

TABLE OF CONTENTS

	Page
TABLE OF CASES AND AUTHORITIES	i
PRELIMINARY STATEMENT	1
STATEMENT OF THE ISSUE	3
STATEMENT OF FACTS	4
ARGUMENT	5
 POINT I	
THE STATE HAS AN OBLIGATION TO ENSURE THAT PUBLIC SCHOOLS PROVIDE STUDENTS WITH AN ADEQUATE HIGH SCHOOL EDUCATION	5
 POINT II	
THE COURT SHOULD DIRECT THE STATE TO MAKE STATE AID TO EDUCATION MORE EQUITABLE AND UNDERSTANDABLE	11
CONCLUSION	15

TABLE OF CASES AND AUTHORITIES

Statutes

20 United States Constitution Section 6301	7, 9
20 United States Constitution Section 6311(b)	7, 10
20 United States Constitution Section 6316	10
8 NYCRR Part 120	10
8 NYCRR Section 100.1(t)	7-9
Education Law Section 3205(1)(c)	5
Education Law Section 3205(3)	6
Elementary and Secondary Act of 1965	7, 9
New York State Constitution	10
No Child Left Behind Act of 2001	7, 9-11

PRELIMINARY STATEMENT

The Midstate School Financial Consortium (“Midstate” or the “Consortium”) submits this proposed *amicus curiae* brief in support of a reversal of the Decision of the Appellate Division, First Department in this matter dated June 25, 2002 (295 A.D.2d 1).

Midstate is a voluntary association of 293 school districts and 19 BOCES dedicated, among other things, to educational reform and improvement of school funding mechanisms in our State. Its office is located at 6390 Fly Road, East Syracuse, New York.

Since 1991, the Consortium, through its members has engaged in numerous ongoing efforts to point out the inadequacies of public school financing in New York State as it presently exists. In doing so, Midstate has offered constructive suggestions for understandable, predictable, fair and workable alternatives which would serve to better address the educational needs of all of our State’s children.

This case presents an issue of critical importance to public school districts throughout New York State, including those who participate in the Midstate School Financial Consortium. At issue is the process by which the State of New York financially supports its system of public education so as to comply with the mandate of the Education Article of the New York State Constitution. Article XI requires the State of New York to provide a sound basic education to all the children attending its schools. Midstate seeks to underscore the position of plaintiffs and other *amici* organizations which support plaintiffs in advocating appropriate judicial remedies to the State’s violation of the

to law and arguments that might otherwise escape its consideration and that it would be of special assistance to this court.

The submission of the proposed *amicus curiae* brief is accompanied by the filing of a Notice of Motion and Affidavit dated February 28, 2003, with a return date of March 17, 2003.

STATEMENT OF THE ISSUE

Whether the court below erred when it reversed the order of the Supreme Court directing the Respondents to reform the State's current system for financing public education?

The proposed *amicus* respectfully submits that the answer is yes.

STATEMENT OF FACTS

The proposed *amicus curiae* will not recite a separate statement of facts, except as hereinafter specifically cited within the text of its brief, but will defer to the facts as outlined in the brief submitted by Appellants, Campaign for Fiscal Equity, Inc., and as set forth in the Record on Appeal.

ARGUMENT

POINT I

THE STATE HAS AN OBLIGATION TO ENSURE THAT PUBLIC SCHOOLS PROVIDE STUDENTS WITH AN ADEQUATE HIGH SCHOOL EDUCATION

In its decision in this matter, the Appellate Division concluded that the state's public schools need provide no more than the opportunity to acquire the level of skills "imparted between grades 8 and 9", since this is the level of skills sufficient to obtain "low level" employment and to read simple voting information and juror instructions (App. Div. at 8). Proposed *amicus curiae* concurs with Plaintiffs that this constitutional standard is offensive to any reasonable understanding of the purpose of an education in today's world. (Plaintiffs' brief at 17). If, as prior decisions of this Court have said, the State Constitution requires that all children of this State be educated, it is respectfully submitted that the term "educated" must have real meaning in terms of helping our students to be able to function as responsible citizens in today's society. In the present case, if the Appellate Division's holding is allowed to stand, it will create a hollow standard for our children which will make this constitutional provision meaningless. As Plaintiffs assert, if this Court determines that no child of this State is entitled by constitutional right, to anything more than an eighth grade education, it will be telling students that our State's educational system does not entitle them to actually graduate from high school, to be prepared for college or to do anything other than menial work. (Plaintiffs' brief at 3).

under Education Law §3205(3), union free and central school districts with a population of more than 4500 inhabitants as well as city school districts may require minors to attend until the last day of session in the school year in which the minor becomes seventeen years of age. It makes little sense, we submit, to have a standard under the State Constitution which ends the State's obligation to educate at 8th grade while having compulsory school age laws that may, in some cases, require attendance until past age 17. Instead proposed *amicus* joins Plaintiffs in asking this Court to adopt a more realistic constitutional standard making clear that all of the children of this State are entitled to the opportunity to obtain an adequate high school education that will prepare them for a competitive employment and to function as productive citizens. (Plaintiffs' brief at 6).

In suggesting that the Court adopt this standard, proposed *amicus curiae* is doing no more than reinforcing the conclusion reached by the trial court in this matter after analyzing the enormous amount of evidence presented in this case. The trial court concluded that students should have the opportunity to acquire the skills and knowledge necessary to graduate from high school with the ability to (a) compete for "productive employment", or to pursue higher education and (b) to understand, evaluate and rationally communicate about issues confronted by citizens in the exercise of their civic responsibilities. (Trial Ct. at 13-17, Plaintiffs' brief at 21-22). The standard adopted by the Appellate Division, by contrast, leaves our State's students unprepared for today's modern economy. Proposed *amicus* is not in any way suggesting that those who lack a high school education and who perform low level jobs cannot be valuable and productive members of society. What

Students must also be assured that they will be able to obtain the skills and knowledge necessary to undertake civic responsibilities in a complex society. As Plaintiffs indicate in their brief to this Court, the vast weight of evidence supports the trial court's conclusion, as well as the learning standards set by the Board of Regents and the State Education Department under §100.1(t) of the Commissioner's Regulations, that the full development of the reading skills and thought processes necessary to discharge the responsibilities of citizenship today requires a high school education. (Plaintiffs' brief at 38). As Plaintiffs also indicate, the argument that a constitutionally adequate education today requires the opportunity to obtain a meaningful high school diploma is self-evident. It is naive to think that the parents and employers of our students would expect anything less from our school systems. There is now also federal recognition that this skill level is necessary for an adequate education. Under the No Child Left Behind Act (NCLB) of 2001, which embodies that latest set of amendments to the Elementary and Secondary Act of 1965 (20 USC §6301 *et. seq.*), Congress has enacted legislation which provides for assessments based, in part, on high school graduation rates (See 20 USC §6311(b), "adequate yearly progress" and "graduation rates for public secondary school students").

As for requesting that this Court specifically define the educational skills and knowledge necessary to constitute an adequate education, proposed *amicus curiae* concurs with Plaintiffs' view that this task properly belongs to the Board of Regents, and that the Regents and the State Education Department, not the courts, are best suited to determine whether an adequate high school education

graduation requirements reflect generalized statewide minimum standards of quality. These requirements for all intents and purposes are mandatory standards for all of New York's public school students. As indicated in the brief submitted on behalf of proposed *amici* New York State School Boards Association and National School Boards Association, they are the real point of reference in determining the adequacy of New York's System for funding education. (See brief on behalf of proposed *amici*, pp. 9-12). Proposed *amicus* Midstate also concurs with proposed *amici* New York State School Boards Association and National School Boards Association's views that these learning standards contain the essentials of an adequate basic education. For example, in the area of English/language arts, the learning standards require that students:

listen, speak, read and write for information and understanding...read and listen to oral, written and electronically produced texts...and develop an understanding of the diverse social, historical and cultural dimensions the texts...represent...listen, speak, read and write for critical analysis and evaluation...and for social interaction. (8 NYCRR §100.1[t][1][i]).

As to career development and occupational studies, the learning standards require that:

students be knowledgeable about the world of work, explore career options, and relate personal skills, aptitudes, and abilities to future career decisions...demonstrate how academic knowledge and skills are applied in the workplace and other settings...mastery of the foundation skills and competencies essential for success in the workplace...[and that] students who choose a career major will acquire the career-specific technical knowledge/skills necessary to progress toward gainful employment, career advancement and success in postsecondary education. (8 NYCRR §100.1[t][1][vii]).

establishing governments; the governmental system of the United States and other nations; the United States Constitution; the basic civic values of American constitutional democracy; and the roles, rights and responsibilities of citizenship, including avenues of participation. (8 NYCRR §100.1[t][1][iii]).

In the areas of mathematics, science and technology, students must be able to:

use mathematical analysis, scientific inquiry and engineering design, as appropriate, to pose questions, seek answers and develop solutions...access, generate, process and transfer information using appropriate technologies...understand mathematics and become mathematically confident...by applying mathematics in real-world settings...understand the relationships and common themes that connect mathematics, science and technology and apply [them] to these and other areas of learning...(8 NYCRR §100.1[t][1][ii][a],[b],[c]).

These learning standards are not “pie-in-the sky” aspirational goals for students and school districts. They represent the minimum level of knowledge and skills which school districts must teach and students must acquire in order to earn a public high school diploma in New York State. (See 8 NYCRR §§100.1(g)(t), 100.2(ee), 100.5). Based both on logic and current law, it stands to reason that the Court’s determination as to whether New York’s system for funding public education should be based on whether that system provides students with a true opportunity to acquire the skills necessary to obtain a high school diploma.

In addition, proposed *amicus* respectfully points out, as do proposed *amici* New York State School Boards Association and National School Boards Association, that New York State is a recipient of federal educational funds under the Elementary and Secondary Education Act of 1965 (ESEA, 20 USC §6301 *et seq.*). The most recent reauthorization of this legislation is commonly known as the No Child Left Behind Act of 2001. Title I of this legislation, which provides funds for improving the academic achievement of disadvantaged students, requires that as a condition for the receipt of such funds, states must develop vigorous academic standards in language arts, mathematics

and science. In addition, states must develop assessments that measure student achievement that are tied to those standards. These standards must specify and measure student knowledge and achievement. Every state's students must be proficient in these standards by the end of the 2013-2014 school year. (20 USC §6311[b][1][D]). New York has identified the Regents' Learning Standards as its requirement for compliance with this federal legislation and has adopted extensive regulations to comply with its requirements. (See 8 NYCRR Part 120, *et seq.*).

Proposed *amicus* does not contend that the requirements of the No Child Left Behind Act must be imposed as the educational standard under the New York State Constitution developed by this Court in this case. What it does contend is that this Court cannot turn a blind eye to the legislation and simply rubber stamp the 8th or 9th grade level standard reached by the Appellate Division below. Under these federal standards, every school and school district must meet adequate yearly progress objectives regarding the programs of students toward satisfying the learning standards. There are very serious consequences which attach to the failure to meet these objectives. They include alternative governance arrangements for any such school or school district, not limited to turning over its operation to the State. (See 20 USC §§6311[b][2][G]; 6316).

In addition, under this legislation, schools that fail to meet the adequate yearly progress targets established by the State can be identified as either in need of improvement, corrective action or restructuring depending on the number of consecutive school years they fail to meet those targets (20 USC §6316). As indicated in the brief submitted on behalf of proposed *amici* New York State School Boards Association, Inc. and National School Boards Association, New York State has identified over 400 public schools in need of improvement

or corrective action, located in 66 separate school districts throughout the State. (See brief on behalf of proposed *amici* New York State School Boards Association, Inc. and National School Boards Association, p. 13).

Based on the foregoing, proposed *amicus* joins Plaintiffs in the case in respectfully requesting that this Court adopt a constitutional standard making clear that all of the children of this state are entitled to the opportunity to obtain an adequate high school education that will prepare students for competitive employment and to function as capable and productive citizens. In so holding, the Court should be cognizant that the Regents' Learning Standards now define the minimum skills and knowledge students are expected to acquire as a result of receiving a public education in New York, as well as the standard for the State to receive federal funds under the No Child Left Behind Act. Accordingly, proposed *amicus* respectfully submits that it is the responsibility of the State to provide the funding and resources necessary for all our students to achieve these goals.

POINT II

THE COURT SHOULD DIRECT THE STATE TO MAKE STATE AID TO EDUCATION MORE EQUITABLE AND UNDERSTANDABLE

Proposed *amicus* joins with Plaintiffs and with proposed *amici* New York State School Boards Association and National School Boards Association in contending that any efforts ordered by this Court to improve the State's system of funding education must take into account regional differences in resources and costs and refocus aid specifically on student needs. Any reforms must also provide for the additional needs of districts with a concentration of children in poverty or with other special needs.

This position is consistent with that of the trial court in this matter which set down basic principles which would provide guidance to State government in achieving changes in the State's system of funding education. Under these guidelines, any reforms to the State's system for funding public education may not deprive any school district of the resources necessary to provide all its students the opportunity for a sound basic education. It must also take into account variations in local costs as well as provide sustained and stable funding that promotes long-term planning by school districts. (187 Misc. 2d at 115).

In addition, these guidelines require that the State provide an understandable explanation of how it distributes State aid. In this regard, Midstate wishes to point out that it has always supported the proposition that the State's policy for funding education should be easily understandable and easily explained to the public, and that there should be assurances that funding allocated for education be used for that purpose. This State can no longer, we submit, continue to employ State aid formulas which are so complex and byzantine that even our Governor and our Commissioner of Education cannot comprehend them.

Recently, Midstate also promulgated a proposal for a simplified, equitable new school aid formula which calls for an elimination of the current 58 page "State School Aid Formula." In its place, use a new simplified true mathematical formula consisting of:

- A. Basic Operating Aid: \$8,176 Per-pupil Foundation. Aid calculated for each student based on a "foundation" of \$8,176 (\$8,000+2.2% CPI increase for 1999-2000). This basic amount to be adjusted to reflect local costs significantly higher or lower than average using National Center for Educational Statistics (NCES) school costs index. Funding sources for Basic Operating Aid would be local, state and federal.

- B. Extraordinary Needs Aid. Second category of aid augments Basic Operating Aid, specifically recognizing the higher costs of educating students who reside in families of below-average wealth, have limited English language skills and/or are living in sparsely populated areas. In order to achieve educational equity for all students, some districts need extra aid.
- C. Tax Fairness. A major feature of the Midstate proposal is tax fairness via an equitable local contribution. A uniform statewide tax rate of \$13 per thousand of assessed [true] property value is applied. If it generates the [\$8,176 per pupil] foundation, no additional State aid is received. If it generates more than the foundation, districts may impose a lower tax rate or spend more as they prefer. Wherever the \$13 tax rate does not generate the foundation amount, State aid makes up the full difference.
- D. BOCES, Building, Transportation and High-Cost Special Education Aid Remain Unchanged from Present Formula. Under the Midstate proposal, four special categories of aid would remain as they are now. Basic Operating Aid funds the core, actual classroom costs of educating a child. These categorical aids, while vital to education, are above and beyond basic classroom instruction and should be funded separately.
- E. Save Harmless Provision. Implementing the Midstate proposal might mean less State aid than current for some districts. Incorporating a “Save Harmless” provision, as has frequently been done in the past when aid formulas were modified, protects districts from the sudden loss of Basic Operating Aid.

As such, Midstate's proposal is, among other things:

1. **Simple.** A true mathematical formula, it fits on a single sheet of paper *as opposed to* the painfully complex current State School Aid “Formula.”
2. **Fair to every child** because it provides an equal starting point for funding every child's education – an equal opportunity for every child to receive a good education– no matter where they live in New York State *as opposed to* the current formula which has the effect of allowing the wealthier districts to become more wealthy at the expense of the poorer districts.
3. **Closes the gap** between rich and poor districts to help all children attain the new State standards *as opposed to* the existing formula which diverts aid to the wealthier school districts in the State, giving less to the districts that need the most help.

As such, Midstate’s proposal reflects agreement with the remedial provisions of the decision of the trial court below. Therefore, the proposed *amicus curiae* respectfully submits that, if followed by this Court, the remedial provisions of the decision and order of the trial court below will serve to safeguard the right of all public school students throughout the State to an opportunity for a sound basic education.

CONCLUSION

For the foregoing reasons, the proposed *amicus curiae* respectfully requests that this Court reverse the Opinion of the court below, uphold the order of the Supreme Court and provide such other and further relief as to this court may seem just and proper.

Dated: February 28, 2003
East Syracuse, New York

Respectfully Submitted,

BENJAMIN J. FERRARA, ESQ.
NORMAN H. GROSS, ESQ.
Attorneys for Proposed *Amicus Curiae*
Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.
5010 Campuswood Drive
East Syracuse, New York 13057
Telephone: (315) 437-7600

TO: ELIOT SPITZER
Attorney General of the State of New York
Attorney for Defendants-Respondents
120 Broadway
New York, New York 10271
(212) 416-8020
CAITLIN J. HALLIGAN
MARK GIMPEL
Deputy Solicitors General
MELANIE L. OXHORN
ALLISON PENN
Assistant Solicitor General of Counsel

JOSEPH F. WAYLAND, ESQ.
Simpson Thacher & Bartlett

425 Lexington Avenue
New York, New York 10017-3954
(212) 455-2000

MICHAEL A. REBELL ESQ.
Michael A. Rebell Associates
Attorneys for Plaintiffs-Appellants
6 East 43rd Street
New York, New York 10017
(212) 867-8455