



- b. “Reform[] the current system of financing school funding and managing schools . . . [to ensure] that every school in New York City [has] the resources necessary for providing the opportunity for a sound basic education”; and
- c. “[E]nsure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.”

*CFE v. State*, 801 N.E.2d 326, 348 (N.Y. 2003) (“*CFE II*”).

4. The Court of Appeals directed the State to comply with this order by July 30, 2004. *Id.* at 349.

5. The Defendants have failed to take any action whatsoever to remedy the constitutional violation found by the Court of Appeals or to comply with the specific mandates of the Court of Appeals’ order by July 30, 2004, nor have they taken any such actions to date.

6. The Court of Appeals remitted this case to this Court for further proceedings in accordance with the Court of Appeals’ decision.

7. On August 3, 2004, this Court issued an Order appointing Judicial Referees. The Referees were to: 1) report on “what measures defendants have taken to follow the . . . [Court of Appeals’] directives; 2) “identify the areas, if any, in which . . . compliance is lacking”; and 3) make recommendations on how to “bring the State’s school funding mechanism into constitutional compliance insofar as it affects the New York City School System.”

8. The Judicial Referees held extensive hearings, and requested and received documentary and testimonial evidence, pursuant to this Court’s Order.

9. On November 30, 2004, the Judicial Referees submitted their Report and Recommendations (“Judicial Referees’ Report”) to this Court.

10. The Referees specifically found that “the State [failed] to accomplish any of these three mandates from the Court of Appeals.” Judicial Referees’ Report, at 12.

11. The Referees held that by the State's own admission, "legislative action has not been taken" with regard to the second and third elements of the Court of Appeals' order, i.e. reforming the school funding and accountability systems. *Id.* at 12 n.8. The Referees further specifically found that although the State contended that it had fulfilled the Court of Appeals' first mandate with regard to determining the actual costs of providing a sound basic education, the costing-out analysis submitted by the State in regard to operational funding was flawed and did not satisfy the Court of Appeals' first directive. *Id.* at 14-24. With respect to facilities funding, the Referees found that the State failed to provide any "evidence . . . concerning the aggregate cost of providing constitutionally adequate facilities in the New York City District." *Id.* at 34.

12. The failure of the State to comply with the June 26, 2003 order has resulted in substantial prejudice to the 1.1 million public school children in the New York City District whom Plaintiffs represent. Defendants' failure to meet the July 30, 2004 deadline means that implementation of a system to provide constitutionally adequate resources to New York City's students has been delayed at least an entire school year. Tens of thousands of students will drop out of school before completing high school this year due to this non-compliance, and hundreds of thousands of other students will experience continued educational deprivation, much of which will be irreparable and will substantially undermine their ability to function productively as civic participants and to seek competitive employment throughout their lives. Further delays in meeting the Court of Appeals' mandate would cause unconscionable continued injury to these students.

13. The Referees specifically found in their Report that “[t]he Court also clearly has the authority to enforce its orders through its contempt powers, and to impose sanctions for any such contempt, including fines.” *Id* at 54 n.85. (citations omitted).

14. The Referees have determined, after reviewing the testimonial and documentary evidence, that the provision of a sound basic education to New York City students will require an increase in funding for New York City’s students of \$1.41 billion for the next school year, plus the amortized cost of providing facilities funding of \$1.836 billion for the next school year. *Id.* at 4-5. When calculated at a 6% amortization rate, this facilities funding amounts to an additional \$110 million.

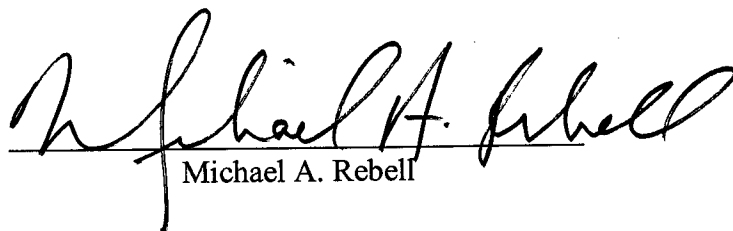
15. Accordingly, the Plaintiffs respectfully request that the Court issue an Order finding the Defendants in contempt and imposing on them a daily fine which is the equivalent of  $1/365^{\text{th}}$  of the amount that full compliance would cost for Year 1, pursuant to the Referees’ Recommendation, or \$4,164,000 for every day that the State remains in contempt and in substantial non-compliance with the mandates of the Court of Appeals and any Order issued by this Court in response to the Report and Recommendations of the Judicial Referees.

16. The penalty amount should be paid to the Department of Education of the City of New York (“DOE”) to be expended on programs and services for the 1.1 million school children on whose behalf CFE has pursued this litigation, provided that DOE expends the money in accordance with a comprehensive sound basic education plan which has: a) been developed in accordance with the enhanced accountability requirements, recommended by the Judicial Referees and approved by the Court; and b) which has been reviewed by the Commissioner of Education.

17. Consistent with the Referees' recommendation that Defendants be granted an additional 90 days to enact legislation and begin to implement the orders of the Court, Plaintiffs suggest that the imposition of the requested fines should be stayed for 90 days from the date of the issuance of this Court's order.

18. As is set forth in more detail in Plaintiffs' Memorandum of Law, the imposition of substantial monetary fines is an appropriate and effective means of enforcing compliance with constitutional mandates that has been used repeatedly by state and federal courts in New York. The imposition of this sanction is likely to induce the Governor and other State officials to overcome the impediments to compliance that have persisted to date and to implement an appropriate remedy, in accordance with the orders of this Court and the Court of Appeals during the 90 day grace period.

19. No prior application for the same or similar relief has been made to this or any other court.

  
Michael A. Rebell

Sworn to before me this  
16th day of December, 2004

  
Notary Public

MARY ANN FOERTH  
NOTARY PUBLIC, State of New York  
No. 01FO4910290  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires Oct. 26, 2005