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Writer's Direct Dial:
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March 3, 2005

By Hand

Hon. Leland DeGrasse
Supreme Court of the State of New York
Chambers: 60 Centre Street, Room 521
New York, New York 10007

Re: CFE v. State of New York
Index No. 111070 / 93

Your Honor:

We write to inform the Court that because of a word processing glitch defendants' initial proposed order failed to make clear defendants' agreement with certain aspects of plaintiffs' proposed settle order. A corrected order is enclosed. As corrected the enclosed order removes two points of contention listed in plaintiffs' reply memorandum.

Point Fourth of plaintiffs' reply memorandum suggests that plaintiffs and defendants may disagree about the referees' (and plaintiffs') usage of the word "additional" in describing capital funding. In fact it appears that there is no substantive disagreement. Plaintiffs urge that the amounts recommended by the referees are "in addition to the funds needed on an ongoing basis to maintain the New York City District's school facilities in good repair." Plaintiffs' reply memo at 4. Defendants agree that this is the referees' recommendation. This agreement is stated in footnote 3 of defendants' initial proposed order, which because of a word processing error is inadvertently misplaced in the operational funding chart rather than the capital funding chart sections of defendant' order. The enclosed order corrects this error, placing that footnote in the proper place, i.e. in the capital funding chart, now numbered as footnote 5. The defendants' enclosed proposed order maintains the omission of the word "additional" but specifically includes the referees' articulated distinction between "capital funds" and "repair and maintenance funds," clarifying the referees' intent that their recommended capital funding is not "additional" to some other base number.

Point Second of plaintiffs' reply memo indicates that the referees' recommend that additional operating funding "will need, in each year after the first year, to be adjusted for inflationary increases and

Hon. Leland DeGrasse

March 3, 2005

Page 2

to reflect any changes in student enrollment.” Defendants agree that this correctly states the referees’ recommendation, and a footnote to this effect was inadvertently deleted by the same word processing glitch which caused the above referenced footnote to be moved to a different position in the defendants’ initial order. A new footnote 3 to this effect now appears in the defendants’ proposed order, enclosed. With this and the above correction, both expressing concurrence with plaintiffs’ position, the enclosed order is otherwise identical to the initial order previously submitted by defendants.

In Point First of their reply memorandum, plaintiffs urge that this Court should enter an order that the referees’ report be “in all respects ratified and confirmed” (emphasis supplied). Such language, which arguably would incorporate the referee’s report and recommendation by reference, is inappropriate in an order, which is limited to describing the specific relief the court wishes to impose on the parties. In addition, such language is inconsistent with plaintiffs’ own proposed order, which substantively varies from language used by the referees in a number of ways, some still unexplained; and defendants’ counter-proposed order, which, as amended, clarifies the referees’ report in the four ways specified in defendants’ memorandum.

Respectfully submitted,

/s/

Bruce B. McHale

Assistant Attorney General

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