach, however, would also have an impact on capacity, since, based on these projections, 330 elementary classrooms, 32 intermediate classrooms, and 35 high school classrooms would be used for creating libraries. The total cost for necessary capacity to replace the spaces used for a new library initiative is \$64.12 million for high school capacity.

The Court of Appeals specifically held that students in New York City are entitled to up-to-date books that are “integrated with the contemporary curricula.”⁸⁵ However, existing libraries in many New York City schools have deteriorated and lack a sufficient number of current books, reference materials, technology, and furniture. Few schools have received interior upgrades, and the approximately 60 percent of school buildings over 60 years old tend

⁸² 31 leased spaces and 83 mini buildings have no libraries, but this analysis does not propose libraries for these structures because we assume that they are connected to a main building that does have a library or will likely be prioritized and serviced under the DOE’s classroom libraries initiative.

⁸³ For this estimate, we assume that three full size classrooms (i.e., 750 square feet each) will need to be converted for an elementary school library, four full size classrooms for an intermediate school library, and five full size classrooms and another 250 square foot room for a high school library.

⁸⁴ Estimated costs, provided by SCA, are based on \$802,000 for an elementary school library (110 costing \$88.22 million), \$960,000 for an intermediate school library (eight costing \$7.68 million), and \$1,330,000 for each high school library (seven costing \$9.31 million).

⁸⁵ *CFE v. State of New York*, 100 N.Y. 2d at 913

to be in the worst shape. As a result, CFE estimates that approximately 60 percent of school libraries, due to the age of the buildings, need renovation. After removing the 160 schools that have received a library upgrade through one of a number of special programs,⁸⁶ and the 125 schools without libraries addressed in the previous paragraph, a total of 350 schools presumably need upgrades. At \$300,000 per library – the amount generally provided for architectural upgrades of space, furniture, and technology as part of a library upgrade - plus a budget for the purchase of new books, the total cost for upgrading libraries at 350 schools is \$150.5 million (\$430,000 per school).

Based on these projections, the total investment needed to ensure that each New York City public school has a functioning library is \$255.71 million, and the additional capacity in high schools, which must be provided to support new libraries in existing schools, requires an additional \$64.12 million.

C. Science Laboratories

The Court of Appeals also specifically recognized the importance of science laboratories in its decision, stating that the lack of laboratories in many New York City high schools was “particularly poignant.”⁸⁷ The court specifically found that, as of 1999, 31 New York City high schools lacked science laboratories. Based on a more recent analysis,⁸⁸ CFE believes that 64 high schools need new labs or total upgrades to provide all of their students a reasonable opportunity to meet the Regents Learning Standards. The need to replace or create new science labs at the high school level requires additional funding of \$168.25 million (\$2.63 million per school). Most of this cost is for total upgrades or replacement labs in 54 high school buildings.⁸⁹

⁸⁶ Through efforts by the New York City Council and borough presidents, the Robin Hood Foundation library program, and DOE interior modernizations program in the early 1990s.

⁸⁷ *CFE v. State of New York*, 100 N.Y. 2d at 911 n. 4.

⁸⁸ New York City Department of Education, school facilities analysis (2000).

⁸⁹ 54 high school buildings and five leases, at a cost of \$2.75 million each, and five miscellaneous spaces at a cost of \$1.2 million each.

Because almost no effort has been made to upgrade New York City's middle school science labs since the schools were originally built, virtually all of them need extensive and comprehensive work. We estimate that upgrading 179 of New York City's middle school science labs would require a total of \$210.95 million (\$1.18 million per school) in additional funding.⁹⁰

Based on this analysis, it would cost \$361.2 million to ensure all middle school and high school students in New York City have access to a functioning lab.

D. Auditoriums / Gymnasiums

Currently, there are 363 schools in New York City without auditoriums.⁹¹ Given the scarcity of available land in many parts of the city, it would not be feasible to build auditoriums at most of these schools. Therefore, we focused on those schools that have neither an auditorium nor a gymnasium. There are approximately 38 school buildings that fit in this category, not counting leased facilities, annexes, early childhood centers, or other miscellaneous spaces. Based on SCA's \$4.73 million cost estimate for building an auditorium addition at one elementary school, and a 10 percent adjustment for purchasing necessary additional land, the potential cost of creating 38 auditoriums/gymnasiums is estimated at \$179.74 million (\$4.73 million per school). For the balance of schools that lack auditoriums but appear to have gymnasiums, we recommend the purchase of capital equipment such as a portable stage, seating, and other such items that will enable them to use their existing gyms and/or lunchrooms for dramatic productions, assemblies, and other such events. The cost of purchasing the necessary equipment to enable the 325 other schools to create makeshift auditoriums is \$24.375 million (\$75,000 per school).

⁹⁰ Total upgrades of a two-room science lab are estimated at \$1.2 million, for a three-room lab \$1.7 million, for large high schools, which need multiple labs \$2.5 million. This analysis excludes one middle school that had its science labs renovated previously and does not include those schools that may need only a partial upgrade.

⁹¹ This number, from the 2003 building conditions surveys, does not include leased spaces, which generally do not have auditoriums because of the need for double height spaces. In many major lease sites, the lunchroom doubles as a multipurpose room for assemblies and meetings. There are a few leased sites with a gymnasium that also function as an auditorium.

In sum, the amount of capital funding needed to provide New York City students with constitutionally required access to specialized space is \$968.495 million.

4. AVOIDING IMMINENT ADDITIONAL OVERCROWDING

The Court of Appeals has held Article XI of the state constitution entitles all children in the state to “minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.”⁹² Although there has been no finding of constitutional deficiencies in regard to the general state of the city’s infrastructure and its impact on students’ health and education, based on the evidence at trial, the court determined that, at this time, constitutional violations exist in New York City in regard to overcrowding, class size reduction, and access to specialized spaces. Accordingly, despite the urgent needs involved with these myriad deficiencies, CFE is not including in its BRICKS proposal most of the projects in the city’s five-year plan that seek to improve the quality of existing buildings or prevent their deterioration.⁹³

In some instances, however, the state of deterioration of certain buildings or parts of buildings is so grave that if repairs or renovations are not undertaken immediately, those facilities are likely to be rendered unusable within the next five years. Were this to occur, New York City’s overcrowding problem would be further aggravated, especially in many neighborhoods where every classroom is desperately needed. For this reason, we believe that appropriate allocations should be included in the BRICKS program to cover repairs and renovations in buildings that are needed to avoid additional overcrowding if not attended to immediately.

The city’s five-year capital plan indicates that an investment of \$10.5 billion (in 2003 dollars) is needed over the next 10 years to repair and replace building systems and undertake exterior modernizations in existing public school buildings. The plan allocates \$2.9 billion

⁹² *CFE v. State of New York*, 86 N.Y.2d at 317; 100 N.Y. 2d at 911

⁹³ Given the deteriorating state of school facilities in many parts of New York City and in other districts around the state, it is possible that if these problems are not remedied through a combination of city funds, an expanded building aid program or otherwise, future litigants may bring these issues before the courts and establish violations under the adequate facility aspects of Article XI.

(inflation adjusted) for both over the next five years. Based on the criterion of imminent likelihood of resulting in additional overcrowding, we have included for BRICKS purposes the most critical projects that involve structural issues. These projects, which constitute about 10 percent of the repair and renovation items in the capital plan, have a total cost of approximately \$976.9 million. Generally speaking, the projects we have included are those that have received the lowest ratings and certain of those in the next lowest rating category in the Department of Education's most recent building condition surveys.

A. Exterior Modernizations

The first category of repairs necessary to avoid imminent overcrowding is certain exterior modernizations that are needed because acute exterior deterioration, especially those due to water penetration, can rapidly jeopardize continued use of the affected space and, in some cases, the entire building. This has been a significant issue in New York City where in recent years many classrooms and top floors of buildings have been closed because of chronic water infiltration. Severe exterior deterioration can also significantly affect air quality and can contribute directly to other problems such as mold growth.

Although DOE has identified 154 buildings as needing exterior modernization at a cost of \$1.675 billion, it has included in the current five-year plan only 50 schools at a cost of \$349.2 million. The buildings funded in the five-year plan have the worst conditions, exhibit or threaten water infiltration, and have exterior components—windows, roofs, masonry, and parapets—with the lowest ratings in the building survey.⁹⁴ The work at approximately 40 of these schools includes window repair and/or replacement. We believe that an additional eight buildings that require window replacement that DOE would delay until the next five-year plan also meet the imminent danger of overcrowding criterion and should be included in the BRICKS construction fund. We therefore recommend that a total of \$414.9 million (\$7.153 million per school) be included in the BRICKS funding to cover all 58 buildings whose overall exteriors received the lowest ratings in the building surveys.

⁹⁴ An important strategy of DOE's capital program is to repair or replace all of a building's exterior components at one time if there are significant deficiencies in multiple components. If three of a building's four major exterior components – windows, roof, masonry, and parapets – are rated below "fair" condition on the most recent building condition assessment survey, then that building is identified as needing a full exterior modernization that

B. Windows

Working windows are extremely important to creating an adequate learning environment and providing light and needed ventilation in the warmer months. Too many school buildings in New York City still need extensive repairs or replacements because the windows are either inoperable, nailed shut because they would otherwise be dangerous to students and staff, or are so drafty that they can not keep out the rain and cold. The capital plan proposes to include window improvements at 104 schools. However, since some essential window projects were not included in the current five-year plan, we recommend an additional 75 replacement projects in which the windows received the lowest ratings in the building survey. Accordingly, the total funding for window work recommended here is \$367.8 million (\$2.055 million per school).

C. Roofs

A roof in good condition is critical to the integrity of a building. The capital plan proposes funding to replace roofs at 64 schools. However, the only difference between a roof that was included in the capital plan (i.e. rated 4.5 and above) and a roof excluded from the plan (i.e. rated between 4 and 4.5) is the extent of existing leaks. We believe that all roofs that have serious leaks create an imminent risk of causing additional overcrowding and therefore recommend that an additional 55 schools be included in this program. The total cost of roof repairs that we recommend is \$115.70 million (\$0.972 million per school).

D. Masonry

Deteriorated exterior masonry is another building component that can allow significant water penetration. We therefore recommend that 19 schools with the worst masonry conditions be included in the BRICKS program at a total cost of \$34.9 million (\$1.837 million per school).

would repair or replace all exterior items – not just the four identified above – but all other exterior components such as doors and window guards.

E. Climate Controls and Heating Plant Upgrades

Since prior capital plans neglected the replacement or upgrading of heat, light, ventilation, air conditioning, and other interior systems, the current five-year plan focuses on these enormous needs. Aiming to improve the interior systems of New York’s aging building stock, the plan proposes spending \$1.71 billion over a five-year period for interior work. We believe that interior system upgrades with respect to climate controls, at a cost of \$59.7 million for work at 175 schools (\$0.341 million per school), and heating plant upgrades, at a cost of \$47.7 million for work at 43 schools (\$1.109 million per school) are necessary to avoid the imminent danger of overcrowding. Therefore, we have included a total of \$107.4 million for interior systems in the BRICKS proposal.

In sum, we believe that a total of \$976.9 million is needed to undertake capital improvements that protect against the threat of imminent additional overcrowding.

5. PROVIDING COMPUTERS AND NECESSARY TECHNOLOGY UPGRADES

In addition to holding that additional capital facilities are needed to reduce overcrowding and class sizes, the Court of Appeals in its discussion of “instrumentalities of learning,” also upheld the trial court’s findings that New York City has insufficient numbers of up-to-date computers and that the age and antiquated wiring of New York City’s buildings has impeded computer use in the classroom.⁹⁵ Currently, although more than 500 schools in New York City have wireless capability and every school building has potential internet access, 20 percent of the city’s school buildings lack the technological infrastructure to provide their students access to the internet. The capital plan proposed providing the supporting infrastructure required to ensure that every classroom has internet access at a cost of \$176.0 million, which we endorse. These funds will provide cabling to an access point in every classroom for approximately 200 schools; they will also pay for ancillary equipment, such as internal servers for large schools, and minor electrical upgrades needed to support the technology infrastructure.

⁹⁵ *CFE v. State of New York*, 100 NY 2d at 913, 187 Misc. 2d at 58-60.

New York City's goal, as stated in the five-year plan, is to provide laptop computers to all of its students and teachers to extend learning beyond the classroom in a wireless environment. An allocation of \$417.7 million is provided in the capital plan to begin to meet that objective. We do not believe that the Court of Appeals' order can be read to support this range of extensive laptop purchases. The court ruling does, however, clearly support supplying New York City students with the same ratio of standard computers to students in the rest of the state.⁹⁶ For that purpose, we believe that \$125.696 million is needed to purchase an additional 72,053 computers.⁹⁷

In sum, New York City has a total need for technology access upgrades and new computers of \$301.696 million.

6. SUMMARY OF FUNDING RECOMMENDATIONS

Overall, BRICKS funding for New York City schools should include all of the items included in **Table 2.1**.

⁹⁶ *CFE v. State of New York*, 100 N.Y. 2d at 913.

⁹⁷ According to the most recent *New York State of Learning* (2003) p. 94, the state averages 21.9 computers per 100 students, compared with 15.3 per 100 students in New York City. Given New York City's 2002-03 enrollment of 1,091,717, it should have 239,086 computers instead of its current 167,033 to reach the state average. This is a difference of 72,053.

Table 2.1 BRICKS FUNDING RECOMMENDATIONS FOR NEW YORK CITY

| | | |
|--|---------------|---|
| Overcrowding | | |
| New capacity in the New York City capital plan | 66,000 seats | \$3.81 billion |
| Eliminating 15-20 year old mini-buildings | 2,200 seats | \$125.88 million |
| Class Size Reduction | | |
| K-3 class size reduction to 20 | 28,014 seats | Included in \$3.81 billion for new capacity |
| 4-5 class size reduction to 20 | 1,897 seats | \$108.92 million |
| 6-8 class size reduction to 23 | 230 seats | \$14.86 million |
| 9-12 class size reduction to 24 | 50,662 seats | \$2.60 billion |
| Access to Specialized Spaces | | |
| Restoring specialized spaces from overcrowding | 1,000 seats | \$70.35 million |
| Creating libraries at schools without one | 125 schools | \$169.33 million |
| Creating auditoriums at schools without one | 363 schools | \$204.12 million |
| Ensuring functional labs in all high schools | 64 schools | \$168.25 million |
| Ensuring functional labs in all middle schools | 179 schools | \$210.95 million |
| Avoiding Imminent Additional Overcrowding | | |
| Exterior modernizations | 58 schools | \$351.10 million |
| Windows | 179 schools | \$367.80 million |
| Roofs | 119 schools | \$115.70 million |
| Exterior masonry | 19 schools | \$34.90 million |
| Climate controls | 175 schools | \$59.70 million |
| Heating plant upgrades | 43 schools | \$47.70 million |
| Instrumentalities of Learning | | |
| Wiring the final 20% of unwired classrooms | | \$176.00 million |
| Purchase of new computers | | \$125.70 million |
| Library upgrades | 350 schools | \$150.50 million |
| | Total: | \$8.912 billion |

Accountability

To ensure that all schools in New York City have the facilities they need to provide the opportunity for a sound basic education, it is also important that the New York City Department of Education and the School Construction Authority provide strong management, an efficient organization, updated standards and streamlined procedures to ensure that the capital plan for the country's largest school system is accomplished efficiently and

economically. In the past, the DOE and SCA have faced criticism for poor planning, high costs, management deficiencies, and lack of coordination.

In 2002, an outside commission headed by Peter Lehrer, a construction industry expert, issued a report examining why the costs to build New York City's schools were so high. Their report made a number of recommendations, chief among them were: (1) unifying a divided bureaucracy—SCA and the Division of School Facilities (DSF)—into an accountable system with increased mayoral control; (2) revising outmoded and cumbersome design standards; (3) lowering school construction costs from \$450 per square foot to \$300-\$325 per square foot; (4) designing more efficient schools that use 60 percent of the gross space for educational purposes; (5) creating more competition among contractors by priority, a commercially viable business environment, and an attractive climate for all top-qualified contractors and vendors; and (6) reducing SCA overhead, in large part by having a smaller staff manage outside architects and construction managers.

SCA has made significant progress to achieve the above recommendations. Since the Lehrer report, (1) all capital planning activities have been merged with the design and construction functions at the SCA and restructured with strong mayoral control; (2) with the assistance of a highly experienced construction executive, extensive revisions have been made to SCA design standards to achieve a better balance of durability and cost effectiveness that will help minimize labor and material costs; (3) the most recent bids based on the updated design standards have been at \$314, \$311, and \$300 per square foot, well within the cost recommendations of the Lehrer report; (4) SCA has set a goal of using 65 percent of gross space for educational purposes;⁹⁸ (5) to attract more contractors and create a more viable business environment SCA has reduced its pre-qualification application form by two-thirds, ensured payment is made on a timely basis, generally within 30 days or less, and streamlined its change order process; and (6) SCA has reduced its staff by approximately 40 percent in the last 15 months to lower its overhead and soft costs.

⁹⁸ SCA has exceeded this goal for one of the three most recent projects, is on target for another, and is just below 65 percent for the third.

To ensure continued progress in meeting these goals and providing accountability, SCA and DOE should ensure specific schedules for projects in the categories identified in this report, make regular reports on progress against proposed schedules and budgets, and provide ongoing analysis of their efforts to reduce overcrowding and class sizes.

We also endorse the recommendation of the New York State Commission on Education Reform that the state should provide New York City and other school districts access to the construction management services of the State Dormitory Authority. We agree that the Dormitory Authority could help New York City and other districts reduce construction costs through assistance with master planning, feasibility studies, cost-benefit analyses, analysis of material selection, and third-party review of construction documents.⁹⁹

All of the state aid that New York City receives for BRICKS funding (and all of its building aid under the reform proposal set out above) should be identified, tracked, and spent exclusively on the capital projects for which it is intended. The city's current practice of incorporating building aid receipts into its general fund should be prohibited.

BRICKS Projects in Other High-Need Districts

1. ELIMINATION OF OVERCROWDING

The extensive court record and New York City's detailed five-year capital plan have provided CFE with substantial information about the specific overcrowding of the New York City school system and the facility needs to relieve the problem. Although comparable information is not available regarding overcrowding in other high-need school districts, numerous conversations with SED and representatives of high-need districts have indicated that severe overcrowding only exists in a few high-need small city and suburban school districts, and is not a systemic problem throughout the state.

⁹⁹ New York State Commission on Education Reform, *Final Report* (March 29, 2004), p.47.

2. CLASS SIZE REDUCTION

Unlike New York City, other high-need districts do not appear to have above-average class sizes system wide. Compared with New York City’s average elementary school size of over 24 students per class, other high-need districts average between 18 and 20 students per class,¹⁰⁰ below the statewide average. For middle schools and high schools, no comprehensive data are available, but sample class sizes in grades 7-10 peg high-need district class sizes between 19 and 23, compared with New York City’s classes of 28 and 29.¹⁰¹ Although there may be some individual districts with unusually large class sizes, CFE believes that there is no systemic statewide need for funding at this time to lower classes to the statewide averages in high-need districts outside New York City.

3. ACCESS TO SPECIALIZED SPACES

The building conditions assessment surveys (BCAS), which school districts must conduct of all of their buildings, provide information on the status of specialized spaces—such as gyms, libraries, and science labs—around the state. Although the BCAS database is not entirely comprehensive, the surveys do provide information on 3,036 school buildings outside of New York City that serve 1,655,698 students.¹⁰²

Most schools around the state are fully equipped with the specialized spaces needed to provide the opportunity for a sound basic education to their students. However, according to the surveys, a number of schools, especially in high-need districts, lack key specialized spaces identified by the Court of Appeals – science labs, computers, libraries, and auditoriums.

¹⁰⁰ New York State Education Department, *New York: The State of Learning, Statistical Profiles*, Table 3, p. 3.

¹⁰¹ New York State Education Department, *New York: The State of Learning, Statistical Profiles*, Table 3, p. 3 and *New York: The State of Learning, Statewide Profile*, Table 2.9, p. 34.

¹⁰² Information on high-need districts includes 153 school buildings in the “Big Three” districts (i.e., Buffalo, Rochester, Syracuse) that serve 93,067 students, 291 buildings in high-need rural districts that serve 147,087 students, 231 buildings in high-need small city districts that serve 138,786 students, and 126 buildings in high-need suburban districts that serve 650,169 students.

A. Science Labs

According to the BCAS data, 52 high schools in high-needs districts around the state serving 17,056 students lack science labs. This includes 10 high schools in Buffalo, Rochester, and Syracuse, 19 in rural districts, 18 in small city districts, and 4 in suburban districts.

B. Libraries

Outside of New York City, 153 schools in high-need districts serving 34,064 students have no library. This includes 24 schools in Buffalo, Rochester, and Syracuse, 53 in rural districts, 33 in small city districts, and 43 in suburban districts.

C. Auditoriums

Although most schools around the state have not needed to carve their auditoriums into classrooms to relieve overcrowding, 399 schools serving 153,524 students in high-need districts have no auditorium at all. This includes 54 schools in Buffalo, Rochester, and Syracuse, 156 in rural districts, 113 in small city districts, and 76 in suburban districts.

4. COMPUTERS AND TECHNOLOGY UPGRADES

According to the BCAS data, in high-need districts outside New York City there are 236 schools serving 74,571 students without a computer room. This includes 56 schools in Buffalo, Rochester, and Syracuse, 63 in rural districts, 53 in small city districts, and 64 in suburban districts. Although wireless technology may have begun to alleviate the need for a designated computer room in each school, we assume that at least some of these schools need capital funds to provide appropriate wiring and infrastructure for internet access. Outside of New York City, only large city districts average fewer computers per 100 students (21.8) than the state median (21.9), but the gap is practically negligible.¹⁰³

5. FUNDING RECOMMENDATIONS

Although their capital needs do not compare with the extensive deficiencies in New York City, other high-need districts throughout the state do have deficiencies in a number of the specific capital funding categories that the Court of Appeals has identified as warranting

¹⁰³ New York State Education Department, *New York: The State of Learning, Statewide Profile*, p. 94-95.

constitutional consideration. As part of the BRICKS program, we therefore recommend that the State Education Department establish a program that will permit high-need districts to apply for BRICKS funding in accordance with eligibility criteria analogous to those set forth for the New York City BRICKS programs described in this proposal.

We estimate for working purposes that projects with a total cost of approximately \$1 billion would likely qualify for BRICKS funding. This estimate is based on the general lack of overcrowding and above average class sizes in high-need districts outside of New York City; the past ability of many high-need districts, especially in rural areas, to capitalize on the building aid formulas; and the fact that the number of students in high-needs districts other than New York City is approximately half the city's student population.

Part 3.

A CONSTITUTIONAL SYSTEM OF EDUCATIONAL ACCOUNTABILITY

EXECUTIVE SUMMARY

In recent years, New York, like most other states, has adopted a set of challenging educational standards that are geared to preparing all students to be capable citizens and to compete in the global marketplace. The state has also implemented extensive Regents testing programs to measure student progress toward meeting the standards. These assessments are used to hold school districts, superintendents, principals, and students accountable for meeting specific outcome goals and to apply a range of sanctions if they do not.

The Court of Appeals' decision in *CFE v. State* makes clear that all students cannot realistically be expected to obtain a sound basic education in accordance with state graduation standards unless sufficient resources have been provided to all schools. If the state does not provide adequate funding, it is both unreasonable and unfair to hold school officials and students accountable for meeting the state's ambitious achievement goals.

Adequate funding is, however, a necessary but not a sufficient condition for improved student learning. As the Court of Appeals also held, current funding and school management structures must be reformed to ensure that sufficient resources such as qualified teachers, appropriate class sizes, instructional materials, and adequate facilities are actually available in each school in accordance with the needs of students. Moreover, these resources must be used in ways that will actually provide all students a genuine opportunity for a sound basic education.

Thus, a comprehensive accountability system that meets the constitutional requirements articulated by the Court of Appeals must include not only accurate outcome measures and decisive consequences but also assurances of adequate funding and methods for fairly distributing and effectively using appropriate resources to meet student needs. Accordingly, we propose a new constitutional accountability for the State of New York consisting of the following five basic components, all of which are necessary and cannot effectively be implemented separately.

1. ADEQUATE SYSTEMIC FUNDING

Adequate annual levels of funding that guarantee minimum essential resources, as determined through periodic objective costing-out studies, must be assured in a stable, predictable manner. The current state education finance system, which consists of approximately 50 diverse formulas and grants in aid, should be replaced by a foundation system that consolidates most state funding into a single block grant, and that appropriates these grants through multiyear legislative funding commitments. The legislature must also provide sufficient funds for the State Education Department (SED) to carry out its accountability functions effectively.

2. COMPREHENSIVE PLANNING AND DISTRIBUTION OF SUFFICIENT RESOURCES TO EACH SCHOOL

The myriad of current categorical funding restrictions and reporting mandates should be replaced by a requirement for a single comprehensive “sound basic education” plan that each school district should develop with substantial input from administrators, teachers, parents, and the public at large. Plans of New York City and other districts with large numbers of students who are not currently meeting Regents standards would be subject to review and approval by the SED through a peer review process. Their plans would be required to demonstrate specifically how the district’s funds will be used in defined priority areas to meet the goals of providing all students with the opportunity for a sound basic education and closing existing achievement gaps.

The plan should cover a four-year period, but it should be updated annually to allow for necessary interim adjustments. It should set forth specific output benchmarks and describe methodologies for determining how funds will be allocated to schools in the district to meet student needs. SED should appoint a Sound Basic Education Implementation Task Force, with diverse community representation, to advise the Regents on appropriate regulations and guidelines to implement the new accountability system.

3. EFFECTIVE USE OF RESOURCES

Comprehensive planning at the district level must be accompanied by comprehensive planning at the school level. School-level planning promotes effective resource use by accounting for local conditions and student needs, and by focusing on building school-based instructional capacity. School-level planning should provide feedback on resource adequacy and specific implementation issues. It should also promote the development of local priorities in areas like art education and civic participation to supplement the core subjects emphasized in the Regents testing program. Local plans should be developed with significant input from teachers, parents and the entire school community.

Effective use of resources will also require the identification of existing statutory, regulatory, and contractual impediments to providing a sound basic education, and concerted efforts to negotiate new ways to promote policy initiatives while recognizing employee job protection needs in the changed constitutional context. In addition, the State Education Department's current information systems need to be updated and expanded to enable such functions as individual student tracking and effective coordination of resource allocations.

4. PROPER ASSESSMENT OF OUTCOMES

The Regents' current system of student testing should be maintained, but improved by (a) undertaking a thorough independent review of the validity and reliability of all the Regents examinations; and (2) encouraging districts and schools to utilize portfolios in a supplementary manner to assess organizational, communication, social responsibility, and other civic participation skills.

5. APPROPRIATE CONSEQUENCES FOR POOR PERFORMANCE

Decisive sanctions should be applied promptly at all levels of responsibility to ensure the availability of adequate resources and to eliminate fiscal abuse and professional incompetence. But once any necessary sanctions have been applied, the additional "consequences" for low performance should include renewed efforts to ensure that adequate resources to meet student needs are available and are being used effectively.

Specifically, where schools are persistently low-performing, SED should send a highly qualified state assistance team to conduct a thorough school improvement review, designate a “distinguished educator” to work at the school for the next year or two, and develop and ensure the implementation of an effective school turnaround plan.

An independent Accountability Review Panel should be established. The governor should designate two of the members of his Commission on Education Reform to serve on the panel, two members should be designated by the plaintiffs in *CFE v. State of New York*, and three should be appointed by the Regents. The panel should (a) identify major statutory, regulatory, or contractual provisions that need to be reconsidered in order to meet constitutional objectives; (b) retain professional auditors to conduct periodic operational efficiency audits of New York City and other school districts; and (c) report annually to the governor and the legislature on the implementation of the new constitutional accountability system.

INTRODUCTION

In order to cure widespread constitutional deficiencies, the New York Court of Appeals, in its 2003 decision in *CFE v. State of New York*, ordered the state to (1) determine the actual cost of providing a sound basic education; (2) reform the current funding and management structures to ensure that all schools have the resources they need to provide a constitutionally adequate education; and (3) develop "a new . . . system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education."¹⁰⁴

The court's seemingly simple order has profound implications. It requires a new approach to school finance that looks not only at how much money is made available but also at how the money is spent and whether increased funding actually results in improved student performance.¹⁰⁵ It essentially calls for a "next generation accountability" approach that includes testing, sanctions, and other traditional accountability concepts but incorporates them into "a broader reform strategy designed to alter the conditions of teaching and learning that affect student performance."¹⁰⁶

In recent years, New York State, like most other states, has adopted a set of challenging educational standards that are geared to preparing all students to be capable citizens and to compete in the global marketplace. The state has also implemented extensive Regents testing programs to measure student progress toward meeting the standards. These assessments are then used to hold school districts, superintendents, principals, and students accountable for

¹⁰⁴ *CFE v. State of New York*, 100 N.Y. 2d at 128.

¹⁰⁵ The broad implications of this approach are discussed in W. Norton Grubb and Luis Huerta, "Straw into Gold, Resources into Results: Spinning Out the Implications of the 'New' School Finance," *PACE Working Paper Series* 01-1, April 2001.

¹⁰⁶ The term "next generation accountability" was formulated by the Education Commission of the States. In a project designed to help education policymakers improve their accountability systems, ECS describes next-generation accountability models as improvement-focused systems whose purpose is to improve teaching and learning; include all levels of the education system – state, district, school and classroom; and hold adults in the system accountable for student performance. See, e.g., Education Commission of the States, *Designing and Implementing Standards-Based Accountability Systems*, March 1998; Michael Cohen. "Emerging Issues in the Design of Next Generation Accountability Models." *ECS Briefing Paper*, May 2002.

meeting specific outcome goals. Under the federal No Child Left Behind Act of 2001, an extensive series of sanctions is imposed on schools and school districts that fail to meet these achievement targets.

The court's order, consistent with a comprehensive "next generation" approach to accountability, makes clear that the output measures demanded by the current state and federal accountability schemes cannot realistically be achieved unless requisite educational inputs have been put into place. First and foremost among the necessary educational inputs is, of course, adequate funding—requiring, according to the *New York Adequacy Study* and CFE's building aid analysis, increased statewide appropriations of \$9.5 billion per year. If the state does not provide adequate funding, it is both unreasonable and unfair to hold school officials and students accountable for meeting the state's ambitious achievement goals.

Adequate funding is, however, a necessary but not a sufficient condition for improved student learning. As the Court of Appeals clearly held, current funding and school management structures must be reformed in a manner that will ensure that sufficient resources are actually available in every school. Thus, the state not only must ensure that sufficient funds are appropriated for public education purposes, but it also must see that the resources that money can buy, such as qualified teachers, appropriate class sizes, instructional materials, and adequate facilities, are actually available in each school in accordance with the needs of students.

Moreover, these resources must not only be made available, but they must be used in ways that will provide all students a genuine opportunity to obtain a meaningful education. All educators and parents know that an effective school not only has an acceptable number of certified teachers, up-to-date textbooks and adequate facilities; it also is an institution in which administrators, teachers, and parents have the skills, knowledge, and opportunity to create an environment for teaching and learning that results in a sustained educational achievement.

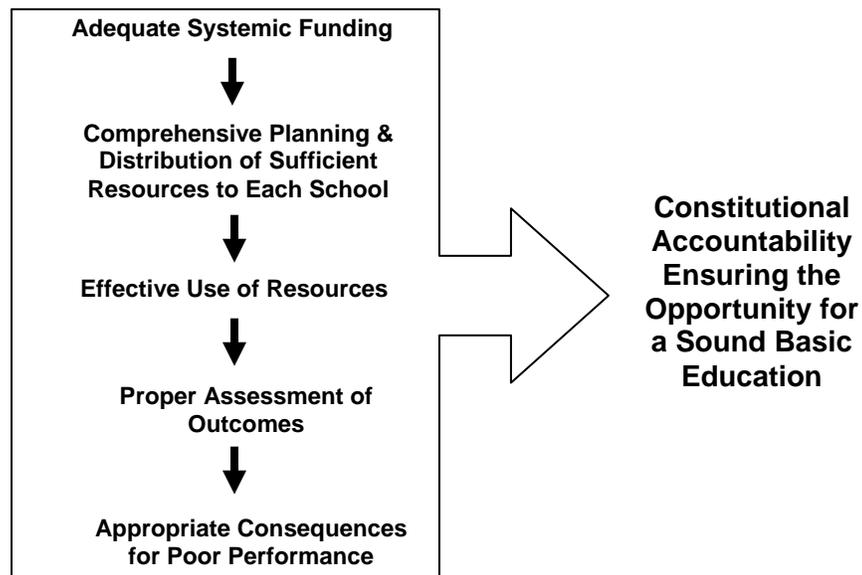
In sum, then, a comprehensive accountability system that meets the constitutional requirements articulated by the Court of Appeals must consist of the following five basic components:

1. Adequate systemic funding
2. Comprehensive planning and distribution of sufficient resources to every school
3. Effective use of resources
4. Proper assessment of outcomes
5. Appropriate consequences for poor performance

New York State's current accountability system focuses almost exclusively on the last two of the five components of a comprehensive accountability system. We believe that an appropriate accountability system that meets the Court of Appeals' requirements, and holds all stakeholders accountable for student performance, must comprehensively include all five of these concepts, each of which is necessary and cannot effectively be implemented separately .

The proposal we set forth in the pages that follow will incorporate and build on the state's existing System of Accountability for Student Success (SASS) but will also consider in detail the funding needs, planning mechanisms to assure the effective delivery of instructional resources to each school, and methods to ensure that those plans are implemented properly and actually foster educational improvement in each school (see **Figure 3.1**).

Figure 3.1 COMPONENTS OF A CONSTITUTIONAL ACCOUNTABILITY SYSTEM



The absence of adequate funding in the past has rendered calls for increased accountability in New York City and other high need school districts throughout the state hollow and often disingenuous. The prospect of adequate funding in accordance with the Court of Appeals' order changes the entire accountability equation in these districts: once funding is assured, it will become fully realistic to expect much higher levels of student performance, and it will become entirely appropriate to hold teachers, administrators and school officials—as well as parents and students—responsible for meeting specified achievement goals.

With adequate levels of funding, the need for sufficient resources in every school and for effective management of resources at both the district and the school levels take on new significance. The main mechanisms we will propose to assist officials in accomplishing these tasks, and to hold them accountable for ultimate student learning outcomes, are comprehensive planning and implementation processes and enhanced information, reporting, and public monitoring procedures. The availability of adequate systemic funding, provided largely through a single foundation block grant, will provide an opportunity for New York City and other high need districts to reconsider instructional approaches, establish priorities, and mobilize broad-based staff and public support for renewed efforts to improve student achievement dramatically. Where these efforts fail to result in acceptable student performance, we will propose strong methods to remedy the deficiencies and turn failing schools into successful learning environments.

It is important that comprehensive planning consider the needs of all schools in New York City and other high need districts. As the evidence at the CFE trial clearly indicated, the problems of resource shortfalls, and the educational deficiencies they create are, systemic issues and unless accountability mechanisms are put into place on a systemic basis, pouring resources and focusing attention on a subset of schools today will merely result in shifting the problems to other schools tomorrow.¹⁰⁷ School improvement efforts must be coupled with

¹⁰⁷The recent report of the New York State Commission on Education Reform ("the Zarb Commission") proposes that "resources . . . to remediate academic deficiencies" and "initiatives for improvement " be made available only in a subset of "poorly performing schools." See New York State Commission on Education Reform, *Final Report* (March 29, 2004), pp 34-35. This position falls far short of the Court of Appeals' mandate for the assurance of adequate resources and an effective system of accountability for "every school in New York City." *CFE v. State* 100 N.Y. 2d at 128 (emphasis added).

efforts to build additional district capacity to support continued reform; if this is neglected, sustained progress at the school level will be impossible.

In any large bureaucratic system, effective deployment of resources and improved instructional capacity requires extensive managerial authority and administrative discretion. But public education, especially in large urban areas, necessarily operates in a political environment where many incentives other than bottom line outcomes and economic efficiency come into play. This means that employee needs for job security and professional integrity must be respected and that parental needs for information about and input into their children's educational welfare must be accommodated. Finding mechanisms that will effectively balance these managerial, professional, and parental needs is key to the success of the educational enterprise and of any accountability system. Transparency of the planning and implementation process and serious engagement of teachers and parents in the enterprise are key aspects that balance. Although ultimately management is responsible for the decisions and their implementation, all of the relevant stakeholders must be committed to the basic policy directions if challenging achievement goals are to be met.

A CONSTITUTIONAL SYSTEM OF EDUCATIONAL ACCOUNTABILITY

1. ADEQUATE SYSTEMIC FUNDING

The Court of Appeals' order mandated that the state ascertain "the *actual cost* of providing a sound basic education. . . ." ¹⁰⁸ The recently released final report of the *New York Adequacy Study* ¹⁰⁹ directly responded to that mandate. Based on the professional judgment deliberations of ten panels of distinguished educators from New York City and other urban, suburban, and rural districts throughout the state, the study specified with precision the *actual* cost of providing requisite resources, in accordance with student need, for every school in New York City and for every school throughout the state. The study's findings provided several alternative actual cost options, ranging, on a statewide basis, from \$6.6 billion to \$9 billion in current 2004 dollars, to be phased in over a four-year period. New York City would receive approximately 62 percent of these amounts. Since these are the only actual cost data that have been made available to the governor and the legislature, ¹¹⁰ we assume that constitutional

¹⁰⁸ *CFE v. State of New York* 100 N.Y. 2d at 128 (emphasis added). The Court of Appeals' order technically applies only to New York City. However, consistent with the position of the governor, the legislative leaders, the Regents and the Zarb Commission that the remedy in *CFE v. State of New York* should be implemented on a statewide basis, all of CFE's proposals have adopted a statewide implementation perspective.

¹⁰⁹ See American Institutes for Research and Management Analysis and Planning, Inc., *The New York Adequacy Study: Determining the Cost of Providing All Students in New York an Adequate Education Final Report* (March 2004). This extensive 15-month study was sponsored by CFE, the New York State School Boards Association (NYSSBA), and 28 other statewide organizations that constituted the Council on Costing Out. It was conducted on an independent basis by the American Institutes for Research (AIR) and Management Analysis and Planning, Inc. (MAP). Based on the middle range of the recommendations of the AIR/MAP study, trended forward to current dollar needs, and its own analysis of amortized capital construction requirements (which were not covered by the AIR/ MAP study), CFE has called for a total current dollar increase of \$9.5 billion in statewide spending, to be phased-in over a four-year period.

¹¹⁰The Regents and the Zarb Commission have issued funding proposals calling for increased statewide phased-in appropriations of approximately \$11 billion and \$2.5 billion to \$5.6 billion, respectively. Both of these studies were based on a so-called "successful schools" methodology that calculates the cost of an adequate education based on a number of abstract definitional and statistical assumptions, *none of which relate to the actual costs of providing the opportunity for a sound basic education to students in New York City or other high need districts throughout the state*. Moreover, the school districts identified in these studies as being successful were, by and large, affluent suburban districts, with proportions of minority and English Language Learner populations well below the state average. This is another reason that these studies do not reflect the *actual* needs of students in New York City and other high need districts throughout the state. See New York State Education Department, *Regents Proposal on State Aid for 2004-05* (January 2004). New York State Commission on Education Reform, *Final*

compliance will require funding increases for school operations within the range recommended by the *New York Adequacy Study*.

Without adequate funding, comprehensive accountability cannot be realized. Without the guarantee of sufficient resources, schools and students can have no reasonable chance for success. The state, therefore, must meet its constitutional responsibility to provide adequate funding on a continuing basis. In order to assure that adequate education funding be guaranteed on a permanent basis, a statute should be enacted that (a) revises the state education funding system to provide current needs for adequate funding including, at least, the essential resource areas identified in *CFE v. State of New York*,¹¹¹ (b) requires an independent costing-out study be undertaken at least every four years that covers, at minimum, these same resource areas, and (c) requires revision of the education funding system to provide current needs for adequate funding based on that study.

In addition to ensuring an adequate level of education funding, state aid allocations to New York City and other local school districts must be provided to the maximum extent feasible through predictable, multiyear foundation block grants that permit stable, long-term planning and give districts the necessary flexibility, within constitutionally appropriate parameters, to deliver resources to schools in accordance with their students' needs. The Regents, the Zarb Commission, and CFE have all called for such a foundation funding approach,¹¹² and it is clear that foundation funding is one of the "reforms to the current system

Report (March 29, 2004) (hereafter referred to as the "Zarb Commission Report"); Standard and Poor's, *Resource Adequacy Study for the New York State Commission on Education Reform* (March 2004).

¹¹¹Justice DeGrasse's order, affirmed by the Court of Appeals, specified the following essential resources: sufficient numbers of qualified teachers, administrators, and other personnel; appropriate class sizes; adequate, safe, and accessible school buildings; sufficient and up to date instrumentalities of learning, including laboratories, libraries, and technology; suitable curricula including programs providing more time on task for at-risk students; and adequate resources for ELL and special education students. See *Campaign for Fiscal Equity v. State*, 187 Misc.2d 1, 114 (N.Y. Co. 2001).

¹¹²Part I of this report, "An Adequate Foundation for All: A Preliminary Proposal for Reforming the State's System for Providing Operating Aid to Local School Districts," sets forth in detail such a predictable foundation funding system.

of financing school funding”¹¹³ that should be instituted to achieve compliance with the Court of Appeals’ mandate.

The final funding factor required for a constitutional accountability system is an assurance of sufficient resources for the State Education Department (SED) that will enable it to properly carry out its regulatory, monitoring, information, and capacity-building responsibilities. In recent years, SED’s budget has been substantially reduced, resulting in significant cutbacks in personnel assigned to support the existing state accountability system. For example, SED’s office that has prime responsibility for monitoring Title I and low-performing schools has been reduced from a staff of over 90 professionals in 1991 to under 30 professionals in 2004 located in New York City. SED will require additional staffing and additional funding in order to carry out effectively its responsibilities under a new, constitutional accountability system.

2. COMPREHENSIVE PLANNING AND DISTRIBUTION OF SUFFICIENT RESOURCES TO EACH SCHOOL

The Court of Appeals explicitly anticipated that “reforms to the current system of financing school funding and managing schools”¹¹⁴ would be necessary in order to meet its mandate that *every school* have the resources necessary to provide the opportunity for a sound basic education. The critical task here is to “align funding with need.”¹¹⁵ Ascertaining particular school-level needs and enhancing instructional capacity in the classroom are functions that can only be done at the local school district level. This is why the existing state education finance system, which appropriates money through approximately 50 separate formulas and categorical grants that reflect only gross state-level priorities, impedes meaningful accountability. Providing state aid primarily through a single foundation grant would allow New York City and other districts to establish educational priorities, ascertain specific school-level needs, and distribute funds accordingly.

¹¹³ *CFE v. State of New York*, 100 N.Y.2d at 128.

¹¹⁴ *Ibid.*

¹¹⁵ *CFE v. State of New York*, 187 Misc. 2d at 83.

Although a foundation funding system would relieve school districts of most of their current obligations to adhere to specific categorical expenditure requirements, there are important statewide legal and policy requirements that must be met. In addition, the legislature and the public are, of course, entitled to know how districts will use their expanded discretion to meet student needs. The best way to ensure both appropriate managerial discretion and meaningful accountability is through a transparent, comprehensive planning process. We propose, therefore, that the myriad of current categorical funding restrictions and reporting mandates be replaced with a requirement for a single comprehensive plan that each school district should develop with substantial input from administrators, teachers, parents, and the public at large, and that would be subject to review by the State Education Department.

A. District-Level Sound Basic Education Plans

Each school district in the state should be required to prepare a comprehensive sound basic education (SBE) plan in which it sets forth its instructional priorities and explains how it intends to distribute funds to each of its local schools in accordance with those priorities and student needs. New York City and other districts with large numbers of students who are not currently meeting Regents standards should be required to demonstrate specifically how the district's increased funding, together with existing funds, will be brought to bear on the constitutional goal of providing all students with the opportunity of a sound basic education, and on improving achievement for all students and closing any achievement gaps. The plan should cover a four-year period, but it should be updated annually to allow for necessary interim adjustments. The four-year planning period would correspond to the recommended four-year phase-in period for increased educational funding under the *New York Adequacy Study*, thus assuring maximum stability and predictability. The district plans should set specific year-by-year outcome goals and benchmarks of student progress, as well as specific year-by-year input targets that benchmark districts' progress toward full resource adequacy by the end of the four-year funding phase-in.

The single, comprehensive SBE plan would merge all of the fiscal and education planning requirements of the Regents Learning Standards, the federal No Child Left Behind

Act, and compliance assurances for *CFE v. State*, and it would replace current burdensome requirements for school districts to file dozens of uncoordinated plans and reports each year.¹¹⁶ Focusing on a single major annual planning process will sharpen a school district's planning mechanisms, permit meaningful stakeholder input and public participation, and provide a highly transparent core accountability mechanism. The single SBE plan will allow the public, the media, and the state to understand a district's instructional priorities and commitments and to monitor directly the extent to which its instructional goals are met.

Last year, pursuant to a legislative mandate, SED undertook a complete review of all plans and reports currently required of school districts in New York. It concluded that currently school districts are required to file over 125 separate plans and reports with federal and state authorities (see **Table 3.1**).

¹¹⁶ Some specific federal requirements would continue to require specific planning protocols, but these can be incorporated as appendices to the comprehensive plan, as is being done in Maryland, with the approval of the federal authorities. See Maryland State Department of Education. *Bridge to Excellence in Public Schools Act: Final Guidance on Developing the Five-Year Comprehensive Master Plan* (Annapolis: MD), March 25, 2003, pp. 13-14.

Table 3.1 THE NUMBER OF PLANS, APPLICATIONS AND REPORTS REQUIRED ANNUALLY OF NEW YORK STATE SCHOOL DISTRICTS BY CONTENT AREA¹¹⁷

| Content Area | Number |
|--------------------------------|---------------|
| Adult and Continuing Education | 5 |
| BOCES | 23 |
| Career and Technical Education | 7 |
| Educational Data | 7 |
| Pupil Health, Safety & Support | 12 |
| School Improvement | 32 |
| School Libraries | 1 |
| Special Education | 8 |
| Teaching | 4 |
| Technology | 4 |
| School Facilities | 7 |
| Child Nutrition | 3 |
| State and Federal Aid | 12 |
| Total | 125 |

These extensive planning and reporting requirements are clearly duplicative and burdensome both for school districts and for SED staff. The SED task force report reached the obvious conclusion that “Current requirements do little to promote coordinated continuous school improvement, close the student achievement gap or assure the public that they are getting the most out of school resources.”¹¹⁸ Accordingly, the commissioner and the Regents have recommended to the legislature that “[A]ll existing school district planning and reporting requirements be replaced with ... a new comprehensive, streamlined system aligned with the expectations inherent in a result-oriented, standards-based education system.”¹¹⁹ The logic of SED’s recommendation for a simple, comprehensive reporting system is compelling, and its adoption would provide the basis for the type of systematic planning process that is necessary for comprehensive accountability.

¹¹⁷ New York State Education Department, *Proposal for Planning and Reporting by New York State School Districts for the Strategic Use of Resources for School Improvement* (Albany: August 14, 2003), p. 4.

¹¹⁸ Ibid.

¹¹⁹ Ibid., p. 1.

In addition to describing resource distribution to schools, the comprehensive plan must be designed to be a tool for sound school-improvement planning and cost-effective spending decisions. Using student outcome and other data, the plan should focus on how the allocation and use of resources affects school conditions, academic performance, and outcomes, and it should articulate clear instructional priorities for improving student learning and closing any achievement gaps. It should also utilize goals and strategies that ensure that all schools have sufficient resources and are able to use them effectively to build adequate professional and instructional capacity in every school.

Although school districts will need to devote substantial time and energy to developing and implementing such a comprehensive plan, substituting one coherent planning effort for 125 disjointed current obligations should actually result in a reduction in the time and resources that districts currently devote to planning and reporting activities. A preliminary analysis by BearingPoint Inc. estimates that, statewide, completing this paperwork currently occupies the time of the equivalent of over 1,100 full-time employees. These requirements are especially burdensome for small school districts where this work may fall on the superintendent, taking him or her away from more fruitful work.

In recent years, SED has piloted a comprehensive district educational planning (CDEP) process that consolidates many of the plans that school districts must submit to the state. Currently, however, there is no requirement that districts actually do so, except in New York City, where the city school district, as well as each community school district and each school are required by the chancellor to develop a comprehensive education plan.¹²⁰ Since all school districts would benefit from a streamlining of current planning and reporting requirements, and parents and taxpayers in all districts are entitled to a clear blueprint of the districts' fiscal and educational plans, we believe that the basic comprehensive sound basic education planning requirement should apply to all districts in the state. Additional planning requirements, state

¹²⁰ 8 NYCRR § 100.11. According to the 2002 biennial review, 71% of school districts reported that they engaged in some degree of comprehensive planning. See New York State Education Department, *2002 Biennial Review of Shared Decision Making (C 100.11)*, <http://www.emsc.nysed.gov/rscs/SchoolSupportServices/SharedDecisionMaking/2002biennialreviewREPORT.htm#Collaborative%20Planning%20and%20Comprehensive%20Planning>

assistance, and annual scrutiny should, however, apply to New York City and other districts whose students are currently not meeting state standards.

1. *Priority Planning for High-Need and Low-Performing Districts*

The sound basic education plans in districts with schools whose students are currently not meeting standards should include specific strategies and benchmarks for improving instructional capacity, focusing on the high priority areas identified by the Court of Appeals and other essential areas.¹²¹ In New York City, the chancellor should prepare a citywide plan, and each of the ten regional superintendents should prepare plans aligned with the priorities set out by the chancellor. Presumably these priority areas would include

1. Improvement in quality of teaching and instructional leadership
2. Class size reduction
3. Elimination of overcrowding and improved school facilities
4. Enhancement of pre-K and early childhood education services
5. Expanded services for at-risk students at all levels
6. Expanded services for students with disabilities and English language learners
7. Upgrading essential instrumentalities of learning, including laboratories, libraries, and technology.¹²²

Within each of these priority areas, districts would retain broad discretion to develop specific strategies for improving instructional capacity. For example, the improvement of the quality of teaching could be accomplished through a variety of new and existing teacher recruitment and retention strategies, a range of teacher mentoring programs, and/or an array of professional development initiatives. Districts would have substantially more discretion and flexibility to design these programs and initiatives than they do at present. At the same time,

¹²¹ These areas would be identified by an Implementation Task Force, formed by SED, as described in section 2.C. below.

¹²² *The New York Adequacy Study* provides a prototype educational model that can guide districts in the effective allocation of resources to provide the opportunity for a sound basic education for all of their students. As the authors of the study recommended, however, ultimately districts should retain the discretion to use resources in the way that best meets actual local needs and priorities.

however, they would be required to spell out in a clear, focused, transparent manner the policies designed to meet each priority requirement and the methods that would be implemented to accomplish them.

The districts' plans should delineate both long-term and specific year-by-year outcome goals and benchmarks of student progress in terms of test scores and graduation rates, as well as specific year-by-year input targets (such as teacher retention rates) that benchmark districts' progress toward full resource adequacy by the end of the four-year funding phase-in. Input measures should include a district-wide staffing analysis, including a comparison of staffing in Title I versus non-Title I schools. Districts should also be encouraged to include qualitative outcome measures, in addition to test data and other statistical indicators

Annual updates should report on the extent to which the previous year's resource adequacy targets and student outcome goals have been met. They should thoroughly describe any problems that have arisen in meeting the previous year's goals and should include evidence to document implementation efforts undertaken. Updates should also document any continuing resource inadequacies.

Multiyear comprehensive planning will promote the effective implementation of large-scale reforms like class-size reduction. Teacher recruitment and facilities expansion plans can be carefully coordinated with a phase-in of class-size reductions. Similarly, expansion of pre-kindergarten programs through the articulation of target recruitment goals and facilities benchmarks can also be effectively accomplished through a multiyear comprehensive planning process.

Adequate funding combined with comprehensive multiyear planning can substantially improve the quality of teaching and truly provide the opportunity for a sound basic education mandated by the Court of Appeals. Many sound educational policies, like mentoring for all new teachers, reductions in class sizes in the elementary grades, and academic intervention services for all students not meeting state standards, are, in fact, mandated by existing state laws and regulations. However, these requirements are not consistently and systematically implemented, and the current accountability system has no means of reporting or acting upon

violations in these areas. Adequate funding and comprehensive planning will ensure that these initiatives and other creative policies devised by local school boards and administrators will actually be put into effect. Implementation of these reforms on a consistent, systemic basis will dramatically change the working conditions and the learning environment in many schools that are currently low performing and may induce many more highly qualified teachers to enter and remain in the teacher corps of New York City and other high-needs districts.

2. *Allocation of Funds to Schools*

Once basic instructional priorities and strategies have been set, each district plan should describe its methodologies for determining how funds will be allocated to schools within the district. The plans will - ensure that each school has sufficient resources to carry out its instructional objectives and to meet basic student needs. Districts should also maintain a central reserve fund to meet demonstrable, urgent needs of schools.

The plans should set specific annual resource adequacy targets and benchmarks in essential resource areas, including teacher qualifications, class sizes, school facilities, and academic intervention services. Resource adequacy must be assessed relative to the needs of students in each school and must be achieved in every school at the end of the funding phase-in period.

In order to ensure that the Court of Appeals' mandate for adequate resources at *every school* is met, an efficient system of school-based budgeting and reporting will need to be established in New York City and other large districts whose students are not meeting the Regents Learning Standards. Currently, Education Law § 2590-r specifically requires the City of New York to establish "a comprehensive process of school-based budgeting and expenditure reporting." New York City has apparently made substantial progress in setting up technological and organizational systems to meet these requirements. Following the Children's First restructuring initiative, nearly all allocations from the Department of Education now go directly to schools. At the school level, the principals are primarily responsible for their school's budget, and they are required to consult with their school leadership team. Most of each school's funding must be spent according to contractual requirements, Department of Education requirements, and chancellor's priorities. The remaining discretionary funds vary

from school to school. School-level spending decisions include the number and types of administrative and support personnel, after-school and professional development activities, supplementary course offerings, and supplies and materials.¹²³

Adequate funding and comprehensive district planning presumably will permit a greater amount of discretionary spending to take place in most schools, either in broad district-defined priority areas or in priority areas established by the local school communities. We recommend that an Implementation Task Force¹²⁴ established by the State Education Department, review the current school based budgeting procedures and practices in New York City and recommend whether any changes should be made in that system and the extent to which similar school-based budgeting requirements should be extended to the Big Four urban districts and other large districts in the state whose students are currently not meeting state standards.

The comprehensive sound basic education plan should also outline district strategies for assisting schools that are not meeting instructional objectives and performance targets, and identify a sufficient cadre of administrators, staff developers, master teachers, and other personnel to perform these functions. Annual updates should report on the extent to which the previous year's resource allocation, instructional improvement, and student achievement goals were met, and specific steps that are being taken to remedy any implementation difficulties that were encountered. Updates should also document any specific problems of resource deficiency and steps that are being taken to deal with them.¹²⁵

¹²³ New York City has also piloted a promising school-based budgeting initiative, "performance driven budgeting (PDB)," beginning in 1997. Performance driven budgeting emphasizes school-based budgeting focused on improving classroom instruction with decisions made at the school level by all constituencies and supported by the school district. The findings of an evaluation of the first four years of the initiative indicates that academic outcomes in the PDB schools improved relative to schools that did not use PDB. See New York University Institute for Education and Social Policy, *Final Report: Evaluation of the Performance Driven Budgeting Initiative of the New York City Board of Education* (February 2002).

¹²⁴ The composition and responsibilities of the SBE Implementation Task Force are discussed in a section 2.C of this proposal.

¹²⁵ The comprehensive sound basic education planning approach recommended here is similar to the district master planning requirements recently adopted by the State of Maryland. In 2002, Maryland's governor and legislature passed the *Bridge to Excellence in Public Schools Act*, which restructured Maryland's public school finance system and increased state aid to public schools by 40%, phased in over six years (FY 2003 - FY 2008). The law also collapsed some 50 out of 68 categorical streams into one foundation grant. As part of these reforms,

B. Public Engagement

To be effective, comprehensive planning must be a transparent process that provides meaningful opportunities for broad public input from the range of stakeholders with an interest in educational improvement. Existing laws and regulations contain a number of mechanisms for parent, teacher, and community involvement in educational planning, but, with a few notable exceptions, these public participation requirements generally are honored more in form than in substance. Comprehensive SBE planning will provide an important vehicle for reinvigorating teacher, parent, and public participation in educational planning, especially in large urban districts.

The need for expanded and improved public engagement is most acute in New York City. Despite efforts by the mayor and the chancellor to sponsor public engagement forums at the beginning of the Children First initiative, and the establishment of parent support offices and parent coordinators in every school, centralization of virtually all major policy-making authority and the elimination of the Board of Education and the community school boards have detrimentally affected the flow of parent, teacher, and community input into educational policy-making process. The chancellor is currently instituting new initiatives like the establishment of Community Education Councils to try to respond to these needs. The development of citywide and regional sound basic education plans will provide an important additional opportunity to establish meaningful, regular channels for serious consideration of parent, teacher, and community views and perspectives.

Therefore, we recommend that the Implementation Task Force, discussed in the next subsection, develop specific guidelines regarding parental, teacher, and community input into the SBE planning process. For New York City, these procedures should require both initial

all school districts in the state are now required to develop a five-year comprehensive master plan that integrates state, federal, and local funding initiatives and focuses instructional efforts on improving achievement for all students and eliminating achievement gaps between subgroups of students. The *Bridge to Excellence Act* also requires broad-based community and parental involvement in planning and implementation; gives the local government responsibilities for reviewing the master plan; and creates state level responsibilities that include the initial review of each school system's master plan, ongoing monitoring of each plan's implementation, and evaluation of the effect of increased state aid for education on student and school performance in each local school system.

public engagement forums to gauge community sentiment on basic priorities as well as opportunities for follow-up hearings on drafts of plans. In addition, draft plans should be posted on the New York City Department of Education's website during a public comment period;¹²⁶ and the final plan should be accompanied by a detailed discussion of community comments. Final plans should be made available to the public via the internet, as well. Although, ultimately, the sound basic education plan must reflect the priorities and decisions of the mayor, the chancellor, and the Panel for Education Policy, to be effective these plans must be cognizant of parent, teacher, and community concerns and obtain the understanding and support of these stakeholders.

The extent to which similar practices need to be formally adopted in other parts of the state will depend upon a number of factors, including both governance structures and current school board practices. A number of school districts already have formal or informal district-level shared decision-making committees, which vary in their effectiveness. The roles, membership, and functions of these committees, as well as other possible procedures for promoting public engagement, should also be considered by the Implementation Task Force, especially in regard to high-needs districts whose students are currently not meeting state standards.

Comprehensive SBE planning may also encourage new public engagement initiatives that go beyond existing practices and requirements. In Charlotte-Mecklenburg, NC, and other cities, civic and business groups have aided school improvement efforts by organizing annual education summit meetings and promoting community engagement in educational planning. At these meetings, participants try to build a consensus on a set of clear and specific improvement goals for the school system as a whole, while assessing the system's progress in meeting prior year's goals. The follow-up commitment of business and civic leaders to the implementation of the plan over a multiyear period has proved an important component of ultimate educational success in these cities. The SBE planning process might provide an occasion for New York

¹²⁶ An example of an internet-based public comment system is the United States Environmental Protection Agency's (EPA's) EDocket program. Through its EDocket website, the EPA posts proposed rules and regulations, deadlines for public comments and posts the comments as well. The EDocket website can be found at <http://cascade.epa.gov>.

civic and business groups to take a leadership role in providing similar input and support for the renewal of public education in this state.

C. SED Review and Approval

All of the comprehensive sound basic education plans developed by New York City and other districts whose students are not meeting standards should be reviewed and approved by the State Education Department. SED and/or BOCES superintendents should review plans of other districts periodically. The SED reviews of districts whose students are not meeting standards should be thorough, but not invasive; rigorous, but not rigid. They need simultaneously to enforce legal requirements, yet respect district prerogatives. The best way to achieve these diverse ends, we believe, is to adopt the peer review approach currently being used in Maryland.¹²⁷ There, a six-person external team made up of educators, parents, and community members, nominated by local superintendents from around the state and chosen by the Maryland State Department of Education (MSDE), examines each plan. MSDE staff provides evaluation rubrics, training, facilitation, and quality controls. A “local point of contact”—the team leader for the master plan at local level—participates as an observer. After a site visit, a written report with recommendations is developed with MSDE staff and sent to the state superintendent.

The Regents and the State Education Department should also be responsible for developing basic guidelines and regulations for the new accountability system. To do so, we recommend that SED appoint a Sound Basic Education Implementation Task Force, composed of high-level SED officials, as well as school finance experts, school board members, administrators, teachers, parents, business and community leaders, and education advocates. The task force should advise the commissioner and the Regents regarding accountability regulations on issues like instructional priorities, adequacy assessments, requirements for school-based budgeting, and public engagement procedures. They should also propose

¹²⁷The Zarb Commission has proposed placing accountability oversight authority in a new Office of Educational Accountability (The New York Commission on Education Reform, *Final Report* (March 29, 2004), p. 18). Separating out educational assistance from enforcement monitoring responsibilities in this way would appear to be inconsistent with the state oversight role we envision for the comprehensive planning process, and we note that

templates, suggested formats, and guidelines for districts to consider in developing their SBE plans.

3. EFFECTIVE USE OF RESOURCES

Each school district's (and, in New York City, each region's) SBE plan will establish basic priorities, set the instructional directions for improving student performance and closing any achievement gaps, and determine how resources will be distributed among the schools in the district to achieve these ends. The actual implementation of the plan's objectives will, however, depend on a variety of conditions, actions, and developments, some foreseen and some unforeseen, that will occur throughout the district and in particular schools. Additional requirements for the proper implementation of the district plan and effective use of resources include (a) school-level comprehensive educational planning and engagement; (b) removal of statutory, regulatory, and contractual impediments to providing a sound basic education; and (c) improving current state and local information systems.

A. School-Level Sound Basic Education Plans

To ensure that district and school planning are aligned, comprehensive planning at the district level must be accompanied by comprehensive planning at the school level. School-level planning should, to the greatest extent possible, engage the entire school community in creating an environment for teaching and learning that promotes student success.

The basic priorities, instructional strategies, and accountability benchmarks set forth in the district SBE plans (and, in New York City, the regional plans) need to be further developed and implemented through the preparation of SBE plans by each school in the system. School-level planning promotes effective resource use by accounting for local conditions and student needs, and by focusing on building school-based instructional capacity. Each school should, therefore, develop a four-year strategic plan for providing all of its students with the opportunity for a sound basic education, improve achievement for all students, and close any

Maryland has continued to place all of the state's accountability responsibilities in its state education department under its comprehensive planning model.

achievement gaps. The school-based plan should be consistent with the priorities and instructional initiatives set out in the district (and regional) plan. The plan should also allow the principal, working with input from a representative school leadership team that includes teachers and parents, the appropriate discretion to make policy and curricular choices consistent with the district-wide priorities, and to develop and implement supplementary goals and school-based priorities.

School-based planning will also provide an important vehicle for feedback and input to the district for consideration in its ongoing district-wide comprehensive planning activities. One especially important area for such school-based input is the development of local district and school-based educational goals to supplement those set forth in the Regents Learning Standards. The Regents Learning Standards set forth minimum statewide education goals and requirements in basic academic areas describing what students are expected to know and be able to do by the end of grades 4, 8, and upon graduation from high school. Additional academic and citizenship goals in areas like social responsibility, organizational and communication skills, and civic participation should also be formulated, based on the educational values and priorities of each local community. Local planning will also allow schools and districts to emphasize and assess student progress in art, music, and physical education, which are not the subject of Regents testing. The SBE planning process will allow districts to articulate and pursue local priorities in these and other areas and ensure that instructional initiatives and accountability criteria are expanded beyond the academic program areas targeted by state and federal testing requirements.

Another important function of school-level planning in a constitutional accountability system is to identify the extent to which adequate resources to implement the plan are actually available at the school, as required by the Court of Appeals' order. A school-based budgeting system is of obvious importance in this regard, but it also needs to be supplemented by a school-based adequacy assessment process that will help ensure continuing compliance with constitutional adequacy requirements. One method for undertaking such a school-based adequacy assessment was developed by the Demonstration School Project, piloted by CFE, and the League of Women Voters, in 14 schools— seven in New York City and seven throughout the rest of the state in 2002 and 2003. In each of the demonstration schools, a school-based

team that included parents, teachers, and administrators and also key community members, using specific rubrics developed for the project, analyzed the status of the school’s educational resources, in terms of numbers of qualified teachers, adequacy of facilities, ability to provide appropriate academic intervention services to all eligible at-risk students, and so on. Such school-based findings would not, of course, be considered conclusive proof of resource inadequacies. They would, however, provide important information for district officials and state-level monitors to consider in reviewing adequacy needs.

To build capacity for school-based planning, teams from schools identified as not meeting performance targets, and other schools that request it, should be provided with technical assistance and professional development from the district and/or from BOCES and regional resource centers. Appropriate assistance may include briefings on relevant school and district staffing and budget policies; tutorials from knowledgeable school or district staff on best instructional practices; and coaching in facilitation and consensus building for key members of school-based teams.

The school-level plan should be developed through a school-wide planning process involving a representative leadership team, including parents, teachers, and community representatives—presumably an expanded version of the current shared decision-making teams.¹²⁸ A dynamic, school-based planning process can energize not only the school-based team, but also the entire school community into discussing, formulating, and taking responsibility for implementing the sound basic education plan. In many schools today,

¹²⁸ Commissioner’s Regulation section 100.11 requires a plan for participation of teachers and parents with administrators and school board members in school-based planning and shared decision-making (SDM). The policy has been applied with uneven results around the state. The regulation specified the make-up of the districts’ SDM teams and their selection process, but it was vague on what issues should be handled by the teams and the process they should use for doing so. Accordingly, in some schools SDM teams have broad responsibilities for setting budget priorities and developing instructional strategies, while in other districts SDM teams deal with no serious educational issues at all. Districts and schools also vary widely in the commitment of all parties, but especially the leadership, to the SDM process.

In New York City, under the chancellor’s school leadership team plan, the two main responsibilities of school leadership teams are “the creation of the school’s Comprehensive Educational Plan (CEP), including annual goals and objectives and the development of a school-based budget and staffing plan aligned with the CEP,” Board of Education of the City of New York, *The Chancellor’s Plan for School Leadership Teams* (November 1998). As in the rest of the state, implementation of SLTs has been uneven. While most schools have SLTs, the teams vary widely in their willingness and capacity to fulfill their responsibilities.

comprehensive educational planning is a *pro forma* process, occurring in a resource-deficient environment, which inspires little hope of significant improvement and stimulates minimal commitment by the school community. A planning process that is based on an assurance of adequate resources would be a strikingly different enterprise. Effective involvement of school-based leadership teams and promotion of school-wide public engagement will, however, require dedicated resources for facilitators, training, and other specific areas of technical assistance.¹²⁹

B. Removal of Statutory, Regulatory, and Contractual Impediments to Achieving Constitutional Compliance

Adequate funding, provided in a stable and predictable manner, together with a well-conceived comprehensive planning process, can result in dramatic, demonstrable improvements in student achievement in all schools in New York City and other high needs districts. For the full potential of these reforms to be realized, however, any statutory, regulatory, and contractual provisions that stand in the way of effective use of resources and the adoption of new policy initiatives at both the district and the school level will need to be reconsidered. The legislature, the Regents, school districts, and administrator and teacher unions will need to review and revise many existing policies, procedures, and work rules in light of the demands of constitutional compliance, as well as in light of the dramatic changes in conditions and possibilities that will result from the new flow of adequate funding, and new planning and reporting approaches. The SBE planning process provides an appropriate mechanism for doing so.¹³⁰

¹²⁹ The Demonstration School Project undertaken by CFE and the League of Women Voters galvanized the local school planning groups, after they had completed their resource inventories, to reconsider their comprehensive school plans and determine what educational initiatives they would put in place if they were to receive adequate resources, and how each constituent group within the school should be held accountable for specific actions to help meet the objectives of their revised plans. Participating schools reported a new school-wide commitment to meeting the needs of all students and more meaningful engagement and significant accountability commitments from parents and teachers.

¹³⁰ We also believe that the federal No Child Left Behind Act contains a number of provisions that will impede effective implementation of the reforms needed to comply with state constitutional requirements. For example, federal requirements that students in low-performing schools be permitted to transfer to other schools in the district, regardless of the impact of such transfers on overcrowding and class size limitations in the receiving schools, are counterproductive as applied to New York City and other urban districts in New York State. Repeal of impediments to reform contained in federal laws and regulations is, of course, beyond the scope of the present proposal. CFE will, however, be developing strategies to promote reform of the NCLB after the forthcoming presidential elections.

As part of the basic planning process, therefore, each district SBE plan and each school-based plan should forthrightly identify all statutory, regulatory, and contractual provisions that may present serious barriers to successful implementation of the plan. Identification of such impediments will not, of course, automatically result in their elimination. But it will focus the attention of the stakeholders and the general public on these impediments and prompt legislative or regulatory revisions or result in new agreements that will overcome these impediments.

Faced with the challenge to provide inspired leadership and competent teaching in failing schools, New York City education officials and local union chapters have in recent years negotiated flexible new staffing approaches that recognize employee job protection needs. Two specific examples of such innovations were the agreement by the New York City Department of Education and the Council of Supervisors and Administrators to modify principal tenure and the agreement between the Department and the United Federation of Teachers to adopt streamlined “school based option” staffing procedures that, among other things, have facilitated the restructuring of low performing schools.

We do not presume in this proposal to set forth a list of statutory, regulatory, or contractual impediments or to propose specific mechanisms for dealing with them. Rather, we recommend that a prime component of the SBE planning process, at both the district and school levels, involve the identification of statutory, regulatory and contractual provisions that need to be reconsidered. Spotlighting these issues through the planning process may promote immediate dialogue to overcome these barriers or may highlight major issues that need to be considered by the appropriate legislative, executive, or judicial authorities.

Each year the Accountability Review Panel (see section 5.C below) should review issues that have arisen in the development and implementation of district and school plans, including significant provisions in statutes, regulations, and contracts that appear to be inconsistent with the requirements of the new constitutional accountability system. The panel

should hold hearings to obtain public input on these issues. Based on its review and hearings, the Accountability Review Panel should file an annual report to the Regents, the governor, and the legislature that identifies any major statutory, regulatory, and contractual provisions that appear to be creating specific impediments to providing all students the opportunity for a sound basic education.

C. Improved Information Systems

The New York State Education Department has one of the most extensive fiscal reporting and education accountability databases in the nation. State law requires SED to produce an annual report to the governor and the legislature that profiles school districts according to key demographic and achievement measures including “enrollment trends; indicators of student achievement in reading, writing, mathematics, science, and vocational courses; graduation, college attendance and employment rates; ... [and] information concerning teacher and administrator preparation, turnover, in-service education and performance.”¹³¹ SED also coordinates and publishes local school district data on student performance on various Regents examinations in the elementary, middle, and high school grades, maintains a basic educational data system, and publishes studies, analyses, and findings on a range of fiscal and educational topics.

Nevertheless, in the accelerating world of computerized data processing and data dissemination, SED is having difficulty keeping pace with rapidly increasing basic data needs. The main problem is that SED’s current information processing and accountability databases involve multiple, disparate systems that require manual review of data. For example, each year, in order to review compliance with the highly qualified teacher requirements under the federal legislation No Child Left Behind (NCLB), SED must review 230,000 paper teacher forms, plus 60,000 electronic forms received from New York City, and re-type each paper form into a computer database for analysis. SED has developed an accountability database to determine Adequate Yearly Progress (AYP) under NCLB. The database converts over 700 data files into

¹³¹ N.Y. Educ. Law sec. 215a. The report is known as the “655 report” because the original legislative requirement to compile this information was set forth in sec 655 of the Laws of 1987. The annual 655 reports were submitted into evidence at the trial in *CFE v. State* and both the trial court and the Court of Appeals relied upon them extensively in their findings.

an Access Database against which multiple queries and reports are generated and reviewed manually to determine which schools are making acceptable AYP.

SED student-level data collection systems currently lack statewide unique student identifiers that would allow districts and SED to follow all students longitudinally, confirm the enrollment of students changing districts, and track students' progress over time. With a unique student identifier system, SED could establish a "value-added" accountability tracking system, which allows educators and school officials to follow the progress of individual students and ultimately to understand what factors contribute to students' success or failure. SED is working toward adding the information systems needed to support this important accountability feature.

SED is aware of the limitations of its present data systems and is attempting to remedy many of these deficiencies. Based on a BearingPoint Inc. analysis of SED's information processing needs, we estimate that \$30-60 million is required to update the current accountability systems fully. (See BearingPoint's analysis in **Table 3.2.**) Although some of the funding for this work has been identified, BearingPoint estimates that an additional \$20-50 million dollars is needed to complete the task. We recommend that this work be funded immediately.

Table 3.2. ANALYSIS OF SED TECHNOLOGY REQUIREMENTS TO IMPLEMENT NCLB AND CFE v. STATE

| Required System | Purpose | | Potential Cost (\$ millions)* |
|--|--|--|-------------------------------|
| | As-Is | To-Be | |
| Statewide Education Accountability System (SEAS) | <p>The student-level data collected through STEP and LEAP increases the capacity to do data analysis. However, the lack of statewide unique student identifiers limits the ability to perform longitudinal analyses. It is impossible to follow all students longitudinally to determine to what degree performance at the elementary level predicts performance at the middle or high school levels. It is impossible to track an individual student's performance from district to district; consequently, it cannot be determined whether reported transfer students have actually enrolled in another district and whether students transferred to General Equivalency Diploma (GED) programs have earned their diplomas. Also, there is no way to ensure (except through audits) that districts include records for all enrolled students.</p> <p>All BOCES Regional Information Centers (RICs) in New York State are developing a statewide model data warehousing project using e-Scholar to collect student demographic and achievement data from some school districts.</p> | <p>Consolidate BEDS, LEAP, STEP, and the RICs statewide data warehousing effort into a single statewide education accountability system to combine reporting of school report cards and enrollment, while supporting value-added analysis capabilities at the school, district and state level. Redundant data currently entered through these individual systems will be consolidated into one automated process coordinated through the RICs. When fully implemented, the SEAS eventually will provide a comprehensive system that will collect and store demographic, programmatic and performance data on all pre-kindergarten (Pre-K) to grade 12 students in public schools statewide and all students in State-approved general education development programs statewide.</p> | \$10 |
| Accountability Database | <p>Accountability data are gathered in multiple, disparate systems and reviewed manually to determine which schools have made AYP and what the consequences should be. Today, there are over 700 data files that are converted into an Access Database against which multiple queries and reports are generated to determine AYP.</p> | <p>Create statewide database to comply with NCLB to report on AYP progress in a consistent, automated manner and required actions by school and district. This system should be integrated with the Student Education Accountability System.</p> | \$4 |
| Highly Qualified Teachers Database | <p>Each Nov/Dec, more than 230,000 teacher forms are submitted to NYSED that are processed manually by a temporary team of data entry assistants, in addition to the electronic submission of some 60,000 teacher forms from NYC. Each paper submitted form must be retyped into the existing Access Database for analysis against NCLB highly qualified teacher mandates.</p> | <p>Replace scanned forms with on-line data entry system to enable compliance with NCLB highly qualified teacher requirement and address teacher quality and class size components of a Sound Basic education. May be integrated with Statewide Student Education Accountability System to help the state monitor the impact of highly qualified teachers on student achievement.</p> | \$6 |
| State Aid Management System | <p>The State Aid processes are supported today by many separate processes, each utilizing their own micro-level database, paper forms, and filing systems. Significant coordination and duplicate data handling/verification among different SED departments is required to process State Aid. A project was started in the Fall of 2003 to modernize and simplify the State Aid process, but due to State budget constraints, the project timeline was stretched from 18 months to 4 years.</p> | <p>Continue SAMS implementation to consolidate multiple, outdated and confusing financial reporting systems into one easily comprehensible system that is accessible at the school, district and state level. Restore original implementation schedule to implement system in two years instead of four. Provide funding for full incorporation of all state aid ancillary systems such as the BOCES aid claim review, payment and accounting, transportation modules.</p> | \$5 |
| Virtual Learning Space (VLS) | <p>The VLS offers resources that classroom teachers can use to support preK-12 standards-based instruction, such as sample tasks and learning experiences, with an emphasis on mathematics and English language arts, particularly early literacy. Other teaching resources, including those from the State Library, Public Broadcasting Services, and Archives, are also available.</p> | <p>Create on-line collaborative learning community that provides professional development and dissemination of best practices. The VLS will cost-effectively help districts to build teacher capacity and create a network of technical assistance. The VLS can also provide on-line learning opportunities for students, reducing inequities in access to learning resources.</p> | \$5-30 |
| Total | | | \$30-60 |

*System costs include: defining business requirements, project management, system design, development, implementation, maintenance, professional development, and change management. Cost estimates based on SED interviews, BearingPoint knowledge of other state technology efforts, and our implementation work for SAM

Updating of SED's current accountability information systems is a critical prerequisite for an efficient accountability system. In addition, to comply fully with the requirements of the Court of Appeals' order, the information collection and reporting systems of school districts and SED must be expanded to cover information related to the five components of a comprehensive information system. Specific attention should focus on the distribution of resources through the district SBE plans and the effective use of resources at the school level. Professors Anthony Cresswell and Sharon Dawes of the Center for Technology in Government at SUNY/Albany described the importance of these additional information needs in detail in a paper they delivered at the 2004 Symposium of SED's Education Finance Research Consortium:

Prior to the CFE decision, the main state-level educational policy and financing issues revolved around the school aid formula. . . . By contrast, the decisions implied by CFE pertain directly to the ways in which school financing impacts both student achievement and school performance. If a financing system is to meet the criteria implied in CFE, it must therefore deal in some way with the relationships among:

- Definition, measurement, and evaluation of student achievement, school performance, and long-term educational outcomes;
- State level financing policy decisions and allocation schemes,
- Local funding levels and allocation schemes
- Decisions and practices that determine the educational content and methods used in schools, and
- How the allocation and use of resources impact academic achievement, performance and outcomes.¹³²

In sum, Cresswell and Dawes conclude that currently New York collects substantial information about inputs ("what resources and decisions go into the system") and outputs ("achievement, graduation rates, etc."), but none about the critical areas of *process* ("what goes on in the school environment to use those resources") and *outcomes* ("post schooling results in

¹³² Anthony M. Cresswell and Sharon S. Dawes, "The Information Dimension of Education Financing Decisions: Data Needs, Systems, and Strategies." Paper prepared for the Education Finance Research Consortium's Symposium on Education Finance and Organization Structure in New York State Schools, March 5, 2004, Albany, NY, pp. 2-3.

terms of individual and community benefits”).¹³³ They call upon the state to develop a more comprehensive planning process in order to move toward what they call “enterprise information strategies” that make better use of information to support instruction. A table summarizing their analysis of the gaps in the present system is reproduced in **Table 3.3** that follows.

Table 3.3 Cresswell and Dawes’s Analysis of Selected NYS K-12 Information Systems by Focus of Attention

| SYSTEM AND PURPOSE | MAIN FOCUS OF ATTENTION | | | | |
|--|-------------------------|--------|---------|---------|----------|
| | STATUS | INPUTS | PROCESS | OUTPUTS | OUTCOMES |
| LEAP – Local Education Agency Program (reports elementary and intermediate school student demographics and assessment test results for grades 4,5,8 in math and language arts) | Operational | X | | X | |
| STEP – System for Tracking Educational Performance (reports high school student demographics and Regents test results for grades 9-12) | Operational | X | | X | |
| BEDS – Basic Educational Data System (reports information about school districts including student enrollment and characteristics, professional staff, and certain resources such as libraries and computers) | Operational | X | | | |
| Data consolidation and regional data warehouses to reduce the number of separate student-oriented reporting requirements and to make reported data more readily available to users | Under Development | X | | X | |
| State Aid Reports – Various reports that document the sources and amounts of revenue available to each school district in the state | Operational | X | | | |

Source: Anthony M. Cresswell and Sharon S. Dawes, “The Information Dimension of Education Financing Decisions: Data Needs, Systems, and Strategies.” Paper prepared for the Education Finance Research Consortium’s Symposium on Education Finance and Organization Structure in New York State Schools, March 5, 2004, Albany, NY, p. 4.

¹³³ Ibid., p. 2.

We agree, and we recommend, therefore, that the Implementation Task Force, perhaps with the assistance of the Education Finance Research Consortium, develop specific recommendations on how current information systems at both the district and the state level should be improved, expanded, and integrated to support and monitor the comprehensive accountability system required by the Court of Appeals' order. We also recommend that, in accordance with the recommendations of Cresswell and Dawes, while these improvements are being made, a short-term sampling strategy be developed for using existing systems to assess districts' implementation of the CFE reforms and to provide data for educators and researchers working to make connections between the use of funding and students' educational outcomes.¹³⁴

With these systems in place, school districts and schools will more effectively be able to track the specific effects that policy initiatives contained in their plans have on student performance. In addition, SED could better identify and disseminate best practices in order to help build district and school leadership and instructional capacity. SED would also be capable of expanding its annual reporting to the legislature on district plans and progress, and evaluate the effect of increased state aid on student and school performance in each district.

4. PROPER ASSESSMENT OF OUTCOMES

As part of the standards-based reforms that they adopted in 1996, the Regents implemented an extensive system of student assessments. The assessment system was further revised in 2003 to conform to the specific requirements of the federal No Child Left Behind Act. We accept the thrust of the state's present student testing program as an integral part of our proposed comprehensive accountability system for two basic reasons. First, we agree that student assessments are essential to any valid accountability system, and, second, we recognize that federal law mandates many of the specific requirements of the state's testing program. Despite our disagreement with some features of the existing system, we must accept it as an unalterable mandate for present purposes. We believe, however, that the Court of Appeals' order requires some specific modifications and additions to the present assessment approach.

¹³⁴ Ibid., p. 13.

The Regents Learning Standards describe the knowledge and the skills students should acquire at the end of grade 4 and 8, and by high school graduation in order to be prepared for the demands of higher education and the workforce. The state has developed a set of examinations aligned with the standards to assess students' progress toward meeting the standards. To ensure that all students are learning the skills that will prepare them for Regents study in high school, currently students in fourth and eighth grade, and, effective in 2005-06, students from third to eighth grade must take exams in English Language Arts and mathematics. To graduate from high school, all students (starting with the Class of 2003), except students with disabilities who are eligible to graduate by passing Regents Competency Tests, must score at least 55 on Regents exams in five subjects: English Language Arts, Mathematics, Global Studies, Science, and U.S. History and Government or pass an approved alternative to these exams.

Comprehensive assessments that ensure that all students are, in fact, learning the content established in the standards are a critical element of any comprehensive accountability scheme. If, pursuant to the reforms required by the Court of Appeals' order, all schools are actually being provided an adequate level of resources, and all students are being provided the opportunity for a sound basic education, extensive student testing, including "high stakes" graduation testing, is reasonable and appropriate. Over the past year, problems have arisen in regard to test development and standard setting on the physics and Math A exams, which the Regents and the Commissioner of Education have acknowledged and taken steps to correct. Given the centrality of the assessment program for the state's accountability system and the high stakes involved for millions of students, we think more broad-based improvements must be made in the test development and validation process.

Specifically, the state needs to undertake a thoroughgoing independent review of the validity and reliability of *all* of the Regents examinations in order to ensure that the assessments, which provide the core information that fuels the entire accountability system, are accurate and fair. This review should confirm that all of the Regents tests fairly assess the full range of knowledge and skills required by the Learning Standards, and that current passing scores on all of the Regents exit tests are fully validated. Several years ago, the Regents had convened a technical advisory group of independent national testing experts. It is our

understanding that although this group provided helpful suggestions to SED about aspects of particular examinations, they did not complete a comprehensive validity review. This group—or a similar group of outside experts—should promptly be convened to complete this task.

In addition, although standardized tests should continue to be the fundamental core of the state’s assessment system, we think that there is also an important, supplemental role in the accountability assessment system for portfolios and other alternative assessments. Specifically, we recommend use of alternative assessments at the local level to assess skills for civic participation.

The Court of Appeals has repeatedly held that preparing students to function productively and capably as civic participants is the major purpose of a “sound basic education” under Article XI of the state constitution.¹³⁵ Presumably, students who have mastered the Regents Learning Standards have learned all or most of the academic knowledge and skills they need to be capable citizens, and the output measures reflected in Regents tests will reflect these specific competencies. There is, however, another dimension to civic participation that cannot readily be assessed through standard examinations, namely organizational, social responsibility, and other civic participation skills. These skills should be conveyed through a positive school culture and through specific experiences such as service learning, student government, and other curricular and extracurricular activities. SED, therefore, should issue guidelines for schools to use in assessing these qualitative skills through portfolios or other alternative assessments. Requiring students to pass a school-based civic participation assessment prior to graduation would encourage schools to emphasize, consistent with their community’s own values and priorities, these important constitutionally required skills.

5. APPROPRIATE CONSEQUENCES FOR POOR PERFORMANCE

New York State’s current accountability system, primarily driven by punitive features of the federal No Child Left Behind Law, contains many means for sanctioning schools and

¹³⁵ *Campaign for Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307,316 (1995); *Campaign for Fiscal Equity, Inc. v. State ("CFE II")* 100 N.Y.2d 893, 905 (2003).

students that are performing poorly by various standardized measures, but it currently contains no methods for assuring that districts and schools have adequate resources and it provides limited assistance to help poorly performing schools improve. As former Commissioner of Education Tom Sobol recently noted, the current state accountability system is built on the “shaky assumption” that “ teachers already have the skills and knowledge they need to make ... a program work [but] for some perverse reason teachers decline to use those skills and knowledge now but can be made to do so by a rigorous accountability system.”¹³⁶

Certainly, consequences for poor performance must, of necessity, involve the use of sanctions: it is important to identify and eliminate any and all abuse and incompetence that hinder attainment of the critical goal of providing meaningful educational opportunities to all students. But once any necessary sanctions have been applied, the additional “consequences” for low performance must include renewed efforts to ensure that adequate resources to meet student needs have been made available and are being used effectively to establish a positive teaching and learning environment.

Aside from its inability to ensure adequate resources, the major shortcoming of the state’s current accountability system is its failure to provide consistent, effective ameliorative action as an immediate consequence of sustained failure. The current system lacks cohesion and consistency in its responses to the problems of low-performing schools. After describing briefly the current accountability system, we will recommend a number of significant reforms both for applying more decisive sanctions, where necessary, and for consistently ensuring more effective use of resources.

¹³⁶Thomas Sobol, “More Money Isn’t Enough,” *Newsday*, April 4, 2004. Duke University professor Helen Ladd elaborates on the same point as follows: “[School] systems work best when they are designed to be constructive and positive rather than punitive. Even if fear of being sanctioned served as a motivating force for higher student achievement in low-performing schools in the short run, it would be hard to sustain such improvement over time given that good teachers and school principals have better options other than to teach in such schools. Instead, school accountability systems are better used to provide positive incentives for greater student achievement and to identify problems in particular schools [sic] that those problems can be addressed in a positive and constructive manner.” See Helen F. Ladd, “Policy Brief on Accountability.” Paper prepared for the Education Finance Research Consortium’s Symposium on Education Finance and Organization Structure in New York State Schools, March 5, 2004, p. 3.

A. Current Approaches

1. The System of Accountability for Student Success (SASS)

New York's System of Accountability for Student Success (SASS) was originally enacted by the Regents in 2000 and revised to conform to requirements of the federal No Child Left Behind Act in 2003. Each year, SASS sets performance targets for each public school that participates in state assessments. This target aims to allow a school to "compete against itself" in improving the scores that its students achieve on the various Regents tests. Schools are judged both on the basis of the percentage of students scoring at the basic level on state tests and also on the numbers of students achieving at proficient or advanced on those same tests. If a school consistently fails to meet the state standard, the SED requires the local district to create a Local Assistance Plan (LAP) to provide assistance to that school. In addition, an Effective Annual Measurable Objective (AMO) is also used to measure acceptable progress under NCLB and failure to make Adequate Yearly Progress results in additional sanctions under the federal law (see below).

2. The Schools Under Registration Review (SURR) Process

The Schools Under Registration Review (SURR) process is the primary method by which New York currently holds "failing" schools accountable for educational performance. Through this mechanism, SED identifies for registration review a number of the state's lowest-performing schools and then tries to help those schools and the districts that operate them to implement strategies for improving the academic performance of their students. There are currently 66 SURR schools; 46 are in New York City.

Once identified as SURR, a school must develop a Comprehensive Education Plan, in consultation with school staff, parents, community members, and SED. The district must also develop a Corrective Action Plan to support the school. To assist in implementing its plan, each SURR school is provided with some extra resources and assistance.¹³⁷

¹³⁷ In the late '90s, about half of the SURR schools in New York City, which were incorporated into the "Chancellor's District," received substantial additional funding and resources, including a 15% salary supplement to compensate teachers at these schools for extended hours of service. Preliminary findings from this experiment

The school then has up to three full school years to make acceptable progress in improving its academic performance. SURR schools are assigned a SED liaison to oversee improvement efforts. Currently each SED liaison has a caseload of 4-5 schools and spends half of each week in the field working with these schools. If the school fails to move its test scores to an acceptable level, the commissioner will typically enter into an agreement with the school district for the school to be phased out and closed. As a last resort, the commissioner may recommend that the Regents revoke the school's registration.

Not all schools that fail to meet standards are placed on the SURR list. The schools placed "under registration review" are those that are *farthest* from meeting the state's performance standards and are deemed by the commissioner to be most in need of improvement. Many troubled schools whose student achievement is well below standards are not placed on the list and the commissioner may take into account whether SED has sufficient resources to assist schools in making his determination regarding which schools to identify. Moreover, the criterion for "success" in moving a school off the SURR list is that the school meet its own performance target(s), or meet minimum standard(s), and is judged by the commissioner to have made satisfactory progress, and not be farthest from state standards on any other criterion. Moving off the list, therefore, is not an assurance that the school is now truly providing all of its students with the opportunity for a sound basic education.

3. *Federal NCLB Requirements*

The federal No Child Left Behind Act of 2001 (NCLB) requires states by the 2005-06 school year to test students in grades 3-8 annually in reading and math. By 2007-08, students must also be tested in science three times before they finish high school. States set their own standards and choose their own tests. However, some students from each state will take a federally administered test to help the government compare state tests. Test results for states, districts, and individual schools must be broken down by race, income, gender, and other categories to help schools measure and close any achievement gaps.

indicated that significant, demonstrable gains resulted from this experience. See New York City Board of Education, Division of Assessment and Accountability, "Year Two Analyses of Performance of Extended Time and Non-Extended Time SURR Schools" (May 8, 2000).

Within the next ten years, all students are supposed to meet state proficiency requirements. With that goal in mind, schools must meet annual yearly progress targets both for the school as a whole and for demographic subgroups of students. Schools that fail to make adequate progress for two years in a row are designated “schools in need of improvement” and must create school improvement plans to address the needs of students not meeting standards. Title I schools that fail to make adequate progress for two years in a row must allow students to choose a different school. Title I schools failing for three years must also offer students extra educational services, which must be provided outside of the regular school day. School districts have to reserve up to 20 percent of an amount equivalent to their basic Title I grant to pay for this. Schools not making progress after four years must make staff, curricular, or other changes, and a fifth failing year leads to a total school overhaul.¹³⁸ Currently, 527 schools in New York State are listed as being in need of improvement under Title I.¹³⁹ Some SED officials estimate that this number will soon rise to 700-800 schools.

B. Recommendations for Decisive Sanctions and More Effective Use of Resources

1. *Decisive Sanctions*

A constitutional accountability system that ensures adequate resources for all schools and promotes comprehensive planning is likely to improve substantially the general conditions for teaching and learning and stimulate markedly improved performance by teachers and administrators. Consequently, once full funding has been phased in, there should be considerably fewer “schools in need of improvement” than the hundreds that currently exist in New York City and other high need districts. With fewer instances of failure, there will be less need to impose sanctions. Nevertheless, since abuse and incompetence will exist and will obstruct the attainment of performance goals, decisive steps should be taken to deal with these problems.

¹³⁸ NCLB has no mechanism for determining whether schools in need of improvement have sufficient resources and no requirement that states ensure sufficient resources.

¹³⁹ In addition, 188 schools that did not receive Title I funds did not meet progress targets and are listed under state rules as “requiring academic progress.”

Sanctions, where necessary, must be applied at every level of the accountability chain. Since the Court of Appeals has now determined that adequate funding for schools is a constitutional mandate, once the adequate level of funding for current needs has been determined, it is incumbent on the governor and the legislature to ensure that the appropriate level of funding is, in fact, provided each year. Any failures in that regard should be promptly addressed by appropriate judicial process.

The Commissioner of Education and the State Education Department would assume enhanced monitoring, technical assistance, and enforcement responsibilities under the proposed comprehensive accountability system. Assuming that they receive sufficient appropriations to carry out these functions effectively, the commissioner and his staff should be held accountable by the Regents, and ultimately by the governor and the legislature, for any major deficiencies in the performance of these functions.

Along with existing NCLB sanctions on school districts, school boards and their superintendents (or, in the case of New York City, the mayor and the chancellor) should be held accountable by the commissioner for the substance and process of their comprehensive planning, and by the commissioner and the voters for their performance in meeting the objectives they themselves have delineated in their plans. Comprehensive planning, explicit benchmarks, and enhanced information will place a clear focus on any major unjustifiable failures to achieve anticipated results. This will aid voters in determining whether school boards and/or mayors should stay in office and help school boards and mayors to decide whether superintendents and chancellors are living up to their job responsibilities.

The Accountability Review Panel should be given authority and funding to hire independent professional auditors to carry out periodic district operational capacity audits. These audits should assess the extent to which districts are effectively and efficiently spending their funds to improve instructional capacity and to meet the goals and benchmarks set forth in their SBE plans.

The assurance of adequate funding, the resulting improvement in working conditions, and new staff recruitment and retention initiatives should substantially improve the overall

caliber and commitment of teaching and supervisory staffs. The availability of a pool of qualified applicants for teaching and supervisory vacancies would allow New York City and other high need districts to develop rigorous performance evaluation systems and to grant tenure only to individuals of proven competence. In contrast, the Court of Appeals found that, in the present situation, “principals’ reviews tend to conceal teacher inadequacy because principals find it difficult to fire bad teachers and to hire better ones.”¹⁴⁰ Nevertheless, there will be instances of incompetent performance by administrators and teachers, and existing tenure laws and contractual provisions should be reconsidered and, where necessary, revised to ensure that staff members who cannot adequately meet children’s needs receive intensive professional support. Where that support does not lead promptly to improved performance, such individuals should be quickly removed from their positions.

2. *More Effective Use of Resources*

Comprehensive planning, with annual updates, at both the district and school levels should provide an early warning system for problems that any school in the system may be having in reaching its specified goals and benchmarks. Needed assistance should be provided promptly to any school that requires it, and not just to those schools “farthest from meeting standards,” as under the current SURR procedures, or only to the category of designated “low performing schools,” as under the Zarb Commission proposals.¹⁴¹

Prime responsibility for providing direction, technical assistance, and monitoring of school-based plans should lie with the local school district (and, in New York City, the regions). The district also should be responsible for necessary capacity building, that is, for ensuring that each school has adequate resources and appropriate personnel and support for implementing the sound basic education plan that it has adopted. Where schools are not meeting performance targets, districts should have the primary responsibility for assessing and ensuring resource adequacy, building managerial and instructional capacity, and monitoring progress. SED would oversee these efforts. However, if a school is persistently low performing, the state has a constitutional responsibility to intervene actively in order to ensure

¹⁴⁰ *CFE v. State of New York*, 100 N.Y. 2d at 113.

¹⁴¹ *Zarb Commission Report*, p.34-35.

that vigorous steps are taken promptly and all the affected students are provided the opportunity for a sound basic education.

In order to ensure students' constitutional rights, SED's intervention must be rapid, aggressive, and effective. Under the state's current accountability system, schools that have been designated as being in need of improvement because they have not met their specified annual yearly target goals must adopt school improvement plans. In the third year of designation as a school in need of improvement, the school must implement a corrective action plan. If, despite this corrective action, the school still is not meeting its annual progress targets, it is designated a "school in need of restructuring."

It is at this point that we recommend enhanced aggressive action by the state to ensure that substantial improvement is actually and promptly accomplished in the school. Specifically, we recommend that SED send a state assistance team conduct a thorough school improvement review, designate a "distinguished educator" to work at the school for the next year or two, and develop and ensure the implementation of an effective school turnaround plan, or other action (such as conversion to a charter school) permitted under NCLB.

Once a school has been designated as needing restructuring, SED should immediately send a state assistance team composed of monitors and educators who have received special training for this purpose to evaluate the situation.¹⁴² One of the members of the team would be a "distinguished educator" selected from the ranks of the master teachers and exceptional school administrators who would volunteer to take a two-year leave from his or her present assignment in order to assist low-performing schools.¹⁴³ In New York City, the chancellor

¹⁴² Similar state assistance teams undertake comprehensive assessments and evaluations of teachers and administrators in regard to low performing schools in North Carolina. See Ladd, "Policy Brief on Accountability," p. 7.

¹⁴³The program recommended here draws on Kentucky's Highly Skilled Educators Program, "an innovative approach to school level reform, providing direct, on-site assistance to schools. A member of the Kentucky Highly Skilled Educators cadre assists a school in strengthening its curriculum, instruction and assessment practices. In addition, this individual supported by members of a regional team, assists the school staff as they improve learning for all children and work toward exceeding the school's improvement goal" (see <http://www.education.ky.gov/KDE/Administrative+Resources/School+Improvement/Assistance+to+Schools/Highly+Skilled+Educators/default.htm>.)

would approve the specific school assignments of distinguished educators selected by the commissioner. Distinguished educators would be assigned to work intensively with one or two low performing schools for a one- or two-year period.

The state assistance team should review both the school's and the district's SBE plans to determine why the school has not meet its designated goals and benchmarks. As part of its review, the team should undertake an independent analysis of the adequacy of the resources that have been provided to the school. The team should have authority to review school practices and district practices affecting the school, as necessary.

On the basis of its review, the team should determine whether the principal has provided capable leadership or would be able to provide capable leadership if given adequate resources and supports. The team will then recommend to the district superintendent (or, in New York City, the chancellor) that the principal be retained or dismissed from his or her position. If the principal is dismissed, the distinguished educator will work with the district authorities and the teacher and parent representatives to select and appoint a new principal as quickly as possible. The distinguished educator, working with the new and/or existing principal and teacher and parent representatives, will review the performance of the current staff and recommend the transfer or dismissal of any teachers who are not able to meet the needs of the schools' students.¹⁴⁴

Based on its review and its knowledge of practices that may have worked successfully in schools with similar demographic profiles, and drawing specialized expertise from the BOCES and regional support centers, the team should then initiate a school-based self-assessment process that will involve the entire school community in a serious process of self-review, including data analysis, reflection, dialogue, and improvement planning.¹⁴⁵ Parents,

¹⁴⁴ Adoption of this proposal would require changes in existing collective bargaining agreements, which, as indicated above, we believe should be negotiated by the relevant parties. Procedures should also be developed that would permit superintendents and, in New York City, the chancellor, working with supervisor and teacher representatives, greater flexibility to effectuate necessary personnel changes as part of the corrective action plan required for schools identified as in need of improvement for three years under NCLB.

¹⁴⁵Kentucky's scholastic audits are one useful model. In Kentucky, scholastic audits are performed by state, regional, and local district personnel. They provide schools with information on over 80 indicators related to

teachers, and other members of the school community should be provided with the information and supports necessary to enable their participation. This process may encourage some families to participate and help improve this school, rather than to exercise their option under NCLB to transfer to other schools. The self-review process should result in the formulation of a new school turnaround plan, which should be developed in conjunction with the district superintendent (or, in New York City, the regional superintendent). Once a turnaround plan is established, the distinguished educator, together with the principal and teacher and parent representatives should promptly select new teachers for the restructured entity in accordance with the needs of the students. To enhance the ability of the restructured school to retain and attract truly highly qualified teachers, we recommend that a substantial increase in compensation be provided for all professional personnel who have been chosen to work in a restructured school through this process.

The team should, in addition, assess the adequacy of the school's existing resources to implement their turnaround plan. If the team concludes that the school lacks sufficient resources, it should apply to the district for the specific resources required. The district should maintain a reserve fund specifically for this purpose. If the district is unwilling or unable to provide the necessary funding, the team should petition the state education commissioner.

The commissioner should have the ultimate authority to ensure that districts provide a sound basic education to all students. These powers should include the authority to validate school and district resource adequacy assessments and, then, if additional resources are required, to recommend they be allocated by the district or provided by a special appropriation from the legislature. In addition, the commissioner should have the authority to compel a school district to make necessary changes to its SBE plan. If the district fails over time to

school success. If a school is in the bottom third of all schools identified in need of assistance for two consecutive accountability cycles, the school district is also subject to an audit. Successful schools request and are granted scholastic reviews. Because Kentucky collects data on the same indicators for successful and low performing schools, it can disseminate best practices by comparing indicators where results vary most from the lowest-performing schools to successful schools. See, for example, Kentucky Department of Education, *The Scholastic Audit 2003: A Report on School Improvement in Kentucky* (Frankfort, KY: 2003). New York State's own educator-led School Quality Review Initiative, now performed for only a handful of schools each year, is another useful model. See New York State Education Department, *The School Quality Review Initiative Self-Review Guidebook*. (September 1999).

improve its persistently failing schools, the commissioner should also be statutorily empowered to assume partial or complete operating authority over the district's operations.

To ensure SED's capacity to carry out its regulatory, monitoring, information, and capacity-building responsibilities in a constitutional accountability system, the legislature must ensure that SED has sufficient funding. BearingPoint's analysis of SED's capacity concludes that SED's current staff is insufficient to carry out its current responsibilities and will require sufficient resources for additional personnel to implement comprehensive accountability. Most of this funding would be devoted to hiring a cadre of highly qualified and experienced educators to work intensively with the teachers and leadership teams and to focus on successful instructional strategies in persistently low-performing schools. The Sound Basic Education Implementation Task Force should review SED's current monitoring capacity and its enhanced responsibilities under this proposal and make specific recommendations on new staffing needs and additional appropriations.

C. Establishment of Accountability Review Panel

An independent Accountability Review Panel should be established. The governor should appoint two of the members of his Commission on Education Reform to serve on the panel, the plaintiffs in *CFE v. State of New York* should appoint two members, and three should be appointed by the Regents. The panel should (a) identify major statutory, regulatory, or contractual provisions that need to be reconsidered in order to meet constitutional objectives; (b) retain professional auditors to conduct periodic operational efficiency audits of New York City and other school districts; and (c) report annually to the governor and the legislature on the implementation of the new constitutional accountability system.

Table 3.4 CONSTITUTIONAL ACCOUNTABILITY: AN OVERVIEW

| | ADEQUATE SYSTEMIC FUNDING | COMPREHENSIVE PLANNING & FAIR DISTRIBUTION OF RESOURCES TO EACH SCHOOL | EFFECTIVE USE OF RESOURCES | ASSESSING OUTCOMES PROPERLY | APPROPRIATE CONSEQUENCES FOR POOR PERFORMANCE |
|----------------------|--|---|--|---|--|
| STATE ROLE | <ul style="list-style-type: none"> ▶ Ensure adequate legislative appropriation, as determined through periodic objective costing-out studies, distributed through a foundation block grant. | <ul style="list-style-type: none"> ▶ Ensure SED’s capacity to review and approve low performing districts’ sound basic education plans and to support persistently low performing schools. | <ul style="list-style-type: none"> ▶ Update and expand SED’s current information systems so they can provide functions such as individual student tracking and effective coordination of resources. ▶ Eliminate statutes and regulations that impede the achievement of instructional goals. ▶ Conduct operational capacity audits. | <ul style="list-style-type: none"> ▶ Maintain existing Regents testing program, but conduct independent review of validity and reliability of all tests. | <ul style="list-style-type: none"> ▶ Judicial review of any failures to provide adequate funding. |
| DISTRICT ROLE | <ul style="list-style-type: none"> ▶ Ensure appropriate distribution of resources to schools in accordance with student need. | <ul style="list-style-type: none"> ▶ Develop policies for improving professional and instructional capacity. ▶ Develop, with substantial public input, a comprehensive 4-year SBE plan that will replace over 100 current plans and reports. ▶ Set forth specific plans and instructional strategies to close achievement gaps. ▶ Fairly distribute resources to all schools. ▶ Update plans annually. | <ul style="list-style-type: none"> ▶ Specify annual resource adequacy targets and benchmarks in essential resource areas. ▶ Identify statutes, regulations, and contractual provisions that need modification to achieve instructional goals. Eliminate the impediments that are under district control. | <ul style="list-style-type: none"> ▶ Administer Regents testing program ▶ Develop additional district-level civic participation goals. | <ul style="list-style-type: none"> ▶ NCLB sanctions ▶ For persistently low-performing schools, SED will send a state assistance team to conduct a thorough school improvement review, designate a “distinguished educator” to work at the school, and ensure implementation of a school turnaround plan. |
| SCHOOL ROLE | <ul style="list-style-type: none"> ▶ Fairly distribute resources in accordance with student need. | <ul style="list-style-type: none"> ▶ Develop a 4-year local strategic plan with school-based goals and strategies, consistent with district priorities to ensure a sound basic education for all students and close any achievement gaps. | <ul style="list-style-type: none"> ▶ Implement policies for improving professional and instructional capacity. ▶ Provide detailed public accounting for how funding from all sources will be used. ▶ Provide feedback on resource adequacy and policy implementation for district plans. | <ul style="list-style-type: none"> ▶ Administer Regents tests. ▶ Assess district- and school-level civic participation goals through portfolios and other alternative assessments | <ul style="list-style-type: none"> ▶ NCLB sanctions ▶ Restructuring of school in accordance with turn-around plan |

CONCLUSION

Adoption of the reforms recommended in this report would fully satisfy the Court of Appeals' mandate in *CFE v. State of New York* to ensure that New York's schools can provide all of their students with the opportunity for a sound basic education.

Implementation of our operating aid proposal will ensure the court's mandate that "funding be aligned with need" in New York State's education finance system and that students in all schools actually receive the resources necessary to provide them the opportunity for a sound basic education. New York State's anachronistic funding "formula" must swiftly be replaced with a fair, forward-looking state education finance system. The reforms presented in the proposal will not only guarantee the availability of requisite resources, they will provide the equity, transparency, and predictability that four state commissions, and virtually all constituencies in the statewide educational community, have sought for 30 years.

The state's antiquated building aid formulas must also be revised to reflect actual student needs and realistic building costs to meet those needs. Our proposal contains seven specific reforms to transform the current state building aid formula into a system that is fair, rational, predictable, and transparent, while at the same time maintaining local control for school construction funding decisions. We also call for the state to act promptly to relieve overcrowding and other capital infrastructure deficiencies in New York City. A special BRICKS construction program, funded in the amount of \$8.912 billion for New York City, is the best way to meet this mandated need. Additional funds in an estimated amount of \$1 billion should be made available for similar pressing needs in other high-need districts throughout the state.

Finally, implementing the comprehensive educational accountability system recommended in our proposal responds to the Court of Appeals' mandate that New York State "ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education." We propose a next-generation accountability system

that does not merely keep score of how schools are doing but truly focuses on supporting improvement. Consistent with the court's requirements, the new accountability system would ensure adequate systemic funding, the fair distribution of that funding to every school, comprehensive planning and effective use of resources, ample information and accurate assessments of students' progress toward meeting standards, and prompt invocation of appropriate consequences for poor performance. It would truly hold all participants in the system accountable for student success.

Together with the *New York Adequacy Study*, these proposals provide the structures needed to meet the constitutional requirements set out by the Court of Appeals in *CFE II*. Fully implemented, they will establish a state education finance of which all New Yorkers can be proud.

APPENDICES

APPENDIX A. MEMBERS OF THE SBE TASK FORCE*

OPERATING AID TASK FORCE MEMBERS

| | |
|--------------------|--|
| Stephen Allinger | Executive Director, Office of Intergovernmental Affairs, New York City Department of Education |
| John Beam | Executive Director, National Center for Schools and Communities |
| Marian Adams Bott | Education Chair, League of Women Voters of the City of New York |
| David Caplan | Board Member, Public Education Needs Civic Involvement in Learning (PENCIL) |
| Joshua Chang | Director, New York City Partnership & Chamber of Commerce, Inc. |
| Bob Cohen | Research and Policy Director, Alliance for Quality Education/ Director, Education Project, Citizen Action of New York |
| Joan L. Colvin | Assistant Superintendent, Jericho School District |
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| Deborah Cunningham | Associate-in-Charge, New York State Education Department |
| Charles Dawson | Deputy Director of Governmental Relations, New York State School Boards Association |
| Regina Eaton | Executive Director, Alliance for Quality Education |
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| Barry Ford | Vice President for External Relations, After-School Corporation |
| Carol Gerstl | Associate Director, United Federation of Teachers |
| Brandon Gordon | Director, Midstate School Finance Consortium |
| Bob Hanna | District Superintendent and Executive Officer, Orange-Ulster BOCES |
| Howard Koenig | Executive Director, Reform Educational Financing Equities Today (R.E.F.I.T.) |
| Mark Lewis | Albany Representative, New York Immigration Coalition |
| David Little | Director of Governmental Relations, New York State School Boards Association |
| Richard Longhurst | Chair of Education Finance Committee, New York State Association of School Business Officials |
| Robert Lowry | Associate Executive Director, New York State Council of School Superintendents |
| Daniel Porter | Deputy Executive Director, Rural Schools Association |
| Thomas Rogers | Executive Director, New York State Council of School Superintendents |
| Joan Scheuer | Consultant, Educational Priorities Panel (EPP) |
| Russell Sykes | Vice-President, Schuyler Center for Analysis and Advocacy (SCAA) |

* The individuals listed as members of the task force served in an advisory capacity. Their participation does not imply individual or organizational endorsement of this proposal.

FACILITIES TASK FORCE MEMBERS

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| Stephen Allinger | Executive Director, Office of Intergovernmental Affairs, New York City Department of Education |
| Larian Angelo | Director, Finance Division, New York City Council |
| Claire Barnett | Executive Director, Healthy Schools Network |
| Steve Boese | New York State Director, Healthy Schools Network |
| Noreen Connell | Executive Director, Educational Priorities Panel |
| Charles Dawson | Deputy Director of Governmental Relations, New York State School Boards Association |
| Vito DeCesare | President, New York State Association of Small City School Districts |
| Bill Duncombe | Professor of Public Administration, Syracuse University |
| Bruce Feig | Chief Financial Officer, New York City Department of Education |
| Carol Gerstl | Associate Director, United Federation of Teachers |
| Richard Kahan | President, Take the Field, Inc. |
| David Little | Director of Governmental Relations, New York State School Boards Association |
| Robert Lowry | Associate Executive Director, New York State Council of School Superintendents |
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| | |
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| Stephen Allinger | Office of Intergovernmental Affairs, New York City Board of Education, |
| Cecilia Blewer | Representative, Chancellor's Parent Advisory Council |
| Charles Brecher | Director of Research, Citizens Budget Commission |
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| David Caplan | Board Member, PENCIL |
| Joshua Chang | Director, New York City Partnership & Chamber of Commerce, Inc. |
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| Martha Group | Midstate School Finance Consortium |
| Leonie Haimson | Chair, Class Size Matters Campaign |
| Tim Kremer | Executive Director, New York State School Boards Association |
| Mark Lewis | Albany Representative, New York Immigration Coalition |
| Daniel Lowengard | Superintendent, Utica City School District |
| Robert Lowry | Associate Executive Director, New York State Council of School Superintendents |
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| Daniel Porter | Deputy Executive Director, Rural Schools Association |
| Cassie Prugh | Legislative Representative, New York State United Teachers |
| Ellen Raider | People's Coalition to Take Back our Schools |
| Jim Sailer | New York City Department of Education, Office of the Comptroller |
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| Jay Worona | General Counsel, New York State School Boards Association |

APPENDIX B. SBE TASK FORCE EXPERT CONSULTANTS

Carol Ascher is a Senior Research Scientist at the Institute for Education and Social Policy at New York University and has written extensively on educational accountability.

Robert Berne is the Senior Vice President for Health and Professor of Public Policy and Financial Management at New York University's Wagner School and a nationally recognized expert in educational policy research.

Charles Coble is vice president for policy studies and projects at the Education Commission of the States. For 13 years, Coble was professor of science education and dean of the nationally award-winning school of education at East Carolina University, Greenville, North Carolina.

Margaret Goertz is a professor of education policy in the Graduate School of Education at the University of Pennsylvania and co-director of the Consortium for Policy Research in Education, where she specializes in the study of state and federal education finance and governance policy.

Janet S. Hansen is vice president and director of Education Studies at the Committee for Economic Development (CED) and a senior fellow at the Education Commission of the States.

Luis Huerta is an assistant professor of education at Teachers College-Columbia University and former research associate and coordinator for K-12 education policy research for Policy Analysis for California Education (PACE).

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Trudi Renwick is a senior economist at the Fiscal Policy Institute.

Ted Sanders is president of the Education Commission of the States. He was previously the chief state school officer in Illinois, Ohio, and Nevada and the Undersecretary and Acting Secretary for the United States Department of Education during the first Bush administration.

Nona Ullman is a managing director with BearingPoint Inc. who specializes in strategic, operational, and information technology consulting projects for educational institutions. Ms. Ullman has assessed K-12 accountability systems for numerous states.

Dennie Palmer Wolf is director of the Opportunity and Accountability Program at the Annenberg Institute for School Reform at Brown University and directs the institute's Rethinking Accountability initiative.