

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – CIVIL TERM – PART: 25

CAMPAIGN FOR FISCAL EQUITY,  
INC., et al,

Plaintiffs,

-against –

THE STATE OF NEW YORK, et al.,

Defendants.

ORDER OF THE REFEREES

Ind. No.: 111070-93

A. The parties are hereby directed to propose to the Referees, on or before September 27, 2004, a procedure, and schedule, for their submission to the Referees, beginning September 28, 2004, and ending not later than October 15, 2004 (but excluding September 30, October 8, October 11 and October 12, 2004), of the parties' documentary and testimonial evidence regarding the following subjects:

1. Each party's best estimate of the amount of the current resource "gap", measured in 2004-2005 dollars, between the total annual funding now expended by the New York City School District for operations and the funding level for operations necessary to assure that all New York City schoolchildren have the opportunity for a sound basic education;

2. The mechanism that should be put in place to permit the computation of that necessary level of funding each year hereafter;

3. Each party's best estimate of the amount of the capital expenditures, measured in 2004-2005 dollars, necessary to provide New York City schoolchildren the opportunity for a sound basic education;

4. The mechanism that should be put in place to permit the determination of that necessary level of capital expenditures each year hereafter;

5. Whether there is any legal or factual barrier to the Court ordering the State of New York to:

(a) make certain that the New York City School District receives each year, through a combination of State and City funding, the operating funds necessary to provide all New York City schoolchildren the opportunity for a sound basic education;

(b) provide the funds necessary, through a combination of State and City funding, for the capital expenditures necessary to provide all New York City schoolchildren the opportunity for a sound basic education;

6. In addressing subjects 1 and 2 above, whether any of the measures that should be implemented with respect to such operating funds or capital expenditures should be phased in over some period of time and, if so, what time period and in what increments;

7. In addressing subjects 1 and 2 above, what criteria should be used to determine whether the opportunity for a sound basic education is being provided? If student achievement levels are to be used, should the student achievement level used be:

(a) the State's proposed standard (80% of the test takers of the 4<sup>th</sup> grade English and Math tests score at a "proficient" level and 80% of the high school students score 65 or more on the five Regents tests for graduation);

(b) the Regents' proposed standard (an unweighted average of 80% of a district's students achieve a basic proficiency score on seven Regents exams over a three-year period);

(c) the Regents Learning Standards;

(d) the "student performance index" described at footnote 8 of the amicus brief submitted by professors William Duncombe and John Yinger of Syracuse

University (and, if that index is used, what threshold score should be utilized to define success – 180, 160, 130, or some other threshold); or

(e) some other student achievement level;

8. In addressing subjects 1 and 2 above, what costing-out methodology should be used – the “successful schools” method, the “professional judgment” method, or another method;

9. If the “successful schools” costing-out method is used, what criteria should be used to identify and select the “successful schools”? In that connection, the parties should provide evidence and argument in support of, or in opposition to, the exclusion from the average cost computation, on grounds of inefficiency or otherwise, of the highest-spending 50% of the “successful” school districts or some other segments of the “successful” school districts;

10. If the “successful schools” costing-out method is used, the parties should provide evidence and argument in support of, or in opposition to:

(a) using the cost-weighting multiples proposed by the State (20% for ELL students, 35% for economically disadvantaged students, 110% for special education students, 55% for ELL and economically disadvantaged students, 130% for ELL and special education students, 145% for economically disadvantaged and special education students, and 165% for economically disadvantaged, ELL and special education students);

(b) using the cost-weighting multiples proposed by the Regents (100% for students from a poverty background and 30% for special education students);

- (c) using the cost-weighting multiples proposed by professors

Duncombe and Yinger (120% for students in poverty, 100% for ELL students, and 200% for students with severe disabilities);

- (d) using some other cost-weighting multiples;

(e) making adjustments for backlogs in the special education evaluations for New York City schoolchildren;

11. If the “professional judgment” costing-out method is used:

(a) are CFE’s proposed class sizes (14 – 16.8 in elementary grades, 22.6 in middle grades, and 18.4 – 29 in high school) required to provide a sound basic education? If those assumptions were modified, what quantitative impact would that have on the costing-out analysis;

(b) what evidence is there that 95% of special education students should be educated in the same facility as mainstream students in order to provide them a sound basic education? If that assumption were modified, what quantitative impact would that have on the costing-out analysis;

(c) what evidence supports the assumptions made about the cost of educating poor and ELL students? If those assumptions were modified, what quantitative impact would that have on the costing-out analysis;

(d) what evidence supports CFE’s proposed school size limits (774 students for elementary schools, 950 for middle schools, 1184 for high schools) built into this analysis, and are these limits required to provide a sound basic education? If these assumptions were modified, what quantitative impact would that have on the costing-out analysis;

(e) what evidence supports the apparent assumption that overhead expenditures (i.e. spending on district-level functions) must grow in proportion to changes in instructional spending? If that assumption were modified, what quantitative impact would that have on the costing-out analysis;

12. If the “professional judgment” costing-out method is used, how can that method be institutionalized over the long term, and who would be responsible for its composition, operation and mandate;

13. If either the “successful schools” costing-out method or the “professional judgment” costing-out method is used:

(a) what specific index should be used to account for regional cost differences;

(b) what adjustments, if any, need to be made to reflect any economies or diseconomies of scale faced by the New York City School District;

14. For academic year 2004-2005, how many New York City school students are enrolled, how much educational funding is provided by New York City, and how much educational aid is currently received by New York City (broken down by source);

15. Beyond the mandatory State funding requirements referenced in subject 5 above, do any other mechanisms need to be put into place to assure that every school in New York City has the resources and facilities necessary for providing all of its students the opportunity for a sound basic education;

16. Who should determine the respective State and City shares of the operations funding and capital expenditures necessary to provide New York City schoolchildren

the opportunity for a sound basic education, and what methods or principles should be used in determining those respective shares; and

17. What system of accountability should be implemented to measure whether the reforms already implemented, and hereafter to be implemented, if any, actually provide all New York City schoolchildren the opportunity for a sound basic education? More specifically:

(a) what planning should be required of the New York City School District and of individual schools;

(b) what oversight should there be by the State and what powers should any oversight group have;

(c) what remedial steps should be taken with respect to those schools that fail to provide all of their students the opportunity for a sound basic education;

(d) what changes, if any, should be made in respect of teacher and principal monitoring;

(e) what reports and/or reporting mechanisms should be implemented;

B. The parties are invited to present such other and further evidence, and to suggest such additional procedures, as they believe will assist the Referees in complying with the Courts' mandate.

C. The parties are further directed that, not later than November 1, 2004, they shall submit to the Referees their Proposed Findings of Fact and Conclusions of Law addressing each of the foregoing subjects, together with such further briefing, if any, as they believe necessary, subject to the previously announced limits as to length.

Dated: September 21, 2004

/s/  
John D. Feerick, Referee

/s/  
E. Leo Milonas, Referee

/s/  
William C. Thompson, Referee