



CFE v. STATE OF NEW YORK: **AN ANALYTIC OVERVIEW OF THE COURT OF APPEALS DECISION**

Holding that Article XI of the New York State Constitution entitles all students to the opportunity for a “meaningful high school education,” the Court of Appeals, New York State’s highest court, on June 26, 2003, reversed almost in its entirety the decision of the Appellate Division, First Department.¹ The intermediate appeals court had held that the constitution guarantees students the opportunity to learn at only an eighth or ninth grade level. The 4-1 Court of Appeals decision, authored by Chief Judge Judith Kaye, reinstates most of the findings issued by trial court Justice Leland DeGrasse, after an extensive seven-month trial, and requires the State to reform the current state funding system by July 30, 2004.

I. Strong Definition of “A Sound Basic Education”

In 1982, in *Levittown v. Nyquist*, 57 N.Y.2d 27, the Court of Appeals held that Article XI, § 1 of the New York State Constitution guarantees all students the opportunity for a “sound basic education,” but did not have occasion to articulate the substantive requirements of this constitutional right. In *Campaign for Fiscal Equity, Inc. (CFE) v. State of New York*, 86 N.Y. 2d 307 (1995), (“*CFE I*”) the Court initiated an innovative deliberative process for explicating the constitutional requirements for a “sound basic education.” Specifically, it issued a “template” definition to guide the trial court’s gathering and review of relevant evidence and indicated that it would issue a final definition, based on the factual record developed at the trial, when the case returned on a final appeal. The template definition emphasized the need to provide students the

¹ The only part of the Appellate Division decision that was upheld was its dismissal of Plaintiffs’ Title VI claim, based on the recent United States Supreme Court rulings in *Alexander v. Sandoval*, 532 U.S. 275 (2001) and *Gonzaga University v. Doe*, 536 U.S. 273 (2002).

skills necessary to enable them to eventually “function productively as civic participants capable of voting and serving on a jury.”

The trial court gathered extensive evidence regarding the precise skills students need to be voters and jurors -- and to “function productively” in the competitive job market. It concluded that productive citizenship “means more than just being *qualified* to vote or serve as a juror, but to do so capably and knowledgeably,” by being able to understand complex issues such as tax policy, global warming, and DNA evidence. *CFE v. State* 187 Misc. 2d 1, 14 (Sup. Ct. N.Y. County 2001). The intermediate appeals court, ignoring much of the evidence regarding the skills students actually need for employment and civic participation, held that 8th or 9th grade level skills would prepare students for menial employment and to read basic information in a newspaper, and that was sufficient to meet the constitution’s requirements. *CFE v. State*, 295 A.D.2d 1 (1st Dep’t 2002).

The Court of Appeals soundly rejected the 8th grade standard. It did so by emphasizing that the constitution requires a “meaningful high school education.” In unflinchingly proclaiming the high school standard, the Court spoke in historic terms, stating that although an eighth grade level education may have been sufficient when Article XI, § 1 was adopted in 1894, “the definition of a sound basic education must serve the future as well as the case now before us.” *CFE v. State*, Slip Op. 15615 (2003), (“*CFE II*”) at 53. The Court affirmed the trial court’s conclusion that students must be provided the skills they need today to function *capably* as civic participants (*id.* at 10) and that to be prepared for employment in the 21st century economy, they require “a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime” (*id.* at 9).

The Court did not *per se* adopt the New York State Learning Standards, issued by New York’s Board of Regents, as the definition of a sound basic education because to do so would be to “cede to a state agency the power to define a constitutional right.” *CFE II* at 11.² Nevertheless, because the state Learning Standards currently establish the requirements for a “meaningful high school education” and for a diploma in the State of New York, there is an

² Judge George Bundy Smith joined in the majority decision, but also wrote a separate concurring opinion in which he stated that he would have explicitly held that the Learning Standards “provide students with the minimum skills required by a sound basic education.” *CFE II*, Smith, J., concurring opinion at 1. His opinion was based on extensive testimony from numerous state education officials and from experts that the Learning Standards were specifically developed to set a baseline level of skills that students need to function productively as citizens and in the job market.

operating presumption that students must be provided the resources necessary to have an opportunity to meet the state Learning Standards, absent a showing by the state that its current “high school graduation requirements are set exceedingly high and students can make a satisfactory entry into the workplace without a diploma.” *Id* at 23, note 6.

Although courts in two other states have indicated that in modern times an adequate education must be at least a high school education (*Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238, 1278-79 (Wyo.1995)), no other highest state court has decisively rejected minimal middle-school level literacy and calculating skills and emphasized the importance of a “meaningful” high school education. Moreover, no other trial court has compiled as extensive and detailed a record regarding the specific skills that students need to be capable citizens and to function productively in the job market, or reviewed in depth the extent to which a state’s learning standards illustrate the level of skills students need to be productive citizens and workers.

II. Essential Resources

In addition to defining the extent of the opportunity for a “sound basic education” guaranteed by the state constitution, the Court of Appeals held that “The State must assure that some essential [resources] are provided.” *CFE I*, 86 N.Y. 2d at 317; *CFE II*, at 11-13.³ The Court reviewed the extensive evidence adduced at trial regarding key resource inputs such as teacher quality, class size, overcrowded facilities, libraries, computers, and laboratories and concluded

³ Justice DeGrasse developed the template outline of constitutionally-required essential resources set forth in *CFE I* in terms of the following seven categories which were implicitly affirmed by the Court of Appeals in *CFE II*:

1. Sufficient numbers of qualified teachers, principals and other personnel.
2. Appropriate class sizes.
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up to date books, supplies, libraries, educational technology and laboratories.
5. Suitable curricula, including an expanded platform of programs to help at risk students by giving them "more time on task."
6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment.

187 Misc. 2d at 114-15. See also, *CFE v. State*, 295 A.D. 2d at 9-10 (affirming that the trial court’s categorization essentially falls within the areas of essential resources set forth by the Court of Appeals).

that “tens of thousands of students are placed in overcrowded classrooms, taught by unqualified teachers, and provided with inadequate facilities and equipment.” *CFE II*, at 22.

The Court specifically credited expert testimony that “teacher certification, test performance, experience and other factors measure quality of teaching; that quality of teaching correlates with student performance” (*CFE II* at 17), that “smaller class sizes in the earliest grades correlate with better test results during those years and afterwards” (*id.* at 19), and that “some exposure to [computers] has become essential” (*id.* at 21).⁴ Arguments put forth by Dr. Eric Hanushek, the state’s expert who claimed that additional resources in many of these areas would not result in improved student performance, were rejected. *Id.* at 19.

To determine whether children are, in fact, receiving the opportunity for a sound basic education, the Court held that both resource inputs and “resulting ‘outputs,’ such as test results and graduation and dropout rates” must be considered. *CFE II* at 12. The Court undertook an extensive review of the poor performance of New York City students on a variety of state standardized tests, as well as the city’s high dropout rates. It rejected the state’s attempt to introduce scores on certain national tests which had not been shown to relate to the educational content taught in New York State, and deemed largely irrelevant passage rates on the Regents Competency Tests, a set of examinations that are being phased out by the State because they only assess 8th or 9th grade reading skills and 6th to 8th grade math skills, rather than a “meaningful high school education.” The Court concluded that New York City schoolchildren are not receiving the constitutionally mandated opportunity for a sound basic education (*id.* at 30-31) and that the cause is the inadequacy of the state education finance system (*id.* at 41).

III. All Students Can Learn, If Provided Appropriate Resources

Perhaps the most pernicious argument that had been made by the state, and accepted by the intermediate appeals court, was the proposition that “poor student performance is caused by socioeconomic conditions independent of the quality of the schools...” *CFE II* at 33. The Court

⁴ Although the Court stated that some savings might be realized by better management of resources devoted to special education (*CFE II* at 35-38), it determined that the defendants’ broad allegations of mismanagement and waste of resources had not been sustained (*id.* at 35). The Court of Appeals also rejected the state’s argument that “some expenditure level, if high enough relative to figures nationwide, simply must be “enough,” without reference to student need, local costs, and the actual quality of inputs and outputs.” *Id.* at 34.

of Appeals decisively rejected this argument, stating that “we cannot accept the premise that children come to the New York City schools ineducable, unfit to learn.” *Id.* at 34.

The Court repeatedly emphasized that resources should be “calibrated to student need” (*CFE II* at 15, 34-35, 49-50) and quoted with approval both the trial court’s holding that the opportunity for a sound basic education must “be placed within reach of all students” (*id.* at 24) and the official position of the Regents and Education Department that “all children can learn given appropriate instructional, social and health services” (*id.*). The clear implication of these statements is that, as Justice DeGrasse specifically stated, students who enter the public schools with substantial socioeconomic deficits are constitutionally entitled to “an expanded platform of programs,” 187 Misc. 2d at 115, that will place the opportunity for a sound basic education “within their reach.”

IV. Powerful Three-Part Remedy

Having closely considered remedies that have worked well in similar cases in other states and those that have not, the Court of Appeals adopted a “middle ground” remedial approach that avoids the extremes of both detailed directives by the court on the one-hand, and total deferral to the good faith of the legislature on the other. Specifically, the Court issued a common sense set of three powerful guidelines that require the state to:

1. Ascertain the actual cost of providing a sound basic education in New York City;
2. Ensure that every school has the resources necessary for providing the opportunity for a sound basic education; and
3. Ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.

In other words, the State is charged with the responsibility for objectively determining how much money is actually needed to provide all students the opportunity for a meaningful high school education, for devising a fair funding approach that will ensure that *each school* obtains the requisite level of resources, and for developing accountability mechanisms that will ensure that the money is used effectively for the stated purpose of providing all students a meaningful educational opportunity.

The decision provides a few additional “signposts” regarding reforms of the funding system. First, the Court indicates that a fair funding system should be based on student enrollment and not student attendance. *CFE II* at 46. Second, it states that funds distributed through the STAR tax refund program must be considered part of the state’s educational expenditures. *Id.* Third, the system must take into account the higher cost of living in New York City. *Id.* Finally, although the Court was not prepared to say as a matter of constitutional mandate that a fair funding system must be “transparent,” avoid needless complexity, and promote “sustained and stable funding,” (largely because of the difficulties of enforcing any such order), it did recommend to the legislature that these factors should be taken into consideration. *Id.* at 47-49.

The Court has set a deadline of July 30, 2004 for implementing the necessary reforms. Implementation means that the costing-out study must be completed, and a fair funding system and appropriate accountability systems put into place by that date. This does not preclude an appropriate phasing in of the new systems and new funding allocations. The case has been remitted to Justice DeGrasse for any further follow-up proceedings that may be necessary.

Although technically the Court’s remedial order applies only to New York City (because the evidence before the Court focused exclusively on New York City), the Court clearly did not preclude a statewide remedy -- and arguably even expects that in all likelihood the legislative response will be statewide. Two of the judges explicitly stated that the remedy should be statewide (*CFE II*, Smith, J., concurring opinion at 23) or would be statewide (*id.*, Read, J., dissenting opinion, at 15, note 8). Moreover, Judge Kaye, speaking for the remaining three members of the Court, went out of her way to note that “In issuing our directive to the State we recognize that it has fiscal governance over the entire State and that in a budgetary matter the Legislature must consider that any action it takes will directly or indirectly affect its other commitments.” *Id.* at 51, note 10.