

# **New York State Aid to School Districts for Construction**

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With the New York State Court of Appeals 4 to 1 decision on June 26, 2003 in favor of the plaintiffs in the Campaign for Fiscal Equity lawsuit, the story of the state's financial responsibility for the New York City public school system is forever changed. The decision, although restricted to New York City's public school system, will undoubtedly have an impact on the way public schools state-wide are funded.

The decision turns on the question of the State's responsibility to provide a "sound basic education" required under the State Constitution. The Court found that New York City with the largest number of students with special needs in the State has received funding according to formulas that do not adequately take these special needs into account. In its decision the Court wrote "Plaintiffs have prevailed here owing to a unique combination of circumstances: New York City schools have the most student need in the State and the highest local costs yet receive some of the lowest per-student funding and have some of the worst results." (NYS Court of Appeals, Campaign for Fiscal Equity v. State of New York, June 26, 2003, p. 54.)

To provide a "sound basic education" there must be a place. In recognition of this physical need for a school, the State provides building aid to school districts State-wide for school construction. The complex formula that provides this building aid has some similarity to the formula for general operating aid, which comprises the main education aid to school districts. This report examines how the State provides financial support for school construction and provides some details on the impact of this aid on several school districts: two urban – Buffalo and New York City – and two rural – Friendship and Roscoe. Because of the CFE decision, the formula that determines building aid must be re-evaluated. How well the State's program meets districts' buildings' need is an important question the legislature must analyze. While the Court did not find that deteriorated building conditions affect the ability to deliver a "sound basic education", the Court of Appeals concurs with the lower court finding on the deleterious effects of overcrowding and New York City's inability to reduce class sizes due to lack of space.

**Introduction.** New York State provides financial support for public education primarily through the State's General Fund – approximately 90% of education aid is provided through the General Fund which is supported by income and sales taxes. The remaining 10% of education aid is funded by a Special Revenue Fund created by net revenues from the State Lottery. The majority of State aid – 56% - is for unrestricted general aid and another 15% goes for services for students with disabilities and the remaining 29% represents aid for categorical programs, such as aid for capital building projects among other programs such as transportation. The total projected State school aid for 2003-04 is \$14.43 billion, a small reduction from 2002-03. Building aid is projected at approximately \$1.1 billion, a small reduction from 2002-03 also.

Before analyzing the Building Aid program it is important to understand the overall profile of New York State's public school students and how the State evaluates the needs of its students. If its aid programs are meant to be structured and targeted to the most needy students and areas of the State, all of its aid programs should fairly reflect this overarching goal to deliver resources where there is need.

**New York State's Public School Students.** New York State has just over 2.8 million students in its public schools (2000-01 statistics). Students come from diverse racial backgrounds state-wide – 55% are white, 20% black, 18% Hispanic and 6% other. Many of New York State's students have high needs – 51% are eligible for free or reduced lunches – although 80% go to college. The Big 5 School Districts – New York City, Buffalo, Rochester, Syracuse and Yonkers – comprise 42% of the total student population of the State. The needs in these districts are much higher than in the rest of the State. Approximately 80% of these students are eligible for free or reduced price lunches, 64% of New York City's students go to college and 79% of students of the other big city school districts go to college. There is high poverty in these cities and they have the highest rate of limited English proficiency in the State.

All five districts have very diverse populations – much higher than the rest of the State. In New York City the racial breakdown of its 1,048,692 students is 15% white, 35% black, 38% Hispanic and 12% other. The four other large city districts, which have a total enrollment of 126,650, educate students that are on average 26% white, 52% black, 19% Hispanic and 3% other. The New York City school district swamps all other districts including the other Big 4 urban school districts; it has over 37% of the public school students in the State. Eighty five percent (85%) of New York City's students are minority and overwhelmingly poor. (“Table 1, Statistics for Public and Nonpublic Schools,” June 2002 Report to the Governor and the Legislature on the Status of the State's Schools)

**Need/Resource Capacity Category and Combined Wealth Ratio.** The State assigns each of its 748 school districts (including BOCES) a Need-to-Resource Capacity Category. “The need/resource capacity index, a measure of a district's ability to meet the needs of its students with local resources, is the ratio of the estimated poverty percentage to the Combined Wealth Ratio. A district with both estimated poverty and Combined Wealth Ratio equal to the State average would have a need/resource capacity index of 1.0.” (“Table 3.1, Need/Resource Capacity Category Definitions,” June 2002 Report to the Governor and the Legislature on the Status of the State's Schools.) The poverty rate is a weighted average of elementary students eligible for free or reduced price lunch. The Combined Wealth Ratio compares the “...ratio of district wealth per pupil to State average wealth per pupil,...” (Ibid.)

The State organizes districts into high, average and low need. Within the high need districts are New York City, the other Big 4 school districts, 43 urban-

suburban and 159 rural districts. High need districts have a need/resource capacity index of 1.1855 or above. Average need districts, of which there were districts in fall, 2000, have an index between 0.7693 and 1.1855 and low need districts (135 in fall, 2000) have an index below 0.7693. Using this same data, the high need districts have 50.8% of the schools State-wide. (“Table 3, Need/Resource Capacity Category Definitions,” June 2002 Report to the Governor and the Legislature on the Status of the State’s Schools)

The need/resource capacity categories are important because it is the State’s way of assessing whether the district has the ability to meet the needs of its students. However, in the discussion that follows it becomes clear that this capacity doesn’t always translate into the level of building aid that a district may be eligible for. The State assigns 6 Need/Resource Capacity Categories:

- “1. New York City
2. Large City Districts – Buffalo, Rochester, Syracuse and Yonkers
3. High Need Urban-Suburban Districts
4. High Need Rural Districts
5. Average Need Districts and
6. Low Need Districts” (“Glossary, Statistics for Public School Districts”, June 2002 Report to the Governor..., p. v.)

It is important to remember that categories 1 through 4 are the high need districts.

The **Combined Wealth Ratio (CWR)** is an important component in determining the Need/Resource Capacity Category. The CWR “...compares district wealth to the State average wealth, which is defined as 1.0....If a district has a ratio below 1.0; its CWR is below the State average. To calculate the CWR for a district the State compares property values to the weighted number of pupils and adds to that a comparison of the income wealth of the district with the weighted number of students. Other factors taken into account include student attendance rates, special ed students, the number of high school students and whether kindergarten students attend a full day or half day program.

The following compares the Need/Resource Category with the CWR for a number of districts which will be discussed in the subsequent sections of this Report.

District	Need/Resource Category	Combined Wealth Ratio
New York City	1	.953
Buffalo	2	.51
Utica	2	.582
Syracuse	2	.501
Rochester	2	.551
Yonkers	2	1.216
Friendship	4	.269
Downsville	5	1.871
Margaretville	4	1.381
Walton	4	.496
Roscoe	5	.974

Of the High Need Big 5 Districts, New York City’s CWR at .953 is just below the State average and Yonkers is above the State average at 1.216. The CWR for these districts has a profound effect on the level of State aid they receive. Downsville, Margaretville and Walton are all in Delaware County; two of them – Downsville and Margaretville – are in the New York City watershed so property wealth is much higher as a result of New York City tax payments. As a result, Downsville’s and Margaretville’s CWR are well above the State average while Walton is only half of the State average. Both Friendship and Roscoe are rural districts which will be discussed later in this report. Friendship is a small, rural district in the western part of the state with a minimal job base; its CWR is very low at .269. Roscoe is a small, rural district in Sullivan County but because of tourism and weekend homes, its CWR is just slightly higher than New York City’s which puts it into the medium wealth category also.

The districts in three suburban counties near New York City – Westchester, Nassau and Suffolk – are primarily low and average need. In Westchester all are low and average need except for Yonkers and Mount Vernon. In Nassau most districts are low need and except for Roosevelt all districts have a combined wealth ratio higher than 1.0. Suffolk has a slightly worse profile with some high need districts but overwhelmingly its districts are low or average need.

The importance of the CWR played a significant role in the CFE decisions. The lower Court decision of Justice DeGrasse which was upheld in most areas by the Court of Appeals’ decision stated that “...the State’s school funding mechanism has failed for more than a decade to align funding with need...” (“D. The State Aid Distribution System,” State Supreme Court Decision, 719 N.Y.S.2d475, unpaginated) Justice DeGrasse went further to state that the combined wealth ratio also does not take into account regional costs, a major issue for a high cost district like New York City. In short, the CWR reflects to a great extent the relative property wealth but does not adequately equalize the high need of students in that district.

**New York State’s Building Aid Program.** The State projects it will provide over \$1.1 billion in support for school construction this year through reimbursement via the Building Aid program. Because the State’s capital aid is a reimbursement

program, local school districts must initially raise the funds for capital projects, primarily through local bond issues requiring local voter approval. (It should be noted that building aid for BOCES follows a very different process and the aid ratio is a mix of the aid ratios of the participating districts.)

Districts generally fund their operations through two main funding sources: revenues it raises through tax levies it imposes based on a publicly approved school operating budget. The operating budget includes salaries, textbooks, school support services, lease payments for any spaces for which the district is the tenant, the day to day operations of running the district, including the daily operations of school buildings and maintenance repairs for those buildings.

When a district decides to undertake a major construction project such as building a new school, an addition to an existing school, a major renovation of an existing building or replacement of a building system, such as replacement of all of the windows in a building, roof replacement, new boilers, etc., the district can legally use its operating funds to pay for these projects. However, given the financial size of these capital projects, districts generally build capital projects with multi-year financing. This also requires a referendum approved by its taxpayers; the district must identify the project or projects, estimate their costs, ask for approval for the projects and to issue bonds to finance them. School districts have the legal authority (except for the Big 5 School Districts) to levy an increase in taxes sufficient to cover the local share of the principal and interest on the bonds. If approved, the district will go into the financial markets and, with the help of underwriters and bond counsel, issue bonds to pay for the project(s).

The above makes it appear as if the budgeting process follows an easy to follow how-to handbook. In reality, a school district budgeting process is fraught with uncertainty. For a referendum on capital projects there may be significant negotiation on the project budget to fit a particular envelope of additional tax levy that may be supportable and there may be a number of failed referendums before the project and the tax levy required are passed. In poor districts, such as Friendship, referendum for capital projects can be quite expensive even with a minimal local share due to low property values.

Because cost is so important to the voters, the project budget may be determined more by what can be approved rather than an amount sufficient to meet educational goals. And districts will avoid this process if they can. In a separate report on alternative development mechanisms, the Niagara Falls' experience is described. The district did not have to go to its voters on the funding for its new high school because they used certificates of participation financed against a lease and they did not have to raise the local tax levy to support the resulting lease payments. However, the district did conduct an extensive public process to gain support for the new high school.

The State's level of reimbursement is determined by the type of project, the eligible project costs and the district's Building Aid Ratio (BAR). In the subsequent discussion on Building Aid Ratios, it becomes clear that the State program, while a stable and consistent form of aid, has inequities and limitations. It does not adequately take into account high cost areas of the State. Also, the way the BAR is calculated, which unlike operating aid does not take into account income levels, creates disparities on providing aid to some high need districts, such as New York City. The BAR is derived by a wealth measure: the actual valuation divided by the resident full year attendance; this is dissimilar to the Combined Wealth Ratio that equalizes property wealth with income levels. Like operating aid, however, the BAR's are structured to give more funding to the lower-value property districts than to the higher-value property districts in the State. As a district's property base increases, building aid decreases; as a district becomes poorer in its property, building aid increases. In the case of a high need district like New York City, it has a BAR for a moderate wealth district because of the way the calculation is structured.

It is important also to understand that the State's Big 5 school districts – New York City, Buffalo, Rochester, Syracuse and Yonkers – are fiscally dependent districts. These 5 districts have no bonding or taxing authority and rely upon their local municipal governments for all aid; all state aid goes to the municipal governments directly. The cities, in turn, fund their local school districts. As will be discussed later in this report, municipal fiscal constraints and politics play a significant role in school construction funding in these cities.

**How Building Aid Works.** The State estimates it will provide approximately \$1.1 billion in Building Aid to school districts state-wide during 2003-2004. Building Aid is provided for capital construction projects costing more than \$10,000 for buildings that are used for instruction and also for school bus garages. No administrative buildings are eligible for Building Aid although offices necessary for the operation of an individual school are included as ancillary spaces in the formula. The State Education Department (SED) must approve the project which also requires local approval by the governing body of the district. (SED's March 2002 Memorandum from Carl Thurnau to Superintendents entitled "State Building Aid for Public School Districts and BOCES" describes the Building Aid program in detail. The following summarizes much of this material.)

Before approving a project the SED evaluates the need for the project, with particular scrutiny on a new school project. SED will look at the district's need for space (how it utilizes its current space, average class size, etc.), its enrollment projections, the proposed curriculum, the resulting program needs for space and floor plans. Once the need for the space is determined, SED shepherds the project through the Building Aid process which first requires SED to pre-approve plans and specifications. The State issues the building permit. It should be noted that in New York City plans and specifications are not submitted in advance nor is the building permit issued by the State. Permits are issued under

an agreement between the New York City Department of Buildings and the New York City School Construction Authority.

SED calculates the amount of Building Aid that a specific project in a district is eligible for based on a number of factors:

- Eligibility of the project.
- Project Costs.
- The State-rated capacity for the building, i.e., the Building Aid Units calculated for the project.
- The construction and regional cost indices in effect when the construction contracts are signed.
- The district's Building Aid Ratio.

**Eligible projects** for building aid include:

- New construction of a new school or building addition;
- Acquisition of property for instructional use;
- Major health and safety repairs that are not maintenance work;
- Alterations to an existing building required by an addition or through conversion of the building to another educational use, for example, converting an administrative building into a school;
- Capital improvement projects are generally reconstruction of individual major elements, of an existing building. For example, capital improvement projects include permanent improvements, remodeling, and replacement of major building components/systems such as roofs, windows, heating systems, etc. The reconstruction/replacement work for a particular system or building component must be significant; it must be an entire replacement or a substantial portion of the system or component. If it does not meet these criteria for a capital project, then it is a maintenance project and must be funded locally in its entirety.
- "Deteriorated Building Elements" can also be funded so long as the need is adequately documented by the district, that the work will be a complete replacement or a substantial portion of that element in the building and that these "Elements" are part of another eligible reconstruction project. On their own, these items which include such items as auditorium seating, blackboards, lockers, etc. would not be eligible for Building Aid. For example, renovating the auditorium under an alteration to the school building could include replacement of auditorium seats. It should be noted that in building a new school all of these "Building Elements" would be eligible for Building Aid under furniture, fixtures and equipment as first-time costs. Any subsequent replacement would have to meet the criteria as set forth above.
- Emergency Repairs are eligible for Building Aid so long as the repairs are capital construction that meets the criteria for a capital improvement project for individual building elements or reconstruction when work on

many building elements and/or systems are required on an emergency basis.

**Project Costs.** If the plans and specifications for the capital project have been submitted to and approved by the Commissioner of Education, building aid can be paid for approved expenses "...for both construction or acquisition of new school buildings, and for the reconstruction and modernization or improvement of existing school buildings." The costs that SED will consider for building aid as a result of eligible projects listed above are:

- Construction costs are eligible but a construction contract must exceed \$10,000 and have received all SED approvals and a Building Permit prior to advertising for public bids.
- Site purchase
- Site improvements, such as grading, etc.
- Professional fees, such as fees for design work by architects and engineers
- Furniture fixtures and equipment (initial costs only)
- Insurance during construction
- General administrative costs.

In a project that is financed through bonds, interest on the eligible costs is also included in the calculation for building aid.

**Building Aid Units (BAU).** The State sets standards for new buildings and additions or the modification of existing buildings by specifying the minimum size for individual spaces. Building Aid Units or BAU are assigned to a project based on the minimum SED-established space standards. For example, for an elementary school, SED assigns 27 BAU to each 770 sf classroom used for grades 1 through 6. Kindergarten and pre-kindergarten classrooms have higher space standards: 900 square feet. Maximum capacities are also established for most educational spaces.

The BAU is the State-rated capacity for a space so if a district is utilizing a standard size classroom with small class sizes which are educationally desirable, small class sizes could have a potentially negative impact on a district's ability to be fully aided for a new school or addition. However, the State also analyzes the school's operating capacity, enrollment and space needs for educational programs in making this evaluation. This potentially raises a question for the State-funded early grade class-size which provides eligible districts with additional funding to reduce their class size to 20 in grades K through 3. The ability to receive aid for small class sizes that may be a district initiative coupled with the State program to reduce class size further could be jeopardized when examined within the context of a district's over-all needs. It is unlikely that this would be a problem in New York City with its overcrowding but in a small district like Friendship, discussed later in this report, how the district utilizes its classrooms is critical for building aid purposes. It should be noted that the State

aid for small class size instruction only pays for instructional needs not for the capital needs to create more classrooms.

There are no BAU assigned to ancillary spaces; BAU are only assigned to classroom space for elementary schools because it is assumed that the cost index will be sufficient to provide for these ancillary spaces. However, BAU will be assigned to other rooms such as the "...library, cafeteria, gymnasium, auditorium and teachers' conference rooms... if these spaces are located in a new building or an addition to an existing school and only on an 'as needed' basis." The language provides some flexibility to SED for calculating BAU. The preceding summarizes the pupil station method for calculating BAU for an elementary school.

The standard for assigning BAU for secondary schools, which affects buildings housing grades 6 and above, is different from elementary schools. There are two different approaches depending on the size of the school: the pupil station method or teaching station method.

For the teaching station method, there is a teaching station assigned to each instructional space, including the gymnasium, cafeteria/study hall and swimming pool. Depending on the number of teaching stations for an individual school, the total is multiplied by a factor (The factor is 30 for junior high schools with 29 or fewer teaching stations and 33 for junior/senior high schools with 25 or fewer teaching stations). The product is the BAU for the building. (Note: there is a separate formula for senior high schools with 22 or fewer teaching stations.)

The pupil station method applies to schools/buildings larger than those described above in the teaching station method. The total number of pupil stations for these larger buildings are calculated by dividing the net square foot area of the rooms used for instruction by the SED-listed square foot/pupil allowance for each of these rooms. For example, for an art room the square foot per pupil is 45 square feet and the maximum number of allowable pupil stations for an art room is 25. Therefore, for building aid purposes the maximum size of the art room eligible for aid is 1,125 sf. Conversely, if a district is planning a new school with an art room of 1,125 sf, SED will assign a pupil station number of 25 to this sized room. Under the pupil station methodology, the library, gymnasium, swimming pool and cafeteria/study hall are eligible to have pupil stations assigned to them.

A formula is then applied to the total number of pupil stations for the building; the result of this calculation is the BAU for that building for building aid purposes.

It should be noted that SED recognizes that the BAU or Pupil Station for a specific room may be different from the SED mandated maximums due to written local policy and/or teaching contracts mandating separate maximums. For example, if a teacher contract mandates a maximum class size lower than the

state maximums, SED will recognize that in calculating the BAU for a capital project.

There is a third method for calculating BAU and that is the square foot methodology which is based on "...a predetermined statewide square foot allowance per pupil for different kinds of buildings." For example, a building that houses grades K through 6 will allow 85 square feet per pupil, a K through 9, 7 through 9 and K through 12 buildings allow 100 square feet per pupil, a 7 through 12 and 10 through 12 buildings allow 125 square feet per pupil. These calculations are for the entire square footage of a school building so that the large spaces occupied by auditoriums, gymnasiums and other common spaces are not disallowed. However, these square footages appear low. For example, in New York City the standard program of requirements that the district uses as a starting point to program a new school has higher total square foot numbers per student: 132 SF/student for a 650 student elementary school, 146 SF/student for a 650 student intermediate school and 171 SF/student for a 800 student high school. The New York City square footages are unadjusted and the State's square footages may be adjusted; that is not clear. For an equal program of requirements, an urban multi-story school planned for a tight site will require more square footage per student than a single story suburban or rural school building because more circulation is needed increasing the square footage.

It appears that this square foot methodology is primarily applied to building additions. SED notes that if "... an existing building plus the proposed addition already exceeds the statewide average square foot allowances, there is no Building Aid." (The March, 2002 SED Memo on Building Aid contains a more comprehensive explanation of the pupil station, teaching station and square footage approaches.)

**Construction Cost Index.** As one of the factors that determine the final building aid that a project receives on a particular project, the State determines the maximum costs that it will reimburse against. Keeping construction costs down really matters. It is important to understand that school districts must follow public bidding procedures which generally result in a higher cost structure. The State set up a Construction Project Cost Index process and a base cost allowance in statute. The base cost is \$6375 per seat or per Building Aid Unit; this cost gets adjusted by the construction cost index issued by the State for the month that the construction contract for the specific project was executed. For example, the index in December 2002 was 124.6. The base cost allowance of \$6375 has an index of 100 so this number is adjusted upward by a factor of .246 for a current construction cost allowance of \$7,943 for projects with construction contracts executed during December, 2002. The construction cost allowances are higher for secondary schools and special education buildings.

Incidentals which include all of the eligible soft costs – acquisition, design fees, insurance, etc. – are added to the base as follows: 20% of the cost index for the

construction contract amount is allowed for elementary schools which is increased to 25% for secondary schools and special education buildings. Therefore, for an elementary school building, the cost allowance for incidentals is 20% of \$7,943 or \$1,588 for a total maximum cost allowance of \$9,531 per BAU.

**Regional Cost Indices.** The State has recognized that construction costs, particularly the labor component, vary widely throughout the State. Six years ago, the State developed regional cost indices for a number of high cost districts throughout the State that allow the construction costs to be escalated by a regional cost index that the State publishes. The regional cost index in effect for 2002-2003 recognizes the differential in labor costs in construction between the heavily developed urban and suburban areas of the State, particularly downstate, from the more rural counties. For example, the regional cost index for New York City is 1.7919, for Nassau and Suffolk Counties on Long Island 1.7146 and for Westchester County the index is 1.5774. 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, the lowest is .9082 for Franklin County. In these instances the State treats the index as a 1.0.

The higher cost structure recognizes the labor component of the “hard” construction costs but does not take into account the higher cost of other “hard” costs such as materials, overhead, etc. which are a part of the construction contract. The regional index does not recognize the higher cost of land, professional services and other “soft” costs, included in the incidental component of the maximum cost allowance in the high cost areas of the State.

**Building Aid Ratio.** The Building Aid Ratio (BAR) is specific to each district and is calculated annually. It is based on the full property valuation divided by the resident weighted average daily attendance. “It is calculated on a sliding scale based on the district’s property value per pupil in relation to the State average. ...The wealth-equalizing features of the formula mean that the State’s share of these expenses increases as a district’s property wealth decreases. For a district of average property wealth per pupil, the State sharing ratio is 49 percent....” (“School District Responses to Building Aid Incentives, April, 2002” New York State Education Department Research Monograph.)

Building Aid Ratios for districts vary from 10% with a maximum aid ratio of 95%. The State will reimburse the district its aid ratio applied against the project costs or the maximum cost allowance, whichever is less.

There was a significant change to the BAR in legislation passed in 1997. This legislation added an incentive of 10 percentage points to the BAR for all districts in the State maintaining the cap of 95%. As part of the incentive a district could select the aid ratio that was most advantageous to it between the 1981-82 year and the current year. So districts not only received the 10% increase, they had the ability to choose the most advantageous ratio over a significant period of time, approximately 20 years; this is the select aid ratio. The differences in the aid ratios could be significant over time so this was a significant boost to many districts' aid ratios. Because the incentive was applied across the board, need did not play a role in the use of the select aid ratio. SED points out that a district actually does not choose its aid ratio; the State automatically chooses the most advantageous aid ratio for a district.

The following table summarizes the BAR for the districts that are mentioned in this report.

District	Need/Resource Category	Combined Wealth Ratio	Select Building Aid Ratios with 10% incentive
New York City	1	.953	64.7%
Buffalo	2	.51	93.7%
Utica	2	.582	89%
Syracuse	2	.501	87.7%
Rochester	2	.551	87.0%
Yonkers	2	1.216	56.0%
Friendship	4	.269	95.0%
Downsville	5	1.871	10.0%
Margaretville	4	1.381	50.7%
Walton	4	.496	90.3%
Roscoe	5	.974	61.9%

To be eligible for the incentive a district's capital projects had to be approved by the voters or, in the case of the fiscally dependent school districts, by its legislatively mandated governing body by July 1, 2000. So for projects approved over this two year period between July 1, 1998 and July 1, 2000, districts were able to maximize their building aid significantly. As a result, building aid payments rose significantly. In 1998, exclusive of New York City, building aid approvals Statewide were approximately \$1.0 billion; approvals rose to \$1.4 billion, \$2.4 billion and \$3.7 billion in the succeeding three years as the average aid ratio increased to 74% from 64%.

Because of this rapid increase in project approvals due to the 10% incentive, which will require significantly increased levels of building aid in subsequent years if all of these projects go into construction, the incentive was essentially eliminated in 2000 with the following changes. The changes allowed a district to have two options on which Building Aid Ratio it could use: either the current year aid ratio or the selected year aid ratio minus 10%. The 10% incentive was added back to either option. More simply, the first option is current year ratio

plus 10%. The second option is select year ratio minus 10% plus 10% so the net result is the select year aid ratio. It became more advantageous for many districts to use the current year aid ratio whereas with the incentive during 1998-2000, most districts used a select year aid ratio. In reality the 10% incentive disappeared for most districts except for the high wealth districts. Prior to the incentive these districts received no building aid as their Building Aid Ratios were zero. With the incentive they received Building Aid Ratios of 10%. When the incentive was essentially eliminated, these high wealth districts retained their Building Aid Ratios of 10%. If, under the formula, a district is not entitled to Building Aid, it is difficult to understand the logic and equity of, first, giving an incentive, if none is needed, and then retaining that incentive without adjusting the aid ratios and other elements of the formula for more needy districts.

It would appear that the Building Aid program is more a way of allocating State funds for construction rather than a program that equitably evaluates need and cost. The complicated formula appears to be just an allocation procedure particularly in the case of new construction. In the discussion that follows on four school districts – New York City, Buffalo, Friendship and Roscoe – the inadequacies of the Building Aid program are discussed.

**How Building Aid Is Calculated:** The above describes the key factors that go into calculating how much building aid a district will receive for a particular capital project. Once the project receives its approval from SED to move forward, SED will calculate the amount of building aid the specific project is eligible to receive. The amount of building aid is the maximum cost allowance for the project multiplied by the district's Building Aid Ratio.

The Maximum Cost Allowance (MCA) is:

EITHER

The product of the Building Aid Units (BAU) multiplied by the Construction Cost Index (CCI) that is in effect the month that the construction contract is signed which is then multiplied by the Regional Cost Index (RCI);

OR

The project's actual costs, whichever is less.

Mathematically, the formula is:

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

$$\text{Building Aid for a Specific capital project} = \text{MCA} \times \text{BAR}.$$

For a New York City typical elementary school of 650 students, assuming the State-rated capacity is also 650 BAU, therefore, the building aid that New York City would receive for this school is as follows:

MCA =  $(650 \times \$9,531) \times 1.7919$   
Building Aid =  $11,101,089 \times .647$   
Building Aid = \$7,182,405.

The construction costs for a New York City elementary school of this size exceed the maximum cost allowance significantly; the hard construction costs today would probably be in the range of \$35 to \$45 million and this number does not include other necessary costs such as land, design and other professional fees, insurance, etc.

**How Building Aid Is Paid to the District.** Because the State pays the building aid on a reimbursable basis, the payments are the amortized value of the building aid over the legislatively mandated useful life of the project. A new school has a reimbursement schedule over thirty (30) years; a capital improvement project is generally reimbursed over fifteen (15) years and an addition is twenty (20) years but this time frame could vary depending on the project. (“Overview of State Building Aid Changes with Questions and Answers,” March 2002.) The district must, therefore, fund the project initially.

A district generally funds a capital project by using its taxing authority and its ability to issue bonds as described in a preceding section. It will go to its taxpayers with a referendum to issue bonds for the project(s) and, if passed, the district’s tax rate will be increased to cover the debt service on the bonds less any state building aid that the district believes the project(s) will be eligible for. The district’s ability to sell bonds in the marketplace will be dependent on its previous record but the assurance of state building aid will strengthen its position in the financial markets.

In 2001 the State changed the way it reimbursed the districts by mandating that building aid be paid on an assumed amortization going forward based on a uniform useful life of the project (briefly described above), a statewide average interest rate which the state will pay for under the building aid program and the eligible costs will be less any funds used for the project raised outside of a debt issuance.

For some districts this meant that the term that a district generally used for its capital borrowings changed and the interest rate could differ, however, going forward it has been felt that districts would be able to modify their borrowings to be consistent with the State’s new requirement. The State bases its average state-wide interest rate on the interest rates reported to it from the previous year. For the 2002-03 school year, the State is using a rate of 4.5% to estimate building aid payments, which include the district’s capitalized interest, for the

entire state except for the Big 5 school districts. For the Big 5 there are individual rates for each district which vary between 4.25% for Rochester at the low end to a maximum of 5.375% for Syracuse.

However, the largest impact of this change has been in the restructuring of outstanding debt that districts had already issued and the timing of the payments from the State which also changed. All debt with principal outstanding as of July 1, 2002 had to comply with "...an assumed amortization to determine the amount of building aid and reorganization incentive building aid that will be payable on such debt service in the 2002-03 school year and thereafter." ("2002-2003 Building Aid Data, SED March 7, 2002 Memo to Superintendents from Arthur Porter and Charles Szuberla.) To do this the "remaining maximum useful life" for the projects financed with this outstanding debt had to be calculated. The State gave districts the option to refinance their outstanding debt or to refinance just the State-funded share of their outstanding debt to be consistent with the restructured building aid payments through the Dormitory Authority of the State of New York (DASNY). (DASNY bonds can also be used to finance projects going forward particularly if a district believes it will exceed the state-wide average interest rate.)

The second big impact of this change in how Building Aid is paid is in the timing of the aid payments. While any interest accrued before the first payment of building aid is made can be capitalized, the State will not make its first building aid payment before the later of eighteen (18) months after approval of the project or the date that an award is made on the construction contract. What this means is that the district must carry the entire costs of a project until construction is about to begin; at this point the district can begin collecting building aid. For a new school, for example, there may be a couple of years of pre-development costs for the local district to carry for site acquisition, design, testing, financing fees for the local bond issuance. This puts risk on the district which is trying to keep costs down both because of the maximum cost allowance and the desire to keep local tax rates as low as possible. A district must make significant financial commitments and spend money before the final financial envelope of the project is finalized. The net result is often the project has to be sized to the budget rather than the budget being sized to the right project.

The other big change that the State made to reimbursing districts for school construction is on pay as you go capital. Rather than issuing bonds many districts would fund small capital projects from cash on hand or initiate a major capital project similarly. Previously, the State would reimburse a district for these cash outlays over a two year period the year after the expenditures were made. Now the State will only reimburse a district on an amortized basis. The impact is easily understood; there is no incentive to take on capital work with operating funds so work that may be easily completed will now take longer and will cost more because it will be bonded.

**Aid Intercept Program.** New York State has an aid intercept program that gives the State Comptroller the ability to withhold current and future state aid payments to a district if that district defaults on its debt service payments. Initially, the district's aid levels are evaluated to ensure that it would cover debt service payments in the event of a default. This intercept program for bondholders is triggered by a default only so the credit rating of the bonds could potentially be stronger if the intercept program were structured to avoid a call of default.

### **Issues Surrounding Building Aid:**

The above summarizes the key elements of the State's Building Aid program. It is a very complicated and technical program that requires skill and sophisticated knowledge to master and, more importantly, to maximize building aid payments. There are issues with inequities in the way the Building Aid Ratio and the maximum cost allowance are structured; other issues are generated from the State's move to make this program fit the State's cash flow constraints and not the needs of school districts which appears to be a key motivation behind the recent changes in the amortization schedules.

SED officials running the Building Aid program are proactive in providing advice and counsel to districts to maximize their building aid and they have published extensive guides to the program and its changes. Much of the preceding section is based on SED publications; SED's clear goal is to be helpful to the districts. Their role in the Buffalo School District's capital program is exemplary. However, they are working with a highly technical program that is filled with inequities and that is subject to the political needs of the legislature and the Governor as well as the cash flow restrictions set by the Division of the Budget in managing a flow of money to the districts.

The following identifies some of the key issues that districts face with this program.

- The Building Aid program is reimbursable; therefore, a district needs to obtain sufficient support from its taxpayers to fund the project initially. The Big 5 school districts must rely upon their municipalities to provide the initial funding; municipal debt limits can prevent a much needed education capital program even with a high Building Aid Ratio.
- Building Aid Ratios are often inequitable and provide insufficient support to the building needs of many school districts and may be providing support to districts that don't really need the support given the level of local resources.
- The maximum cost allowance is generally not reflective of the true costs of a project, particularly, new school construction.

- The timing of building aid payments increases financial pressures on districts.

Issues vary according to the district's needs and relative wealth. Discussions with 4 different school districts – 2 urban and 2 rural: New York City and Buffalo are the urban districts and Friendship and Roscoe are the rural districts. Their experiences underscore some of the policy and practical issues that districts face in trying to build new schools and to renovate existing school buildings. Before examining individual district issues, there are a few other funding programs managed by SED that provide financial support for school buildings. Although much smaller financially, they offer districts the opportunity to implement projects that generally do not receive any State funding, particularly, maintenance projects.

**Other Capital Funding managed by the State Education Department.** The Building Aid program in its funding levels and its scope swamps all other funding programs. However, programs like the RESCUE and minor maintenance programs have been providing valuable assistance to school districts. Other programs are federally created and managed by the State. There is little history on these 3 programs – Qualified Zone Academy Bonds, School Renovation, IDEA and Technology Grant, and Qualified Public Educational Facility Bonds – but they are very important as they are recent attempts by the federal government to provide capital assistance for school construction, a function that the federal government has scrupulously left to states and localities.

- **Rebuilding Schools to Uphold Education - RESCUE Program.** In 2000 the State legislature appropriated \$145 million state-wide for capital funding that could be used as cash outlays or bond principal reduction. Subsequently, another \$50 million was added to the program. The funds could be used for the following types of projects: accessibility, construction emergency, educational technology, health and safety and physical capacity expansion. If a district applied for cash outlays, i.e., used its operating funds rather than bond proceeds, the reimbursement would be made in one lump sum rather than a repayment over the useful life of the project as in the Building Aid program. Additionally, the Rescue funds can be used in combination with Building Aid to cover between 95 and 98% of the project's approved costs.

SED reported that many districts were not submitting projects for this program. State officials suggested that perhaps there were two issues with the program: a complex program and timing problems with the financing mechanism which are through bonds issued by the Dormitory Authority of the State of New York (DASNY). Like Building Aid this is a reimbursement program so districts have to expend the money initially and a great number of districts were waiting for DASNY to issue a second series of

bonds for this program after its initial sale for the program. Districts had to expend their own funds without firm repayment dates.

- **Qualified Zone Academy Bonds (QZAB).** This is a federally funded program that allows interest-free or low interest bonds to be issued to finance rehabilitation work, equipment purchase, development of course material and training of educational staff. The interest that would otherwise be paid by the school district is actually subsidized by federal tax credits to the bond holders. Bonds that are interest-free or low-interest give a significant savings to a district over the life of the bonds. The federal government makes the allocation to the States who can use the authority themselves for eligible projects or the State can make allocations to eligible Districts.

In New York State SED makes allocations of QZAB bonding authority to eligible districts around the State. New York City receives one-half of the State allocation and the balance is distributed to other districts State-wide based on proposals. Districts then issue these special bonds or other entities on behalf of districts can issue the bonds. The program requires a 10% private match which does not have to be cash; it can be goods and services that are estimated at 10% of the project costs.

New York State received tax credits of approximately \$126 million for the first four years of the program – 1998 through 2001. In New York City the City issued QZAB's on behalf of the school system once in the amount of \$31.4 million but let additional authority of approximately \$30 million that expired December 31 2002 lapse. The State has rescinded authority from a number of districts including Buffalo, Syracuse and Wyandanch. When the State does this, so long as the bonding authority has not lapsed, it can re-allocate the bonding authority to other eligible districts.

For 2004 and 2005 the State has received an additional total allocation of \$60 million state-wide and for the first year plans to allocate the total allocation for the year between New York City and Yonkers, each receiving \$15 million in bonding authority.

This is a program that has not been widely used primarily because of the special nature of these bonds. Besides the one bond issuance in New York City, only two districts have used the program and they have used private lenders, not districts or municipalities, for the financing; these two districts are Binghamton for \$810,000 and Rome for \$750,000.

An important piece of work remains to be done on the QZAB program to understand how it is being used nationally, to what extent QZAB's are useful and cost-effective and why school districts are not using them. From the brief description above, New York State has not been able to

use a significant amount of its total bond authority. In localities like New York City, Buffalo, Yonkers and Syracuse, the municipalities control financing so it is impossible for these two districts to use these bonds, even if they were to be issued privately, without the approval of their cities who control all of the districts' funding. If states and districts do not use this program, which is one of the few federal programs that can finance facility needs, any other initiatives will be even tougher to implement. (See article on QZAB's in Inside the Budget, No. 115, July 10, 2003, issued by the New York City Independent Budget Office.)

- **Qualified Public Educational Facility Bonds (QPEF).** This is a new federal program that was signed into law in 2001 as part of the Economic Growth and Tax Reconciliation Act. The federal government gives an allocation of bonding authority to each of the States (similar to the QZAB program but for different capped amounts) to allow the issuance of tax-exempt private activity bonds for school construction. A school district can form a partnership with a private developer who would undertake the capital school construction project. The cost to the district would be close to public financing as the bonds, even though issued privately, would be tax exempt as if it were a public offering. The developer would enter into a lease with the district for the capital project; the lease term would be the same as the bond term. At the end of the lease term the developer would transfer the school property back to the district for no additional cost.

There are many potential benefits of QPEF's:

- The most significant benefit is that districts have the ability to have school construction done privately as a private developer would not have the same public bidding restrictions as a school district has.
- A private developer will be able to achieve lower costs than a school district.
- The cost of the borrowing would be very competitive to the district doing its own financing because both are now tax exempt issuances.
- For a dependent school district like the Big 5 in New York, these bonds do not count towards the local debt so it does not raise constitutional debt limit issues nor do these bonds count towards the State's bond debt.
- Another significant benefit is that the transfer of the property at the end of the lease term will occur without any additional consideration. Under the existing internal revenue code, doing tax exempt lease financings between a private owner and public entity as lessee have been problematic because of the requirement of the public entity to pay fair market value for the asset at the end of the lease term. In essence, a school district would have to pay more than once for the project. QPEF's appear to solve this problem

which would make them potentially very valuable for private-public partnerships.

New York State has not yet issued any guidance or regulations on this program. There is a potential \$190 million in bonding authority for the State. This is an important program to monitor nationally because it has enormous potential to provide both innovative financing, higher quality and lower costs for school construction. The State of Michigan is planning to issue QPEF's. If this transaction goes forward, the structure of the bond issuance, which is scheduled to be through its Michigan Public Educational Facilities Authority, which appears to have been created in 2002 to issue QPEF's, will be important to understand.

- **Minor Maintenance Program.** This program, begun in 1999, provides assistance to districts for maintenance projects. The funds are targeted for repairs not for capital projects. The State's Building Aid program, RESCUE funds, QZAB and QPEF's are all limited to capital construction projects. This program is unique in supporting maintenance needs at the school level. Painting, plastering, landscaping and paving, replacement of auditorium curtains and seats, etc., mechanical system repairs are some of the items that are eligible for this program. It is a very successful program because local schools working with the school community make the choices as to what work will be done and the district and schools often get work done more quickly than it otherwise would have. This program is a very important supplement to a district's operating funds. It was funded at \$50.0 million state-wide for 2002-03. It does not appear to be funded for 2003-04.
- **School Renovation, IDEA and Technology Grant Program.** This is a federally funded one-time program that SED administers. In May, 2003 SED awarded \$78.8 million in funding for the school renovation component of the program to 16 districts and charter schools including the Big 5 school districts and 3 charter schools for "urgent repairs". While this is a one-time program, it is authorized under the federal Individuals with Disabilities Education Act and is an important initiative. Because of the recent award and the fact that this is a one-time grant, there is no experience to evaluate. However, the State took much too long to issue guidelines for this program.

**New York State School District Profiles.** The following section examines four school districts' experience with the Building Aid program. New York City's school system is analyzed in some depth because of the size and complexity of the system, the recent CFE court decision and the fact that the issues that New York City has with the program are experienced, at least in part, by many other districts. The discussion of Buffalo's issues are explored here and also in a

separate report – Alternative Development Mechanisms for School Construction – prepared for the Rockefeller Foundation.

**New York City**, the largest school district in New York State and the country with 1.1 million students, is a high needs district as measured by the State on its need/resource capacity category index. It has the largest number of high need students in the State. The public school students of New York are overwhelmingly minority students with high needs. Eighty one per cent of its students are eligible for free or reduced lunch. Just over 17% of its students have limited English proficiency. “At the time of trial ... Upwards of 73 percent were eligible for the Federal free or reduced lunch program; 442,000 City schoolchildren came from families receiving Aid to Families with Dependent Children; and 135,000 were enrolled in special education programs.” (Court of Appeals decision, Campaign for Fiscal Equity, Inc. et al v. The State of New York, et al., June 26, 2003, p. 5)

The major school buildings in New York City number just under 1100. (This number does not include leases and temporary buildings. When these are included, the total number of buildings, leased spaces and individual temporary structures number approximately 1500.) Over 50% of New York City’s school buildings are over 60 years old which is comparable to the other Big 5 districts; the buildings of the Big 5 are older on average than the rest of the State. Many of these buildings have never had significant renovations; for example, many of these buildings often have original electrical and plumbing systems, now obsolete, original architectural finishes such as floors, walls and ceilings that have only had spot repairs so that the building interiors, although generally clean, bespeak neglect and are depressing. Many science labs are obsolete and fixtures, in general, are worn-out.

Many of the school buildings in New York City are also overcrowded exacerbating the desperate need for building upgrades. Overcrowding means that class sizes can’t be reduced. In the upper grades, programming options are limited because of lack of space. Worse than this is that a number of high schools in Queens where the overcrowding is the worst are on double sessions. With these end to end sessions rotating two instructional days in one, the first session begins early before 8 AM and the second session will end around 5 PM. Students receive one less period a day in a school on double sessions. Schools on double sessions can not be supported educationally, particularly in a district where the number of poor, needy students is so high, but districts like New York City must resort to this practice in a crisis.

It is important to understand the preceding before beginning to examine what New York City receives in state Building Aid. For state building aid purposes New York City is a moderate wealth district. Its current building aid ratio for projects approved during the incentive period (7/1/98 – 6/30/00) is 64.7% (54.7% + 10%) and the actual aid for projects approved after 6/30/00 is 62.1%. The

maximum State share of eligible capital project costs is 95% but New York City's school district with 37% of the students in the State and with the largest number of high need students, an overwhelming number of deteriorated buildings and the highest costs in the State receives considerably less than the maximum building aid ratio that the State can legally provide. The following examines why this is so under the current system, analyzes how New York City, a fiscally dependent district, is financed and explores many other inequities in the current funding system.

### **New York City Funding for its Public School System.**

New York City's public school system relies almost entirely upon the proceeds of bonds issued by the City of New York for its capital projects. The amount of capital funds that the City will make available for the public schools determines the relative size of the school system's capital program. Building aid received from the State is important revenue to the City and DOE but the level of building aid does not play a role in sizing the capital program. There has been at least one serious attempt to leverage building aid to size the capital program but this approach did not receive sufficient local support and would have required special legislation to implement. DOE's capital program begins with a needs assessment that is contained in its five year capital plan.

**Department of Education's Five Year Capital Plan.** Under legislation passed in 1989, DOE must promulgate a draft five year capital plan which must be reviewed in a public hearing process held by the local community school district and then final public review and approval by DOE's governing body. When the law was passed, the then central Board of Education was in place and had the final approval of the plan. Under governance changes adopted in June, 2002, the final approval of the capital plan now rests with the Policy Board appointed by the Mayor after public hearings are held by the local community school districts. As part of these governance changes, the Mayor and Chancellor of DOE announced the effective dissolution of the community school districts and the creation of ten regions in their place. The legislation, however, did not change the role of the community school districts in the review of the capital plan. While skeleton community school districts must legally remain in place, it is not clear how local review of the 5 year capital plan will be handled.

The Mayor and City Council have indirect approval of the capital plan through the budget adoption process as all funding must be approved by the Mayor and the Council. DOE is now operating under a five year capital plan for fiscal years 2000 through 2004, i.e., July 1, 1999 through June 30, 2004. The last year of the current capital plan began on July 1, 2003. (The City's fiscal year runs from July 1<sup>st</sup> through June 30<sup>th</sup>.) The five year plan was approved in May, 1999 so the projects contained in this approved plan are eligible for the building aid incentive. The capital projects in the approved plan did not have to start or be completed

during the incentive period, only approved by the voters or, in the case of New York City, approved by its then central Board of Education.

New York City's public school system does not currently maintain a master plan of all of its facility needs so there is no master list identifying and quantifying all of its capital needs. Two master plans were legislatively required – one in 1989 submitted concurrently with the first 5 year capital plan and then an update four years later. The reality is that the needs so outmatch resources and given the size and complexity of the school system its facilities' needs are always increasing. For example, in the past year creating small high schools in large, older high school buildings requires physical modifications to support educational goals. This change was not anticipated in the current capital plan. Also, buildings that have been under-invested in since they were built in the 1920's and 1930's continue to deteriorate; some building components require emergency replacement and/or the work needed for a particular component increases with time.

The five year capital plan includes an identification of each individual project, its location, estimated cost, and project start date for the entire five years. Therefore, if a roof is being replaced at a particular school, it must be identified in the capital plan; its cost and the fiscal year in which the project will take place is also identified. For multi-year projects such as a new school, the design and construction start dates must also be specified. If a new school is to be built, its grade structure (elementary, middle or high school), number of seats and geographic location (community school district for elementary and middle schools and borough for high schools) are identified. There are lump sum items allowed in the capital plan for such items as lead paint and asbestos abatement projects; this is for unanticipated abatement projects that will undoubtedly occur. The statute allows an emergency unspecified lump sum category equal to 5% of the total funding to cover capital projects which were not included in the plan but become necessary during this five year period. The unexpected needs easily exceed the 5% limitation.

Over the span of five years a capital plan will change responding to changed circumstances. Under the statute the capital plan must be amended if projects are added or deleted, funding changes, program categories that exceed the original plan amount by 10% and schedule changes greater than six months. DOE is now in the process of its third amendment for the current capital plan. The current capital plan was approved at a level of \$6.992 billion against a list of specific projects. Part of the reason for the capital plan amendments is due to the fact that some of these projects will not be funded under this capital plan because of cost increases on other projects due to increased scopes of work and rising construction costs.

A five year plan carved in stone on a specific date is not an adequate planning document nor does it serve the students and educators who use the school

buildings well. There is very little flexibility in the plan and it is, in reality, a political document that is supposed to assure the public that the money will be well-targeted and well-spent. Instead, the only thing that a five year capital plan ensures is that there will be a lot of disappointment at the schools when projects don't get done and not much ability to communicate the reality of why this happened. At the end of the day, only school level issues count – is the project going to be built or not and when.

With the last year of its current capital plan just beginning, DOE must begin planning for a new five year plan for fiscal years 2005 through 2009 which would begin July 1, 2004 and end June 30, 2009. The draft plan must be submitted for the public review process as outlined above. After the local community school district and Policy Board review, the Mayor and City Council provide funding for the capital plan as part of the City's budget adoption process. The City is not required to fund the capital plan at the levels DOE requests but, once the City's budget is adopted, the City may only reduce the level of capital funding to DOE as part of a City-wide across the board reductions. The City can not legally target DOE only for reductions.

The needs identified in all of DOE's three five year capital plans to date have been organized into two major categories: work on existing school buildings – capital improvement projects - and new schools - capacity projects. The needs assessment for the existing buildings were based primarily on deficiencies identified during building condition surveys of each building completed during the planning process for the existing capital plan. As part of the needs assessment, the capital plan also identifies existing overcrowding, educational programs requiring additional space such as class-size reduction in the early grades and pre-kindergarten programs and enrollment projections. An analysis of the existing building utilization and space needs is done annually to calculate how many new seats are needed now and in the near future in various parts of the City and at different grade levels.

**New York City's funding of its Public Schools.** The New York City school system receives its budget from the City of New York as part of the City's budgetary process which culminates during the budget adoption process between the Mayor and the City Council in June of each year prior to the start of the City's new fiscal year which begins July 1<sup>st</sup>. (The fiscal year that began July 1, 2003 is fiscal year 2004.) DOE receives an appropriation of funding from the City of New York from two main City sources: its operating budget, known as the expense budget, and its capital budget.

**Operating Budget.** The operating budget for DOE, which was \$11.4 billion for fiscal year 2003, is used for recurring items including but not limited to salaries, classroom instruction and support, textbooks, supplies, transportation, food services, building operations and maintenance, lease payments, etc. The City's operating or expense budget is funded by revenues into the City: in 2001 56%

came from tax revenues, 13% in non-tax revenues, 19% in State categorical grants and 12% in federal categorical grants. State building aid is included as revenue in the City's expense budget. On the expenditure side the single largest item in the expense budget in FY 2001 was education at 29%, which includes support for the City University of New York.

The City-wide expense budget for FY2004 is \$44.5 billion with a proposed Department of Education budget of \$12.1 billion. (The final adopted budget for the Department of Education was not available.) The proposed \$12.1 billion will be funded by approximately half in City funds, just over 40% in State aid and the balance from the federal government. Another major expenditure of the expense budget over-all is to pay for debt service on outstanding bonds.

**Capital Budget.** DOE also receives funds from the City's capital budget for its capital projects. The capital budget is separate from the expense budget and is funded by multi-year financing, i.e., the proceeds of bonds issued by the City. The use of capital funds is restricted to major physical improvements that do not recur annually, have a useful life of at least five (5) years and cost in excess of \$35,000. Therefore, a new school or a new roof on an existing school are capital projects and can be funded through the capital budget. Day to day operating expenses can not be funded by the capital budget. Teachers' salaries and textbooks are not capital projects. The expense budget can be used to fund capital projects, called "pay as you go" capital. However, the capital budget can not be used to fund operating expenses.

The City's bonds are generally thirty (30) year bonds and are re-paid by the City out of its expense budget. In 2001 8% of the City's expense budget and 16% of tax revenues that the City received was used to pay debt service on outstanding bonds. The City can issue several types of bonds:

- General obligation (GO) bonds are backed by the full faith and credit of the City. There is a constitutional debt limit on the issuance of these bonds tied to City real estate values which caps the amount of the debt the City may issue. In the late 1990's the City was dangerously close to this limit which would have prevented it from going into the capital financial markets to raise funds for capital projects such as new schools. (The cities of the other Big 5 school districts also have constitutional debt limits.)
- Transitional Finance Authority Bonds (TFA). When the City came close to its debt limit several years ago, the legislature authorized the City to create the Transitional Finance Authority (TFA) which can issue bonds which do not count against the City's debt limit but the repayment is with specific earmarked funds.
- Tobacco Bonds. As a result of the major tobacco settlement, another public corporation, Tobacco Settlement Asset Securitization Corporation, was created to issue bonds secured by the City's share of the tobacco settlement.

Again, these bonds do not count against the City's debt limit and are secured by the funds from the tobacco settlement allocated to the City.

The City makes appropriations of bond proceeds to DOE for its capital projects. DOE is not responsible for the underwriting of the bonds nor for the bond repayment so it is not significant what form of bonding is used for school projects. However, DOE must compete with other municipal needs for the capital budget and, in a city as large as New York; the competing needs are very large. In a report issued by the Independent Budget Office the planned capital commitments for 2003-2006 total \$25.4 billion. Of the originally projected \$25.4 billion cited above over a four year period, total education commitments were estimated at 15%, the third largest use of capital funds after environmental protection and transportation. ("Understanding New York City's Budget: A Guide to the Capital Budget," Independent Budget Office, November 2002.) Since this Report was issued, the City has downsized its over-all capital spending due to decreased revenues.

If the Transitional Finance Authority had not been created, the City would not have been able to market its bonds and most capital construction would have halted as the City's capital program is primarily funded by the City. Investment in the City's infrastructure, including education, is integrally tied to the City's finances and the marketplace's evaluation of the City's financial strength. In addition to the constitutional debt limit, the City is also constrained from issuing debt if its revenues fall off. A significant reduction in revenues will limit the City's ability to issue new debt because of constraints on its ability to pay for both ongoing services and to pay debt service on outstanding bonds. That is the current situation with a weakened New York City economy. As a result, the bond rating agencies carefully monitor the City's financial position. As can be seen in the succeeding paragraphs, the City may have to reduce DOE's capital plan because of revenue shortfalls but it may also add funds back, often for earmarked projects.

There is another way to fund capital projects: pay as you go capital mentioned above which uses expense dollars to pay for a capital project. Essentially, the capital project is funded in a given year and not funded over multiple years as in bond financing.

**The Capital Planning and Budgeting Process.** The City's Office of Management and Budget (OMB) has over-all management of the City's capital budget process. The City issues a "Ten-Year Capital Strategy" every two years to reflect over-all goals of the capital program and the estimated levels of funding. Annually the City presents its Four Year Commitment Plan which lays out the specifics of the capital program for the upcoming year and identifies its estimated funding for the subsequent three years. The capital commitment plan for the new fiscal year is adopted as part of the budget adoption process by the Mayor and the City Council in June of every year.

The annual appropriations for DOE's capital plan are determined by estimates given to DOE by OMB. The annual estimates are a result of an analysis of the city-wide resources that are expected to be available and allocated according to an analysis of city-wide needs. The City of New York does not analyze the needs identified during DOE's planning process; the City sets the annual appropriations that it thinks it can make available over each of the five years of DOE's capital plan.

During the planning process OMB will advise DOE of what funding it will expect to make available which DOE then plans against. Essentially, DOE sizes the capital plan to fit the resources it expects will be there, which is overwhelmingly City capital funds. For the current capital plan there was not a give and take on the level of City funding during the capital planning process. The initial draft of the current capital plan proposed a financing plan that exceeded the City's budget estimates significantly. DOE proposed to increase the investment in its buildings by securitizing the additional building aid revenue it would receive as a result of the 10% incentive. DOE estimated the cash flow from this additional building aid revenue would have supported an additional \$2 billion in funding for capital projects. Spending additional funds on capital projects would have in turn generated more building aid. However, this type of financing did not receive the support of the City nor of a majority of the then members of the Board of Education. This securitization would have required special legislation and it was an untested product financially. However, DOE had genuinely attempted a realistic financing plan that stated its needs were greater than available City resources and suggested ways to leverage building aid revenue to increase the investment in school buildings.

DOE's capital plan then is not a pure planning document. It functions more as a list of projects prioritized by year. Because of the public approval process, albeit important, and the way in which the capital plan is "sized", the capital plan is a document that identifies legitimate needs but does not necessarily fund all of the highest educational priorities nor are its needs a significant issue for the City of New York in setting initial funding levels. However, both the Mayor, City Council and Borough Presidents consider school construction a very high priority; the problem is that the resources do not match the needs. The capital plan is not a blueprint for the future. The process is terrible; no one is well served although the projects that are funded and get completed are sorely needed.

With the governance changes giving the Mayor the control of DOE, the Mayor and the Chancellor have an opportunity to initiate a planning process that is more meaningful for the school system and for the City as a whole. With the new five year capital plan due in November, 2003, it will be interesting to see what the planning process is, how it involves other City agencies and the communities and how frankly the needs and financial costs of the school system are presented.

In the current proposed capital budget for FY2004, the City lists the Four Year Commitment Plan for DOE from all funding sources as:

FY2004	\$ 522,851,842
FY2005	611,002,000
FY2006	792,255,000
FY2007	1,004,326,000

Over the last two years due to revenue shortfalls, the City has reduced its capital budget and DOE has had over \$1.0 billion in capital budget reductions over the last three years of its current five year capital plan. For FY 2004 the budget amount of \$522,851,842 reflects a portion of this \$1.0 billion reduction. In a proposed amendment to its 5 year capital plan issued in March, 2003, DOE identified the sources of its now approximately \$6.7 billion capital plan down from the original approved \$6.992 billion. This new total number reflects the reductions of approximately \$1.0 billion and additions to the budget of approximately \$800 million. Most of these additional funds were for earmarked projects and did not necessarily replace projects that were no longer funded in this capital plan as a result of the billion dollar reduction.

This 5 year capital plan was originally adopted in May, 1999 in the original total amount of \$6.992 billion. The \$800 million in additional funds came from:

Pay-As-You-Go Capital, funded by DOE	\$170.0 million
Mayor, City Council, Borough President earmarked funds	511.3
State RESCUE Program	77.4
Qualified Zone Academy Bond program	31.4
Educational Construction Fund surplus	9.2
<b>Total</b>	<b>\$799.3 million</b>

- Pay-As-You-Go Capital** was funded by DOE itself out of its operating budget. DOE needed permission from the City to do this because funds are given to DOE in units of appropriation for specific uses. Funds can not be moved from one unit of appropriation to another without DOE demonstrating that it had the flexibility in its budget to free up these funds. The City would have to include this change in its formal modification to the budget which occurs at several points through the year.
- Mayor, City Council and Borough President earmarked funds.** Elected officials have the flexibility to add funds to DOE's capital program for specific programs. One of the largest earmarked items in this category is \$150 million from the Mayor and City Council for new capacity projects in each of the five boroughs. Additionally, individual council members and borough presidents receive discretionary lump sum allocations of capital

funds annually. These elected officials often select education related projects in their district. For example, a council member may fund a computer lab or refurbish a playground in his or her district. Borough presidents have the flexibility to undertake the same kinds of projects. Most of these projects are small and have great benefit for individual schools; these projects were generally not included in the five year capital plan so this funding is particularly valuable to individual schools. Over a three year period council members and borough presidents have allocated \$190.4 million for these types of projects.

- **State RESCUE Program.** DOE has received two allocations of RESCUE funds: \$58.2 million initially and \$19.2 million, approximately 40% of the total state-wide appropriation. The RESCUE funds were used to install air conditioning in hundreds of schools for summer school and to renovate existing school buildings.
- **Qualified Zone Academy Bonds.** DOE received \$31.4 million in QZAB bonds which it used for technology infrastructure projects. The QZAB bonds were issued by the City of New York. Another \$30 million in QZAB authority was allowed to lapse at the end of 2002. DOE has received three additional allocations totaling \$44.8 million, all of which expire December 31, 2003. The City's Budget office will need to issue these special bonds by that date or else the allocations will lapse. The Independent Budget Office recently reported that the City has no current plans to issue QZAB's.
- **Educational Construction Fund (ECF).** The New York City Educational Construction Fund is a State public benefit corporation controlled by the Mayor and DOE. ECF's function is to finance schools on City-owned land as part of a privately developed joint occupancy structure. A private developer is designated as developer of a publicly owned parcel to build a private use as well as a school. ECF issues bonds for the development of the school and the debt service on the bonds is paid for by the ground rent and payment in lieu of real estate taxes (PILOT) that the private developer is required to pay for the private use on the publicly owned site. These payments are directed to ECF to pay off the bonds it issues for the school that is also on the site. ECF provided \$9.2 million from its surplus for school renovations.

**Role of the New York City School Construction Authority (SCA).** Unique in the State of New York is the relationship that DOE has with the New York City School Construction Authority. In order to streamline and accelerate the building of new public schools in New York City, the New York State legislature created the New York City School Construction Authority in 1989. SCA is a public benefit corporation created by the State to act as agent for its only client, the

New York City Department of Education. It has a board of three trustees; the Chancellor is the Chair and the other two trustees are appointed by the Mayor.

When the SCA was created in 1989, the legislation mandating the five year capital plan was part of the legislative package. Under the statute the capital plan is created by the school district, and the capital funds are appropriated to DOE but they pass through SCA. For example, when DOE does any capital work, DOE must request capital funds from the SCA.

SCA's initial role was to provide planning and design services for DOE's capital program. DOE defined the capital program consistent with and supportive of its educational mission. SCA carried out the capital program. The planning staff charged with producing the capital plan has recently been moved from DOE's Division of School Facilities to SCA so the new five year capital plan for FY2005 – 2009 will be produced by SCA for the first time.

Prior to this merger SCA's traditional role during the planning process has been to provide information for the capital plan. Its main function as an organization has been to implement the projects identified in the capital plan through the management of the design and construction of the individual projects identified in the capital plan. SCA using its own in-house staff or managing outside consultants has done the feasibility studies for all new school sites and then managed the design process for new schools. For rehabilitation work for existing school buildings SCA has undertaken with its own staff or managed outside consultants for the initial scoping reports and then the design of the projects. SCA's other major activity has been to manage the construction of most of the capital plan projects.

SCA's previous role was extraordinarily important as the key implementer of capital projects for DOE but its responsibilities have grown with the transfer of the planning staff as well as the staff who worked with the educators in programming new schools. Additionally, the staff who acted as key liaisons during design and construction with the local community school district superintendent and his or her staff were also transferred to SCA. What this merger means for the SCA is that its role as a design and construction agency has grown to include activities much closer to the core mission of the school system and the role of school buildings. It is an important challenge for SCA that both DOE and SCA should work hard at - to sensitize and "educate" staff on how to program a new school and to provide key support particularly towards the end of construction as the school gets fitted out. This is particularly important as SCA has generally not received high marks from educators.

**Building Aid to New York City's Public Schools.** In 2002-03 DOE estimated it would receive \$405.178 million in Building Aid from the State of New York. This total has four major components:

Aid for existing project base amortized over 30 years	\$370.864 million
Aid for leases	13.907 million
Aid for Pay-as-you-go Capital (“non-recurring capital outlay expenditures”)	13.393 million
Projected aid from new projects	7.013 million

DOE estimates that 98% of the Building Aid that New York City will receive in 2002 is from the existing project base and only 2% is from new projects which have the benefit of the incentive. Most of the new projects are for renovation work. These figures underscore the relevance of the Building Aid formulae in a district like New York City where the annual capital spending is several hundred million dollars with fifteen new schools opening in September, 2003. Most of the construction contracts for these new schools were executed in 2001. As a result, if SCA and SED are up to date with their filing and reviews, most of these new schools should be included in the Building Aid revenue numbers for 2002-03.

**New York City’s Building Aid Ratio.** Given the profile of its students, it would be expected that New York City’s Building Aid Ratio (BAR) would reflect the enormous needs of its students. In fact, it does not. The value of real estate is one of two factors that contribute to the calculation of the BAR. Because New York City has the most valuable property in the State, concentrated in Manhattan, New York City is a moderate wealth district for Building Aid purposes with a select aid ratio, absent the incentive, of 54.7%. The high real estate values, particularly in commercial properties, are concentrated in only a portion of Manhattan but they overwhelm lower values in many of the poor neighborhoods of the City. And because the City school district is consolidated and encompasses all five boroughs, the BAR reflects the City over-all and does not segregate the wealthier from the poorer neighborhoods. If the City school district were broken up, even into the 5 boroughs, for building aid purposes, the resulting ratios would potentially be significantly higher than the 54.7%.

As property wealth declines, the BAR will increase and the State will pay a higher share of school construction costs. If property values were to fall this year, it would take a few years before those values were reflected in the BAR. In a City as complex as New York with high taxes (and this year there has been an 18.5% increase in real estate taxes), the assessed valuation of property is extremely important to a property owner because it is one of the two important components in calculating an owner’s real estate tax bill. The other important factor is the tax rate. Many owners challenge their annual property assessments asking for a reduction in their assessments through the certiorari process. If property assessments are reduced, the State will not take these reductions into account in calculating education aid unless the aggregate reductions total a minimum of 1% of the total assessed valuation of property in New York City. Given the high value of property values, the most recent fair market value for property City-wide is \$468.4 billion with only \$68.936 billion with an assessed value of \$107.6 billion. The fair market value for each of the five boroughs demonstrates how the

BAR would potentially vary by borough: Manhattan - \$168.8 billion, Queens - \$127.6 billion, Brooklyn - \$101.4 billion, Staten Island - \$38.8 billion and Bronx - \$31.7 billion. Further, a 1% represents a significant amount of value, which if taken into account in the building aid calculation would increase New York City's BAR.

The inequities in the BAR have not been a subject of much focus. Realistically, it would be extremely difficult politically to change the way New York City's public school system was treated for building aid without a wholesale revamping of the building aid program. As a result of the Campaign for Fiscal Equity court decision, it is inconceivable that the BAR and other elements of the building aid formula will not be re-examined.

**Maximum Cost Allowance Issues.** The BAR is applied only to the State-defined eligible costs as calculated through the maximum cost allowance. Calculating the maximum cost allowance is another key area where New York City's students are short-changed. The eligible costs are adjusted with a regional cost index whose purpose is to balance out the inequities of construction costs in different parts of the State, particularly, labor costs. As previously described, New York City has the highest regional cost index in the State at 1.7919. Even with this adjustment, the State's maximum cost allowance falls far short of the actual costs to purchase a site and design and build a new school in New York City. Therefore, the BAR with incentive of 64.7% is applied against a maximum cost allowance that does not reflect the cost of a new school so the actual building aid for a new school in New York City is far less than 64.7% of the costs. New York City Department of Education (DOE) estimates that in actuality only 25% of a new school costs are ultimately aidable.

With the regional cost adjustment applied, the maximum cost allowance for New York City is approximately \$17,000 per seat which is somewhat higher for a high school and for special education. There is a huge disparity between the State's maximum cost allowance and actual costs; this is not unique to New York City but the gap is exacerbated by conditions that are unique to New York City due to the following conditions:

- Cost of land is the highest in the State. The regional cost index is applied to construction costs only so the high cost of land in New York City is not adjusted. Additionally, site acquisition is included in the "incidentals" allowance which is calculated at 20% of the allowable construction costs so if it is an expensive parcel, its full costs will not be aidable.
- Vertical construction costs more. Because New York City is land-poor, sites for new schools are small requiring buildings that have multiple stories. For example, vertical buildings require deeper foundations to carry the heavier loads. More stairways are needed. Building characteristics such as these increase costs. One new high school for

900 students that will open in the Bronx in September, 2003 is in a 7 story building, necessitated by the very small site.

- Construction methodology. Because of the congestion and small sites, contractors often have to provide for storage off site or have more frequent deliveries. They may have to use more specialized equipment tailored for small spaces. All of these factors increase costs.
- Building materials/standards. All schools must meet codes and standards to ensure health, safety and support of the educational program for the school. If a district exceeds what the State believes is required for a sound educational program or for ease of building operations and maintenance, for example, and the costs increase, there is no adjustment allowable. In New York City although the technical standards for new schools are being reviewed, decisions had been made in the past to have redundancy in systems such as the heating plant and to use more durable materials. Providing longer lasting buildings is not recognized; doing more than what's required must then be financed locally.

It should be noted that DOE recently announced a reduction in construction costs of a large addition to an existing school. One of the key reasons for this reduction appears to be the elimination of masonry block walls between classrooms; the walls are now gypsum board which is routinely used in office and residential construction. Reducing this first time cost achieves a much-needed reduction in construction costs but ongoing maintenance costs will increase. It was not clear from the press reports whether soundproofing materials were added as ordinary gypsum board does not necessarily provide adequate sound proofing between classrooms which is critical.

In fact, many districts have local cost structures that exceed the maximum cost allowance for new schools for their district. The major reason is the base construction cost that the State uses to adjust upwards to the point in time when the construction contract is executed and the regional cost adjustment. These indices which have been criticized are applied to a base cost that has not kept pace with the cost of school construction state-wide. SED has looked at a recent group of new school projects around the state. Exclusive of New York City, on average, 30% of a district's costs for a new school routinely exceed the maximum cost allowance. To use the building aid ratio to describe how much the State supports the cost of new schools in the State is misleading and makes the building aid program for new schools appear more substantive than it really is.

**Lease Aid.** DOE relies heavily on leased spaces with a portfolio of approximately 175 leases. Some of these leased spaces are significant educational spaces. The State does provide some support for leases but, again the support falls far short of the cost. The aid structure for the annual lease

payments for educational spaces only does not reflect the actual costs that DOE bears. Lease aid is restricted to the initial lease term not to exceed fifteen (15) years; renewal options receive no aid. The formula to calculate lease aid compares the sum of the rent paid over the lease term with the Maximum Cost Allowance adjusted by the Regional Cost Index. In other words, the aid that will be paid is capped by the Maximum Cost Allowance for the space.

It is important to understand that Building Aid will be paid separately for a lease if DOE uses any capital funds for the build-out of the space. If that is the case and the project meets the other criteria for building aid – instructional space, the space has a capacity, it is an approved project and cost exceeds \$10,000 – then building aid will be calculated and paid to the City over the State-defined useful life of the project.

**Pay-As-You-Go Capital Building Aid Reimbursement.** Two years ago, the State would reimburse DOE in the next fiscal year for pay-as-you-go capital outlays. This policy encouraged the use of these funds and then quickly made them available for additional capital projects if the funds remained earmarked for that purpose. The State now reimburses on the amortization process so there is no incentive to use operating funds for capital projects.

**Projects Eligible for Building Aid.** The State criteria for an eligible project include projects in spaces that are used for instructional purposes and have a capacity. Therefore, if a district moves an administrative use out of a school building and converts that space back to instructional space to create new capacity, the cost of relocating the administrative use is not aidable even though doing this will create instructional space. Because of overcrowding, DOE has had a program that systematically moves administrative uses that are not tied to the individual school organization out of schools. For example, a community school district office may be located in one of the district schools. Using a lease, the district office is moved out of the school and the vacated space is converted back into classrooms.

**New York City's Fragmented Approach to Building Aid.** There are three entities involved in DOE's building aid: DOE, SCA and OMB. DOE's revenue division carefully tracks the revenues that it can expect, identifies new revenues and works to maximize revenues that the public school system is entitled to. Building aid is a key revenue that DOE staff tracks and evaluates; the revenue staff understands the building aid program, the formula for New York City and the program's shortcomings. However, it is SCA that submits information on eligible capital projects to SED on a quarterly basis. OMB manages the City of New York's budgets so it, like DOE's revenue division, keeps track of building aid revenue and makes projections to include in the City's budget estimates; OMB's role is more global in tracking the revenue.

The reality is that other than DOE's revenue division, no one understands the building aid issues and has the ability to do something about it. This creates two major issues. The first issue is that building aid is seen primarily as revenue that the City is entitled to. The City's focus appears to be limited to accurate estimates of the revenue and that any changes in the program and their impact on revenue are well understood. Decisions on the capital program are not made taking into consideration the amount of building aid that a particular project may be eligible for or the timing of the project.

The other major issue is maximizing the amount of building aid that DOE may be eligible for, particularly for new school construction, where the maximum cost allowance formula only covers a portion of New York City's actual costs to build a new school. Plans for capital projects must be approved in advance by SED except in New York City where information on projects is submitted when the construction contracts are signed. Districts often use the plan submittal process to discuss building aid issues with SED to make sure, for example, that individual spaces receive the maximum capacity available, i.e., the highest number of BAU. Plan review with SED also offers the opportunity to make sure that all of the spaces for a new school or an addition are labeled appropriately so that they have a BAU and are eligible for building aid. This does not happen for new schools and additions in New York City; information is sent only after plans are finalized and construction contracts are in place. Thus, any opportunity to get feedback from SED staff who calculates the building aid is lost.

New York City's schools capital program is large and complex. However, renovation projects generally fall within the maximum cost allowance so that the building aid ratio is applied to the actual project costs. The real problem is with new construction. DOE revenue staff estimates the State's maximum cost allowance for New York City is approximately \$17,000 per seat while actual costs in New York City are approximately \$40,000 per seat. This is a huge gap so that it is important that DOE maximize the number of BAU that a new school or addition is eligible for so that nothing is left on the table. But New York City does not make that effort. If DOE and SCA were to request working sessions with SED staff on new schools, another issue may be the availability of SED staff to do this work.

While there are hundreds of projects in the DOE capital plan, there are a limited number of new schools and additions. For example, this year SCA is opening 15 new schools and additions. Putting aside SED availability, this number of new schools is not that large and DOE/SCA should be able to organize review of the plans to evaluate how well the program and plans maximize BAU in-house and then to undertake a review with SED.

Why doesn't New York City take fuller advantage of the building aid program in this way. It is primarily the fragmented approach and the lack of full responsibility and authority in one entity that maximizing building aid is important. When the

SCA was created in 1989, it was set up as a capital project agency; its goal was to design and build capital projects, preferably new schools. Establishing the educational program, doing the initial planning, finding sites and, most importantly, managing the over-all program financially were not important to the SCA. On the financial side, SCA focused on the costs of individual projects; the over-all envelope of available funds was given to SCA by the statute. BUT the revenue staff is at DOE. There was no incentive nor was there any responsibility for SCA to do other than what it had to with regard to the building aid program. With the change in governance and SCA and DOE both controlled by the Mayor, there is an opportunity to change the way that New York City's public schools deal with SED on building aid.

**Campaign for Fiscal Equity Lawsuit.** The condition and adequacy of school buildings and the State's role in providing the resources to provide adequate school buildings has been a significant issue in the Campaign for Fiscal Equity (CFE) lawsuit. With the recent Court of Appeals decision there is now a direction to the path to redress the inequities in the building aid that New York City receives. In the brief filed by CFE to support the oral arguments before the Court of Appeals on May 8, 2003, CFE forcefully argued against the State's assertions that school facilities are in good repair and that there is massive waste in the system. Citing the trial testimony CFE demonstrated that the facilities were not in good repair, that there was massive and chronic overcrowding and that at-risk students needed smaller classes.

To achieve reduced class sizes, more classrooms are necessary; that is difficult to achieve in a public school system with too many overcrowded schools. The Independent Budget Office of New York City issued a report on class size in September, 2002 ("K-3 Class Size Drops, But 77,500 Children Still in Classes with over 25 students") detailing the inability in many schools to reach smaller class sizes due to lack of space.

The CFE lawsuit, in its brief, asked the Court "...to uphold the modest set of guidelines issued by the trial court that would direct the State to (a) determine the actual costs of providing students with an opportunity for a sound basic education; (b) reform the current education finance system to ensure that the requisite resources are provided to all school districts; and (c) create an accountability system, ... to ensure that funds are efficiently utilized in a manner that will create the conditions necessary to improve student learning." (CFE – Plaintiffs-Appellants' Opening Brief, Court of Appeals, p. 79) Within the CFE's Application for what is required to provide a "sound basic education", amongst the "essential resources" needed, two are building-based: "2. Small classes." and "5. Adequate and accessible physical facilities, maintained in good repair." (Summary of Plaintiffs' Remedy Request before the New York State Court of Appeals in Campaign for Fiscal Equity, Inc. v. State of New York, January 31, 2003).

While the Court of Appeals did not make an affirmative finding on the necessity of adequate facilities for a “sound basic education”, the Court did agree with the trial court that smaller class sizes have a direct relationship with improved student results. The Court did find that the testimony on “deficient school infrastructure” compelling but “... on this record it cannot be said that plaintiffs have proved a measurable correlation between building disrepair and student performance in general.” The Court’s major facilities’ affirmative finding was “...that class size affects learning.” (Court of Appeals, CFE v. State of NY, pp 17-18)

The IBO report on class size reduction found that there were many examples of neighborhoods in New York City where the State funded early grade class size reduction program could not be implemented or where class sizes could be reduced but on average not to the goal of 20 students per classroom in grades K through 3. The State program funds additional teaching positions but does not provide funds to build new classrooms. District 6 in upper Manhattan, and Districts 24 and 27 in Queens serve a number of neighborhoods where the average reductions in class size in grades K through 3 are modest. In these areas the average remained significantly above 20.

The Court of Appeals did recognize that building conditions and overcrowding could not always be separated. Overcrowding and lack of resources affect educational outputs when there is no library, science labs or other specialized spaces. If there is no science lab in a high school because of deteriorated conditions, there will be an impact on student results in meeting the new standards as lab work is integral to the study of science, particularly at the high school level.

The way that State aid is distributed is at the heart of the CFE lawsuit and the Court of Appeals decision. The trial court had found that the “... State aid distribution system is unnecessarily complex and opaque.” (Supreme Court decision, 719 N.Y.S. 2d475) Testimony elicited during the trial confirmed this fact; there are few people who have a good understanding of the formulas that govern how State aid is distributed. The State formulas are regularly manipulated by political forces to align funding, not with need, but with a politically determined outcome.

Justice DeGrasse, the trial judge, stated in his decision that “... the State has consistently underfunded the Board of Education’s capital and maintenance needs.” (Supreme Court decision, 719 N.Y.S.2d 475) The Court of Appeals citing the State Education Department’s purposes for the State aid programs which include “...to assist school districts in providing an effective education; ...equalize school revenues by providing State aid in inverse proportion to each school district’s ability to raise local revenues;...” stated that “...Clearly these purposes reflect a recognition that inputs should be calibrated to student need

and hence that State aid should increase where need is high and local ability to pay is low.” (Court of Appeals, CFE v State of NY, p. 49)

In an opinion concurring with the majority opinion written by Justice Kaye, Justice Smith writes extensively on the inequities in the State Aid formulas. Justice Smith describes the limitations of the fiscally dependent Big 5 school districts, including New York City, and notes that “...According to the SED, the ‘fiscal dependence on these school districts is fraught with problems related to level and stability of funding and the effective use of education dollars.” (Justice Smith concurring opinion, New York State Court of Appeals, Campaign for Fiscal Equity v State of New York, p. 13) The Court of Appeals understood the limitation on taxes that New York City can levy, its constitutional debt limit, the competition for resources in a municipal budget and what will happen in a municipal fiscal crisis to the education budget. If the State’s role is to assist districts in providing for a sound basic education and the State understands the special needs of New York City’s students and the limitations on local resources, the aid programs must address these limitations and inequities.

The inequities that New York City faces in receiving State aid is a result of the formulas which treat New York City as “...an average wealth district..., overlooking the high concentration of poverty...”, (J. Smith, p. 13) according to Justice Smith who further writes: “Year after year the formulas have consistently failed to measure the actual costs necessary to provide New York City students with a sound education.” (J. Smith, p. 16) Justice Smith ends his opinion with a list of remedies: “In place of the formulas, the Legislature should institute a scheme that:

- (1) eliminates the current state formula for distributing aid to New York City;
- (2) determines, to the extent possible, the actual costs of the resources needed to provide the opportunity for a sound basic education in all school districts in the State;
- (3) ensures that at a minimum every school district has the necessary funds to provide an opportunity for a sound basic education to all of its students.” (J. Smith, pp 23-24.)

Much of what the Court of Appeals refers to in its findings is general operating aid and not building aid. However, building aid, as noted earlier, is allocated according to a wealth equalizing formula not unlike operating aid which the Justices clearly assert do not recognize the high needs of New York City’s students and the buildings they attend. The Justices also understood in writing their decision that there are regional cost differences which must be taken into account in distributing State aid. The regional disadvantages in the building aid program have enormous impacts on the aid New York City receives. If there was a building aid program that meaningfully met the needs of New York City, early class size reduction in the early grades would have been a State building priority,

not just the City's and the IBO would not have had to write a report that over 70,000 needy students could not be in small classes due to lack of space.

**Buffalo School District.** Buffalo is the second largest school district in New York State with a student population of approximately 41,500. Buffalo is one of the Big 5 school districts in New York State and is a dependent school district, i.e., no ability to tax and to issue bonds. The municipality of Buffalo, as in New York City, must issue the bonds for the school district and all aid comes into the City. Like New York City, Buffalo has run up against its constitutional debt limit and has very limited ability to issue bonds for public schools or for any other purpose. And unlike New York City, there is no Transitional Finance Authority. In fact, in the last night of this year's State legislative session, June 19, 2003, the legislature set up a financial control board to take over Buffalo's finances. Buffalo's tax base has been shrinking and the city is in a very precarious position financially which has had serious implications for the school district.

The school district has had three years of budget shortfalls and has had to close schools and lay off staff to close the budget gaps. A badly needed capital program for the school district's aging infrastructure did not become a reality until SED urged the city and school district to look at ways to structure a program given Buffalo's high BAR with incentive of 93.7%. Unlike New York City, Buffalo is a low wealth/high needs school district; its student population meets the criteria for high need and its property wealth is eroding, a significant reason for Buffalo's financial problems with its shrinking tax base. Therefore, Buffalo is eligible for one of the highest BAR's in the state with a very modest local match.

Buffalo was not able to take advantage of the high BAR for two reasons. Because building aid is a reimbursement program, the City needed to issue bonds for the school district's capital program but had no ability to do so because of its constitutional debt limit and its serious financial problems. The second reason was the need for a local match which was not readily available given the school district's and City's budget problems.

Thanks to leadership in the City and the school district, recognition of the real needs of the school buildings led to an innovative financing approach. Special legislation was passed allowing bonds for the first phase of the school's capital program to be issued by the Erie County Industrial Development Agency. The special legislation also authorized the privatization of the planning and project management activities of the capital program. The local match will come from a variety of sources: grants, interest earned on the bond proceeds and energy performance contracts. A full discussion of the special legislation and the financial and legal structure is in the report "Alternative Development Mechanisms for School Construction in New York State."

Unlike New York City, Buffalo is confident that its project costs will be within the State's maximum cost allowance as adjusted for Buffalo. There are a number of

reasons for this confidence. They believe they will be able to achieve this because of the intensive planning work that they have done with SED to maximize the BAU. The first phase projects include major work on existing schools plus some new additions. It is easier to stay within the envelope of the maximum cost allowance with work on existing buildings although the work in Buffalo is extensive and will involve some new construction. Also, the construction cost structure for Buffalo is lower than in New York City and the projects will not be subject to the Wick's law which raises construction costs. It should be noted that the regional cost index for Buffalo is only 1.1178 reflecting the lower cost structure in western New York State.

The local share in Buffalo is modest at only 6.3% of the State-defined eligible costs but raising this low local share has been challenging due to the City's and school district's dire financial straits. It is crucial to the success of Buffalo's program that all of its costs fall within the eligibility envelope because of the local constraints. Buffalo could not have conceived of a capital program without the high reimbursement rate from the State and a lower cost structure due to lower costs in Western New York State, privatization and exemption from the Wick's Law requirements. When contrasted with New York City, opposite conditions exist – a much lower reimbursement rate from the State, higher regional costs and public bidding requirements. Of course, the single biggest advantage that New York City may have is the City's ability to issue bonds for school construction although at a much lower level than was originally planned due to the sluggish economy.

**Rural School Districts.** There are approximately 400 rural school districts in New York State. They are either located in a county with a population under 200,000 or in an area with a density of under 25 pupils per square mile. With 748 school districts (including BOCES), the approximately 160 rural districts identified as high needs districts had a total enrollment of 179,578 for the 2000-01 school year or 6.35% of the public students state-wide.

Many rural districts have high needs with high levels of poverty and generally small tax bases; the result is that they have high building aid ratios. It is generally easy to stay under the capacity caps set by the State given their student enrollment. As a result, rural school districts often have excellent buildings. The greatest needs in the rural school districts are the lack of people to lead the schools and to make long-term commitments to these districts and the lack of quality educational programs. Superintendents and other potential educational leaders leave to go to the suburbs so it is difficult to retain quality educators in many of the poor rural areas.

In an analysis that SED did on the use of the building incentive, "School District Responses to Building Aid Incentives, April, 2002", the State discovered that rural districts with high building aid ratios had a high rate of capital building during the 10% incentive period. For the high need rural districts the average building

aid ratio was just under 80% which rose to almost 90% with the incentive. "...The high need rural districts experienced what appears to be a construction boom. Their average annual percent replacement rate was over 17 percent in the third year of the modified incentive, and averaged nearly 12 percent over the first three years the Building Aid incentive was in effect." The high need rural districts outspent the other high need districts. (School District Responses, p. 11).

However, there are many rural districts that do not fall into the high need category set up by the state. These districts have a mostly poor population when income levels are analyzed but the wealth based on property is significant. This is not dissimilar from New York City with a high needs student population and significant property wealth. For example, Margaret and Downsville are in the New York City watershed area in the Catskills and New York City pays taxes to both towns. There are a number of other areas that are wealthy because of institutions, such as colleges and universities.

Another reason for a wealthy school district with an otherwise poor population is because of tourism, weekenders and wealthy retirees. The aid formulas used to be based on the wealth of the students' families only but a number of years ago in Sullivan County, it was recognized that there was significant property wealth due to weekenders and vacationers. The recognition of this dichotomy was the impetus that caused the aid formulas to be changed to take into account the property base as well as income levels. There are extremes in this category. One school district, Newcomb, in the Adirondacks has very valuable land which can be taxed at a relatively high rate but the student population is very small. There are 64 students in this pre-K through 12th grade district. This district spends \$27,000-30,000/student.

In some of these districts it has been difficult to raise the local share where the voters have less of a stake in how good the schools are. For example, in towns where there are institutions such as universities, some of the students may be children of the professors so understanding the need for improvements may be more understandable and acceptable than in those communities where many of the voters do not have students and will never have students enrolled in the local schools.

When the areas served by the rural school districts are analyzed in terms of economic development, many of the districts appear to be doing well because of high aid ratios but the areas they serve are dying economically and often student enrollments are contracting. From a community development perspective, it may also be very hard for the schools to be a significant tool for community development when a village/town is served by several small school districts. The issues and problems in the rural school districts are profound and go far beyond building issues. As the head of the Rural School Program commented: "These small communities export milk, timber and their best kids."

The following profiles some of the issues faced by two rural school districts: one very small and very poor, the Friendship School District in Allegany County in western New York State, and Roscoe in Sullivan County approximately two hours from New York City in an area known for its trout fishing and vacation opportunities.

**Friendship School District.** The Friendship school district provides pre-K through 12<sup>th</sup> grade education for 370 students. The district's enrollment is shrinking; eight years ago the enrollment was at 500. There are approximately 43 full-time teachers and staff. The district located in Allegany County in southwest New York State serves 4 towns: Belfast, Cuba, Friendship and Wirt.

The State ranks the district in Group 4 as a high need rural population relative to local resource capacity. The students are approximately 95% white and 4.0% black. The district's population is highly mobile; its enrollment fluctuates about 10-12 students on a monthly basis. The students are mostly poor; 44.5% were eligible for free lunch in the 99/00 school year. There are a high number of rental units in the area which contributes strongly to the high rate of mobility. Also, Allegany County has many small school districts which also contribute to the mobility problem; this has a tremendous impact on educational programs.

The local economy is very weak. In the late 60's and early 70's it was a prosperous area with several industries: electronics, foundry, oil and it also served as a bedroom community. Currently there are very few employment opportunities. The only industry is Friendship Dairies which employs only 150-175 people.

There is one school building with two wings: one built in 1938 and the other in the mid-1950's. The high school has one wing; the elementary school has a wing and the middle school occupies one floor. All of the grades share the gym, auditorium, cafeteria, library and nurse's office.

The school building is of a sufficient size but it does not have adequate programmatic spaces, e.g., there are an insufficient number of small reading resource rooms. This is primarily because the district's policy is to have small class sizes of approximately 12-13. Their students have very high needs and in the last five years the performance on the State tests has been medium to low. As a result, they have kept class sizes small which has had an impact on how they use the building.

Programmatically they have focused on systemic programs rather than grade focus. For example, they have a reading program for grades K through 12 and have sustained reading every day for 90 minutes for small groups of 8-10 students. Running this program for small groups does not leave sufficient space for other initiatives.

The District has submitted building plans to SED for review and approval for an addition of 4 instructional spaces: a music room and special education classrooms. The superintendent was not optimistic that these plans would be approved because of capacity issues raised by how the district uses the school. The district labeled some of the instructional rooms as special ed classrooms because it will help the capacity issues but the district will probably use these rooms as resource rooms. This is the game that has to be played to get approval. The District has small class sizes which are good educationally but small capacities fall below the SED facilities' guidelines so to gain approval for an addition they would have to increase class-size. If they did, they would probably have insufficient enrollment to justify the addition.

The district has a building aid ratio of 90% so its local share is only 10%. The superintendent believes that raising the local match for an addition would be a challenge but not impossible. There is only \$52 million of taxable properties to support the district and over one-half of the primary residents don't pay any taxes to the school district because their properties are assessed below \$30,000. A 1% increase in its tax levy this year only raised \$10,000.

The building issues are taking a back seat to fights for program and staff in the current economy. As a result of the Governor's proposed cuts (which were not realized), the district would have had to increase its tax levy 7-8%; this is in addition to regular contractual increases of another 7-8%. Poorer districts such as Friendship that don't have significant local financial support are at a disadvantage. As noted above, small increases on the tax levy can have a huge impact.

The other reason poorer districts are at a disadvantage is that there is a higher number of special need students. Most of the families have two wage earners. The students suffer from lack of pre-natal care and enter school "behind the curve"; life skills are lacking. But state aid is formula driven and, as a result, this penalizes the poorer districts with high needs.

If the proposed State cuts had been realized, the district was probably going to increase class size in grades 5 and up. Their priority would have been to maintain small class sizes in pre-K to second grades. The district has a record of aggressively pursuing grants but they often match state funds. For example, they have an extended school day program until 5:30 and over half of their K to 5 population stays until 5:30. Their systemic reading program is also jointly funded. Reductions in state aid would have had serious consequences for these programs.

On the plus side, the staff is fairly stable. Turn-over during the last seven to eight years has been due primarily to retirements, promotional opportunity and spousal transfers. They have been able to attract fairly experienced teachers from the

area. The current superintendent, Charles Tyo, has led the district for 8 years. When he arrived, he was the 7<sup>th</sup> superintendent in 10 years.

When Friendship's students graduate from high school, very few go to four year colleges. About 50-70% of the graduates attend two year community colleges in the area, either within commuting distance (there are 2 community colleges) or another two community colleges within 2 hours of the area. Over the last five to six years a significant number of students have joined the military. But because there are few employment opportunities: Friendship Dairies and some manufacturing about 25 miles away, most students leave the area.

**Roscoe School District.** The Roscoe Central School District offers pre-K through 12<sup>th</sup> grade education and had an enrollment of 317 at the end of February, 2003. Less than 1% of the district's students are minority and most come from working to middle class homes. Approximately 60 students or 20% of the students are eligible for free lunches. The State ranks the district in group 5 on the needs to resource capacity. Group 5 is a district with average student needs relative to local resource capacity.

The district has one school building originally built in 1939. It has just completed a new addition and partial renovation of the existing building. The addition added a new gym, new locker rooms and 4 classrooms. The renovation included ADA compliance work and conversion of the small gym to a multi-purpose room/small auditorium (there had been no auditorium in the school). The project was budgeted at \$5 million but there were \$200,000 of savings which the district is using to renovate the former locker room into a music room. That work is complete.

The district paid for this project with a 62% reimbursement from the state. The project was approved by the incentive deadline and was therefore eligible to receive the select aid ratio plus the 10% incentive. The local share was paid for by a combination of bonds issued by the district which were overwhelmingly approved in a referendum. A small portion of the local share is from rent paid by the BOCES for use of a few classrooms. The district did not exceed its maximum cost allowance nor did it have a problem with eligible costs. If there had been any issues, the district would not have had the \$200,000 savings.

If the district were submitting this project to SED for approval today, the aid ratio is now 33.1%. The superintendent noted that if the local share were based on a State reimbursement of 33.1%, the project would never have occurred. There is other renovation work that the district would like to do but it is on hold now; it will try and do small parts of the work with available funds.

The district's full time residents have income profiles like other rural districts which would ordinarily warrant a higher building aid ratio. But Roscoe has high property wealth because of tourism and weekend homes. These taxpayers don't

vote here so there's no issue for them on the referendum but the high property wealth depresses the level of state aid. It's their fundamental problem.

The school has sufficient programmatic spaces. The pre-K program is district-funded as the district was not eligible for state funding; they just became eligible for state funding this year. The district considers pre-K an important program; the superintendent believes pre-K should be standardized and become part of the common branches.

The school has one class on grade so class sizes vary depending on the cohort size; the cohort size is larger in the upper grades and lower in some of the elementary grades. The class size ranges from 12 to 26 or 27 in the upper grade levels. The district enrollment is shrinking. Seven years ago enrollment was about 360; the superintendent expects enrollment to stabilize at about 300.

The recent scores for the District at the 4<sup>th</sup> grade level have been very high and as this cohort moves through the system the 8<sup>th</sup> grade scores should improve. The superintendent believes that some of the initiatives, including pre-K instruction, have made a difference and the 4<sup>th</sup> grade scores are one manifestation of this.

Most students go to 2 and 4 year colleges. A large number of students now go into the military. A smaller number go into the work force but the area doesn't have many jobs to offer. The industry in the 5 towns that Roscoe serves - Rockland, Colchester, Hancock, Fremont and Callicoon - is primarily the service industry for tourism. Roscoe has superior fishing and it is easily accessible from New York City which is 125 miles away.

Teacher and administrative staff retention has been an issue because the district's salary and benefits were not competitive. The district has worked to improve this and it is less of an issue than it was 2 or 3 years ago but retention of math and science teachers remains a problem.

Like Friendship the serious issues for Roscoe are educational, not the state of their facilities. However, both districts struggle to provide the variety of programmatic spaces they believe their students need to learn in. Both superintendents were clear about the limitations of the building aid formulas in achieving their educational goals.

**Conclusion.** The level of education aid and how it is distributed is one of the legislature's most important functions. Decisions on education aid during budget negotiations are crucial to finalizing a state budget. However, the outcomes of these negotiations continue to support a complex building aid program that adheres to formulas that few understand and, more importantly, does not adequately meet the needs of the districts the program is meant to support, although the building aid program, for all of its shortcomings, is a consistent and

reliable program for districts. However, absent a complete re-thinking of the state's support for school buildings, the program could better serve the needs of districts by structuring the aid payments to meet district needs not just the State's cash flow requirements, simplifying the program so that it is easily understandable, really making regional cost adjustments and not imposing unfunded capital mandates. The following summarizes some of the key issues with the building aid program:

- **Reimbursement Issues.** Districts with taxing authority are probably "used to" the way the program is structured and are "used to" issuing bonds up front to fund their capital projects. However, a district has significant financial risk in developing a project before the State approves the project and then, once approval is given, before reimbursement payments from the State begin under the new amortization program. And districts have to assume this risk at the same time they are selling this project to their voters. However, if a district has a high building aid ratio, the selling job to voters may be less of a challenge. The reimbursement issue has also arisen with the RESCUE program where districts are not using this funding, in part, because of the uncertain timing of repayment.

The big problem with the fundamental structure of the program is the financial limitations of the Big 5 School Districts who educate the neediest students in the State. Municipal bonds for education projects in these five cities are not exempt from the municipalities' constitutional debt limits. Therefore, these five districts not only compete with other municipal services for funding, their capital program may be stalled because their municipality has no bonding authority. This happened in Buffalo and was a risk in New York City until another financing mechanism was created by the State for New York City and it may also be a problem now in Syracuse. Buffalo, in particular, with a very high building aid ratio and a desperately needed capital program had to resort to alternative financing requiring special legislation to launch its capital program.

- **Building Aid Ratios.** Building aid ratios are responsive to high need students if the district's property values are low. If the district has significant property wealth, the likelihood is that the district will be an average wealth district, like New York City, with the largest number of high need students in the State; New York City's select aid ratio is 54.7% so that with the incentive, NYC's BAR rose to 64.7%. NYC's actual aid for projects approved after June 30, 2000 (when the incentive expired) is 62.1%. Buffalo's select aid ratio is 83.7%, and with the incentive 93.7%; its actual aid for projects approved after June 30, 2000 is 90.1%.

The earlier table that showed need/resource capacity categories and combined wealth ratio is shown below with building aid ratios added:

District	Need/Resource Category	Combined Wealth Ratio	Select Building Aid Ratios with 10% incentive
New York City	1	.953	64.7%
Buffalo	2	.51	93.7%
Utica	2	.582	99%
Syracuse	2	.501	87.7%
Rochester	2	.551	87.0%
Yonkers	2	1.216	46.0%
Friendship	4	.269	90.2%
Downsville	5	1.871	10.0%
Margaretville	4	1.381	40.7%
Walton	4	.496	80.3%
Roscoe	5	.974	51.9%

Except for Downsville, located in the New York City watershed and Roscoe, a tourist destination, all of the remaining nine districts in the above chart are categorized as high need districts by the State. However, of these nine districts, three – New York City, Yonkers, and Margaretville – have combined wealth ratios either close to the State average or above it. All three districts have significant property wealth that work against the high needs of their students. The remaining six districts – Buffalo, Utica, Syracuse, Rochester (4 of the Big 5), Friendship and Walton (located in the same county as Downsville and Margaretville) – demonstrate that districts with high need students will receive greater aid if their property values are low.

Looking more closely at the three towns in rural Delaware County is illuminating. Downsville is located adjacent to the Pepacton Reservoir which is part of the New York City watershed. As a result, New York City pays taxes to Downsville so they have a high combined wealth ratio. Margaretville to the east of Downsville also benefits from the City of New York. Walton to the west of Downsville in the western part of the county does not benefit from New York City's water system. However, the student profiles have many similarities in terms of need.

District	Enrollment	Racial Distribution	Limited English Proficiency Students	Free and Reduced Lunch
Downsville	339	White: 98.9% Black: 0.6% Hispanic: 0.6%	None	Free: 19.3% Reduced: 15.6%
Margaretville	557	White: 87.4% Black: 0.4% Hispanic: 11.1% Asian, etc.: 1.1%	6.8%	Free: 37.3% Reduced: 14.7%
Walton	1174	White: 98.1% Black: 1.2% Hispanic: 0.5% Asian, etc.: 0.2%	None	Free: 23.4% Reduced: 11.6%

Based on these few student statistics, there is no obvious reason why the combined wealth ratios for these three towns vary so greatly other than property wealth. This underscores the discrepancy between need and

level of aid that is the core of the Campaign for Fiscal Equity lawsuit regarding New York City and demonstrates that inequities in the formulas exist outside of New York City.

- **Regional Cost Adjustments.** Creating a regional adjustment for construction labor costs is insufficient to meet the need of districts in the higher cost areas of the State. There needs to be a regional cost adjustment that covers many more cost categories. New York City is the most extreme example of this problem. Because of the higher cost structure in New York City which covers every area of costs - building materials, construction methods, insurance, overhead, property, among others – it is probable that New York City, with the greatest need for new seats in the State, receives as a percentage the lowest reimbursement in absolute dollars in relation to its overall costs for a new school.
- **Construction Cost Allowances.** There needs to be a re-evaluation of the cost allowance per seat that the State allows. It does not reflect actual costs for new construction in many areas of the state. If the State believes that this cost only needs to be adjusted regionally, it must evaluate other state requirements that increase costs such as the Wick’s Law.
- **Capacity Issues.** SED needs to conform its policies on capacity levels with educational goals both at the State and local levels. While the guidelines appear to provide SED with flexibility on calculating capacity, this needs to be clearly stated in guidance provided to districts. Districts should not have to play a game on labeling spaces to ensure that the space is aidable or that a district has sufficient capacity needs to justify additional classrooms. SED needs to have the flexibility and staff to evaluate a district’s capacity needs with its educational policies to ensure that there are adequate spaces to support a particular district’s students’ needs.
- **Unfunded State mandates.** The State needs to structure a building aid program that can be responsive to educational initiatives that are important to the State. Two recent programs, early grade class size reduction and universal pre-kindergarten, require more classrooms to implement. The State’s funds provided additional teaching capacity but did not address space needs. Districts with serious overcrowding had to resort to team teaching to reduce class size and/or to outsource pre-kindergarten classes to private providers above the 10% required outsourcing. In some neighborhoods of New York City it was not possible to access some of this money because of lack of space within the public school system or with private providers.

- Staffing/Training. Districts need to be trained so they understand the State aid programs and, particularly, special programs such as RESCUE and QZAB's, so that they can maximize available State money. It is impossible to expect that many districts with small facilities' staffs, particularly in the rural areas, have the time to devote to a new program; the State needs to proactively train districts and to ensure they have the staff to run major capital programs. In many districts the superintendent or deputy superintendent have to function as a quasi-construction manager. The State needs to provide SED with sufficient staff to do this and to provide ongoing support to a district as its capital program is developed.

The Campaign for Fiscal Equity lawsuit sought to match resources to needs in New York City. The State needs to ensure this equity in every district.