

CFE v. State of New York

Summary of the Appellate Division Decision

Almost ten years ago, Campaign for Fiscal Equity, Inc. (CFE), a coalition of advocacy groups, parent organizations, and community school boards, filed a law suit against New York State on behalf of New York City schoolchildren charging that the state unfairly shortchanged the City's schools. In 1995, CFE won a major victory when the Court of Appeals, New York's highest court, decided as a threshold matter that the New York State constitution requires that the state offer all children the opportunity for a "sound basic education." The Court of Appeals stated that the exact meaning of this standard could only be evaluated and resolved after development of a factual record. On January 10, 2001, Justice Leland DeGrasse, the trial court judge, issued a detailed decision carefully analyzing the evidence gathered during a 7-month trial to find that the current state school funding system was unconstitutional.

On June 25, 2002, the Appellate Division, First Department of the State Supreme Court, reversed Justice DeGrasse's decision. The majority decision, authored by Justice Alfred D. Lerner and joined by Justices John T. Buckley and Joseph P. Sullivan, held that the New York State constitution's guarantee of a "sound basic education" requires nothing more than that schools provide the opportunity to learn at an eighth or ninth grade skill level. The majority opinion concluded that plaintiffs had not proven that the education provided by the New York City schools fell below this minimal level or that the state funding system was the cause of insufficiencies in the City's schools. Justice Peter Tom wrote a separate opinion concurring in the holding but expressing concern that there is a growing educational crisis and explicitly leaving the door open to a future finding that the state funding system violates the constitution. Justice David B. Saxe wrote a strong dissenting opinion chastising the court majority for a decision that logically means that the state has no obligation to provide a high school education and emphasizing that the current system fails to provide the resources that at-risk children need to have an opportunity to succeed.

CFE has announced that it plans to appeal to the Court of Appeals.

I. Justice Lerner's Majority Opinion

The Sound Basic Education Standard

In the 1995 decision, the Court of Appeals stated that the Education Clause of the New York State Constitution (NY Const. article 11, § 1) places an obligation on the state to ensure that all students have an opportunity to obtain a "sound basic education." The Court indicated that this consists at least of the "basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury." CFE I, 86 NY2d 307, 316 (1995). The Court of Appeals specifically indicated that the trial court should use evidence presented in the case to elaborate

on this definition.

In his decision, the trial court judge, Justice DeGrasse, followed the Court of Appeals' directive to fill in the contours of the definition of a "sound basic education." Justice DeGrasse took the Court of Appeals' statement that students should be able to "function productively" as requiring that schools offer students the chance to obtain employment that would provide a living wage. He found therefore that schools should be required to offer students the opportunity to learn the kind of math, science, and computer skills that are often required in today's society for competitive employment. He interpreted the Court of Appeals' directive regarding civic participation as requiring that students have skills that would permit them to understand the kind of complex issues that they might be asked to evaluate as voters or jurors, such as tax policy, global warming, or DNA evidence.

In the Appellate Department decision, Justice Lerner agreed with Justice DeGrasse that the constitutionally required sound basic education consists of the skills necessary to obtain employment and to competently discharge one's civic responsibilities. However, he interpreted these basic contours as requiring a much lower level of skills. With respect to employment, he held that the Constitution requires merely that students be equipped for the lowest level of service jobs. With respect to civic engagement, he agreed that students need to be able to understand the kind of complex issues that they are asked to decide in elections or trials but, citing evidence presented that jury charges are generally at an 8.3 grade level and that newspaper coverage of campaign issues ranges from a 6.5 to an 11.7 grade level, concluded that the level of skills "imparted between grades 8 and 9" is constitutionally sufficient (p. 14) and that the New York City schools were able to provide at least this minimal level of education.

Adequacy of Educational "Inputs" and "Outputs"

In the 1995 decision, the Court of Appeals specifically stated that the students have a constitutional right to attend school in at least minimally adequate physical facilities, to have access to instrumentalities of learning such as desks, chairs, and reasonably current textbooks, and to be taught reasonably up-to-date curricula by adequately trained teachers. Justice DeGrasse concluded that New York City schools, like others around the state, did not provide these basic minimal adequacies and that evidence of very low graduation rates supported the conclusion that many students were not receiving a sound basic education. Justice Lerner rejected these conclusions.

Justice Lerner recognized that many buildings in New York City have been in serious state of disrepair. He noted however that various Board of Education officials had testified at trial that all immediately hazardous conditions had been eliminated, that all buildings had been made watertight, and that progress was being made in other areas. Similarly, Justice Lerner determined that recent increases in funding for textbooks and technology were meeting student needs. Justice Lerner reviewed evidence presented at trial that the lowest performing schools tend to have the highest proportion of uncertified teachers. He also cited testimony demonstrating considerable divergence in qualification between teachers in New York City and those in the rest of the State, such as statistics showing that 31.3% of City public

school teachers have failed the basic certification test at least once, while outside the City just 4.7% have failed. He concluded, however, that such disparities did not establish that the City's teachers are inadequate and bolstered this conclusion by noting that less than 1% of those employed received "unsatisfactory" ratings on their annual performance review.

Evidence at trial established that from 1986 to 1996, about 30% of students in New York City failed to receive any diploma, about 10% received a GED, 48% received a "Local Diploma" (for which students must pass the Regents Competency Tests, which test students at an eighth-to-ninth grade reading level and a sixth-to-eighth grade math level), and 12% received a Regents Diploma (for which students must pass the much more challenging Regents Exams, based on the Regents Learning Standards). The State Board of Regents is currently phasing out local diplomas; now seniors must pass the much more rigorous Regents Exams to graduate. Nonetheless, Justice Lerner dismissed evidence regarding graduation rates as largely irrelevant since the Court of Appeals had indicated that the State simply has a responsibility to offer all children the opportunity of a sound basic education, not to ensure that they actually receive it.

Relevance of the State's Funding System

Justice Lerner also held that even assuming the schools in New York City do not provide a sound basic education, plaintiffs had failed to prove that the deficiencies in the City's school system are caused by the State's funding system. Justice Lerner stated evidence had established that the City's students' lower test results were related to demographic factors. He referenced evidence demonstrating that programs providing extra time-on-task for at-risk students can help most struggling students get up to grade level but suggested that spending money on addressing the underlying social conditions might be more effective than additional education funding. Justice Lerner also suggested that the Board of Education might be able to allocate resources more effectively, particularly by reviewing its policies regarding services to students with disabilities. Justice Lerner underscored that the State is ultimately responsible for providing students with the opportunity for a sound basic education, including ensuring that New York City live up to its responsibilities. He suggested that stronger enforcement of state statutes that require that the City maintain its fair share of funding would be an appropriate means of assuring that the City meet its obligations in this respect.

Federal Discrimination Claim

In its lawsuit, CFE claimed that the state's funding system violates civil rights protected by federal law because it disproportionately harms minority students, who make up 84% of the City's public school enrollment and 73% of the total number of minority students in the state. This claim was based on the implementing regulations of Title VI of the Civil Rights Act of 1964, a federal civil rights law, which prohibit persons or entities receiving federal financial assistance from administering programs that result in a "disparate impact" on racial minorities. 42 USC § 2000d; 34 CFE § 100.3[b] [1], [2]. Justice DeGrasse also found for plaintiffs on this claim. In April 2001, after Justice DeGrasse had issued his opinion, the United States Supreme

Court held in *Alexander v. Sandoval*, 532 U.S. 275 (2001), that there is not a private right of action under these regulations. CFE argued on appeal that it could bring this claim under another federal civil rights statute, 42 U.S.C. § 1983, which provides a cause of action for the deprivation of rights secured by the Federal Constitution or laws. Without addressing the merits of the underlying discrimination claim, Justice Lerner rejected this contention on the ground that the implementing regulations were not "laws" enforceable under Section 1983.

II. Justice Tom's Concurring Opinion

Justice Tom issued a concurring opinion, stating that he agreed with the majority's conclusion that the state's funding system is not unconstitutional and that the administration of the New York City school system is a substantial contributing factor in its failings. He warned, however, that a "nascent educational crisis has been growing over the years, with roots decades deep, but with consequences that are taking on a new urgency" (p. 42). Justice Tom focused particularly on teachers and the essential role they play in schools. He expressed concern about the large numbers of uncertified teachers currently teaching in the New York City schools and trends that suggest that these numbers may be increasing. Justice Tom concluded that unless some other solution is found, the state's funding system may trigger a constitutional violation in the future.

III. Justice Saxe's Dissenting Opinion

Justice Saxe issued a forceful dissent holding that there was ample support for Justice DeGrasse's central finding that the City's at-risk students, who make up a large segment of its total student population, were unable to receive a sound basic education. Justice Saxe argued that by "factoring out" socioeconomic factors, the majority inappropriately limits the state's responsibility to providing whatever educational experience would be necessary for some "theoretical student" rather than to meeting the needs of New York City's actual students (54-55). Reviewing evidence at trial that demonstrated that programs providing extra time on task for at-risk students resulted in impressive academic progress, Justice Saxe concluded that students have a constitutional right to the resources that would give them the opportunity to obtain an education. He also found that plaintiffs had succeeded in demonstrating that the failure of so many New York City public school students was attributable to the State's chronic under-funding of City schools.

Although Justice Saxe indicated that he felt that Justice DeGrasse went too far in asserting that a sound basic education should be sufficient to obtain more than a minimum wage job, he argued that the majority decision set the standard for a sound basic education much too low. He observed that if, as the majority held, the state's obligation is satisfied by providing students with eighth grade skills, "then logically, it has no meaningful obligation to provide any high school education at all" (p. 61).

Justice Saxe indicated that he would affirm the portion of the trial court's decision that directed the State to determine the actual cost of providing City public schools with the programs they need to serve their students. This would include the platform of programs needed by

at-risk children, as well as professional development for teachers particularly designed to help the City's many new and inexperienced teachers. He would also require the State to ensure that the funds necessary to provide these services are provided. Although he held that revamping the statewide funding system was outside the scope of relief that could be properly sought in the CFE case, he characterized this as a laudable and beneficial goal.

Justice Saxe agreed with the majority opinion that plaintiff's claims under the implementing regulations of Title VI should be dismissed.