



## **Campaign for Fiscal Equity, Inc.**

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### **Summary of the Decision by the Court of Appeals in Campaign for Fiscal Equity, Inc. v. State of New York**

Ten years ago, the 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 school children charging that the State unconstitutionally under-funded the City's schools. On June 26, 2003, in a major victory for CFE and the students it represents, the Court of Appeals, New York's highest court, held that the state funding system must be reformed to ensure that every school in New York City has sufficient resources to provide its students with the opportunity for a meaningful high school education.

This decision builds on a 1995 decision by the Court of Appeals that held 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 at trial. 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 the trial court's decision, holding that the state constitution only guarantees that schools provide the opportunity to learn at an eighth or ninth grade level and that the current funding system was adequate to meet this standard.

CFE appealed and organizations from around the state – including the City of New York, the New York State School Boards Association, the United Federation of Teachers, and Midstate School Finance Consortium – filed "friend of the court" briefs supporting CFE's request that the Appellate Division decision be overturned. The 4-1 decision by the Court of Appeals, written by Chief Judge Judith Kaye, overturns the Appellate Division on all grounds related to the constitutional claim. The decision sends the matter back to the trial court to oversee proceedings to ensure students in New York City actually receive the opportunity for a sound basic education. Judge George Bundy Smith concurs in the holding but indicates that he would have ordered reform of the entire statewide funding formula to ensure that all schools in the state have sufficient resources to give their students the opportunity to meet the Regents Learning Standards. Judge Susan Read dissents.

#### **I. The Majority Opinion**

##### **The Sound Basic Education Standard – A Meaningful High School Education**

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." The Court of Appeals specifically indicated that the trial court should use evidence presented in the case to elaborate on this definition.

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," finding that schools must offer students the chance to obtain employment that would provide a living wage and to 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. The Appellate Division, ignoring much of the evidence regarding the skills students need for employment and civic participation, determined that 8th or 9th grade level skills are sufficient to prepare students for menial employment and to understand certain basic jury instructions.

The Court of Appeals soundly rejected the 8th grade standard. On employment, the Court held that "a high school level education is now all but indispensable" to prepare students for jobs that are sufficient to support themselves. (p. 9) Regarding civic engagement, the Court favorably quoted trial court's holding that students must be more than just "qualified" to vote or serve on a jury but rather that they must have the skills to do so "capably and knowledgeably." (p. 11) The Court thus determined that a "sound basic education" as guaranteed by the New York State constitution requires that all students have the "opportunity for a meaningful high school education, one which prepares them to function productively as civic participants."

### **Deficiency of Educational "Inputs" and "Outputs"**

In the 1995 decision, the Court of Appeals specifically stated that 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. The Appellate Division rejected these conclusions.

The Court of Appeals overturned the Appellate Division's holding and explicitly reinstated most of the trial court's findings. After summarizing the extensive evidence demonstrating the central importance of high-quality teaching, small class sizes, and adequate libraries and computers, the Court observed:

[T]ens of thousands of students are placed in overcrowded classrooms, taught by unqualified teachers, and provided with inadequate facilities and equipment. The number of children in these straits is large enough to represent a systemic failure. (p. 22)

The Court also rejected the Appellate Division's statements regarding educational outputs. 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. New York City students' scores on state tests in lower grades are also shockingly low. The Court determined that these levels of performance were constitutionally inadequate.

The Court explicitly dismissed arguments advanced by the state that the high number of drop outs and low test scores should be blamed on the low socio-economic status of many New York City students or the high number of those students who are immigrants. Rather, the Court

observed, the constitution mandates a system of schools wherein “all children” may be educated and accordingly true educational opportunity must “be placed within reach of all students.” (p. 24)

### **The State’s Responsibility for the Proven Educational Failures**

In the 1995 decision, the Court also indicated that plaintiffs must establish that educational deficiencies are caused by the funding system and that increased funding can provide better teachers, facilities and instrumentalities of learning. The Court found that plaintiffs had met their burden, establishing the basic (and unsurprising) fact that money matters and that additional resources can provide better educational opportunity for New York City students.

The Court of Appeals specifically rejected attempts by the State to blame New York City for the proven inadequacy of the schools. For example, although the evidence had established that some money might be saved by reducing the number of students with special needs who are educated in segregated settings, the Court rejected the Appellate Division’s conclusion that up to “one billion” dollars could be saved as entirely lacking basis in the record. More fundamentally, the Court held, even if the State had successfully proven misconduct by New York City, it would still be liable because the State ultimately bears responsibility for ensuring that its citizens obtain the educational opportunity guaranteed by the Constitution.

### **The Remedial Order**

The judicial branch must “define and safeguard rights provided by the New York State Constitution.” (p. 42) Accordingly, although the Court recognized that establishing a remedy in a case such as this that raises significant issues regarding legislative policy making is difficult, it recognized that it bore a responsibility to do so. The Court ordered a three part remedy: (1) the State must ascertain the “actual cost of providing a sound basic education in New York City,” (2) the State must reform the funding system to ensure that “every school in New York City would have the resources necessary for providing the opportunity for a sound basic education,” and (3) the State must put in place a system of accountability that will ensure that the reforms actually provide this opportunity. The State has until July 30, 2004 to implement the necessary measures.

Plaintiffs had sought a specific order that the entire statewide funding system be reformed to ensure that all students in the state have an opportunity for a sound basic education. The case, however, was brought on behalf of school children in New York City and the proof in the case concerned only New York City schools. Accordingly, the Court determined that it could properly only order funding reforms concerning New York City. However, the constitutional standard applies to all students in the state and the Court explicitly suggested that in acting in response to this order, the Legislature could of course choose to implement statewide reforms.

The trial in this case concluded in 2000. Since that time, reforms at the local, state, and national level have sought to improve education. The Court recognized that such reforms --- including the governance legislation that grants the mayor of New York City direct authority over the schools; the state’s Schools Under Registration Review program that seeks to identify and improve under-performing schools; the full implementation of the Regents Learning Standards; and the federal No Child Left Behind Act --- may have helped ameliorate some of the deficiencies proven at trial. Although the Court indicated that it did not think that these reforms would erase the need for additional funds, it suggested that evidence regarding the effect of reforms could be presented in further proceedings before the trial court.

**II. Judge Smith's Concurrence**

Justice Smith concurred fully in the Court's holding but indicated that he would have gone further. On the standard, he would have specifically ordered that the Regents Learning Standards provide students with the "minimum" skills required by a sound basic education, that the remedy should be statewide in scope, and that it should include a specific order that the present funding system be reformulated. His finding regarding the standard was based on extensive evidence from numerous state education officials and experts that the Regents Learning Standards were specifically developed to set a baseline level of skills that students need to succeed. His holding regarding the funding system relied on considerable evidence demonstrating that the formulas are ineffective and – in part because of political deal making – fail to align funding with need.

**III. Judge Read's Dissent**

Although she stated emphatically that students who attend New York City schools require more than an eighth grade education and that the City's public schools have too often failed to furnish our children with the educational opportunities that they deserve, Judge Read dissented. She argued that the "high school" standard adopted by the majority was vague and faulted the majority for failing to provide an objective reference point other than the Regents Learning Standards that are currently required for a high school degree. She further argued that plaintiffs had failed to prove that lack of money caused the proven deficiencies in the City's schools and that ordering the trial court to oversee remedy proceedings overstepped the proper judicial role.