

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

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

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TESTIMONY BY CHARLES SZUBERLA

1. I am Coordinator for School Operations and Management Services in the New York State Education Department (SED). I am the Senior Manager who oversees the offices of Facilities Planning. I have been in my present position since the fall of 1999. From 1994 to 1999 I was Manager of the Offices of Facilities Planning.

NEW YORK STATE BUILDING AID

2. New York State building aid is available for approved public school expenses incurred in the construction of new school buildings, additions, and alterations or modernization of district-owned buildings. It may also be used for the purchase of existing structures for school purposes and for lease- and installment-purchase payments.¹

3. In 1997, the Legislature enacted two changes to Building Aid. First, the formula began to compensate for the relatively high construction costs faced by certain districts because of conditions in their local labor market. This enhancement resulted in a New York City regional cost

¹The New York Building Aid program is summarized in a July 2004 Memorandum, SED Office of Facilities Planning, *State Building Aid for Public School Districts and Boces*. See http://www.emsc.nysed.gov/facplan/publicat/building_aid_guidelines_072804.html.

index of 1.8753, which is the highest in the State compared to a floor of 1.0 for the lowest cost regions of the State.

4. Second, legislation in 1997 also provided a 10 percentage point across-the-board increase in the Building Aid Ratio (State share) for all school districts (capped at 95 percent). State Building Aid currently ranges from 10 to 95 percent of the approved cost allowance of a building project. The legislative change means, for example, that a district which formerly received zero would get 10%, a district which formerly received 45% would get 55%. This 10% increase in the State share correspondingly lowered the local share by 10%. As a result of this legislative change New York City went from a 50% local share to a 40% local share for its school construction projects. This change allows New York City to do 25% more construction work for the same local share.

5. The State share (the Building Aid Ratio) of the allowable expense for any given district is wealth equalized. It is calculated on a sliding scale based on the district's property value per pupil in relation to the State average. In the case of projects financed with bonds, the interest costs related to the cost allowance are also aided.²

6. Beginning in 2001 State aid for all construction projects is paid over the useful life of the project. In most school districts State aid is paid over 15 years for reconstruction, 20 years for major construction/additions and 30 years for new buildings. In New York City, the State aid is paid over a 30-year period under applicable statutory provisions.

²The Big Five City School Districts are subject to debt limits under Article 8 of the State Constitution. New York City is limited to ten percent of the City's full value, calculated as an average using the last five years' tax rolls. The other Big Four cities are limited to nine percent of full value. State Building Aid may not be deducted in calculating the debt limit.

7. Regarding leased space, if the district enters into a long term lease, *e.g.*, 50 years, the State treats this for aid purposes as if it were new construction. Otherwise, the State bases its aid for leasing on a 15-year lease. However, this is subject to renewal, *i.e.*, a building which is to be in use for 30 years can be financed by two 15-year lease arrangements.

8. Building Aid is based on an Assumed Amortization Schedule using a statewide average interest rate. There is a separate interest rate for each of the big five school districts, and funding for a project may be arranged through the Dormitory Authority of the State of New York, in which case the actual interest rate will be used.

9. For building aid everywhere in the State except New York City, districts submit plans and specifications to SED before bidding for the project commences, and SED reviews these plans and specifications before bids are received and contracts issued. This advance review includes SED advice and comments on the extent to which the project will be eligible for state aid. It is not uncommon for the districts to make adjustments to their projects based on SED comments at this stage.

10. By statute New York City is not required to submit its plans and specifications to SED in advance, although there is nothing which prohibits it from doing so. In practice the City does not submit plans, drawings or specifications for its projects before they are bid and contracts are issued. While New York City could obtain advance SED review of plans and specifications in the same manner as the rest of the state, and obtain comments on levels of aid before bidding, it does not do so. The result is that SED does not review New York City school construction projects until the City submits a contract for aid reimbursement.

11. Except for New York City, districts submit capital construction plans and specifications to the State Education Department, whose staff calculate a maximum construction cost allowance. The key elements of State Building Aid are:

- Rated Capacity expressed in Building Aid Units (BAU). The BAU assigned to a particular project is computed using space standards established by the Commissioner or in the case of New York City based on the capacity calculated by the Department of Education. When new buildings or additions to schools are planned, the total projected student enrollments for the grade levels to be housed in that new building are compared to the actual number of regular and/or interchangeable classrooms being proposed.
- Construction Project Cost Index -- This is the New York State Labor Department index, which represents the cost of labor and materials. It varies monthly and is used to determine the construction project cost index for both construction contracts as well as for incidental costs. For computing actual Building Aid, the construction project cost index used is the one that is in effect the month the district signs the major contract for the work proposed under each particular project.
- Regional Cost Factor – The cost allowance is adjusted to reflect the prevailing wage rates of each county. The regional cost allowance is based on the wage rates and benefits for three representative construction trades.
- Maximum Cost Allowance -- The product of the Rated Capacity times the Construction Cost Index times the regional cost factor. This represents the maximum amount of actual expenditures upon which the State will pay Building Aid.

- District Building Aid Ratio -- This represents a fixed percentage determined annually for each individual school district, based on the full value of property in the district and the number of students in the district. It varies from 10% in the wealthiest districts to as high as 95% in the poorer districts. The district is aided at the district building aid ratio on the lesser of the actual project cost or the maximum cost allowance. The current building aid ratio for New York City is 60.7 percent including the 10 percent incentive.

12. A simple example of a hypothetical New York City elementary school using the foregoing generally applicable procedure illustrates how State building aid works in practice:

Cost Allowance Example
New K-6 Elementary School

- Assume a 550 student school (justified by enrollment projections).
 - 7 grades (K - 6) plus 3 pre-kindergarten rooms.
 - 4 sections (4 x 7) each grade for a total of 31 classrooms.
 - Average class size = 18.
- Each child requires roughly 130 square feet of space.
 - Includes corridors, cafetorium, library and ancillary spaces.
 - School size is 68,750 square feet (550 students x 130 S.F./student).
 - School construction costs \$315 per square foot including incidentals.
 - The total cost of the school is \$21,656,250.
- The number of building aid units (BAUs) equals:
 - 31 classrooms x 27 = 837

- 27 for cafeteria
- 27 for library
- 27 for gymnasium
- 10 for teachers conference room

Total BAUs = 919.

- The estimated cost index is \$10,304 per BAU unit based on June 2004 figures (includes \$8,587 for construction and \$1,717 for incidentals.) This goes up significantly for middle school and high school construction projects.
- The NYC regional cost factor is 1.8753.
- The maximum cost allowance is $919 \times \$10,304 \times 1.8753 = \$17,757,921$.
 - Construction exceeds maximum cost allowance.
 - The project is 82 % aidable.
 - New buildings and additions typically exceed the maximum cost allowance by more than 30 percent.
 - State aid share at 60.7% is \$10,779,057.³
- Districts receive State Building Aid on the lesser of the actual construction cost or the maximum cost allowance at the district's building aid ratio. Most new buildings exceed the maximum cost allowance.⁴

³As noted above, this model would apply if New York City were subject to the same practices as elsewhere. However, for New York City the number of Building Aid Units is based on raw unadjusted capacity supplied to SED by the New York City Department of Education after a contract is bid.

⁴Total expenditures for capital construction are limited to the amount properly authorized by either a vote of the people in a public school district (or declaration of an ordinary contingent

13. Between 1998-99 and 2004-05 State support for school construction Statewide increased from \$827 million to \$1.395 billion.. During this same time period, State support for school construction in New York City increased from \$221 million to \$417 million, an increase of \$196 million or over 88 percent. The trend is shown in the following table:

<u>School Year</u>	State <u>Total</u>	New York ⁵ <u>City</u>
(amounts in billions)		
2004-05	1.395	.417
2003-04	1.228	.411
2002-03	1.227	.394
2001-02	1.421	.437
2000-01	1.193	.400
1999-00	.947	.274
1998-99	.827	.221

14. Historically, New York City school construction costs have far exceeded the allowable costs under the State building aid formula. In fact, at more than \$500 per square foot for three recent projects on file with SED, the costs are significantly higher than the statewide average cost, even after adjusting for regional cost differences. Statewide average school construction costs run \$140 - \$150 per square foot, including incidental costs. Applying the New York City 1.873 cost adjustment to the \$150 would give a City an adjusted allowable cost of \$281 per square foot, but this figure would include incidental costs.

15. Under the newly unified School Construction Authority in New York City, design standards for City construction projects have been modified to reduce building costs. New York City

expense by the Board of Education, when appropriate) or by the Boards of Education in the Big Five City School Districts.

⁵Based on SED's September 1, 2004 database.

has reported reducing construction costs for some projects to \$315. However, this reduced figure has not included incidental costs. Incidental costs are in addition to construction costs, and include certain expenditures for site purchase, grading or improvement of the site, original furnishings or equipment, or professional fees (design and legal) and other miscellaneous incidental costs (such as insurance during construction and general administrative costs). Even assuming New York City costs reduced to \$315 per square foot, because these omit incidental costs, which are substantial, they still far exceed allowable costs.