

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS (NYSER), RUBNELIA AGOSTINE, MIRIAM ARISTY -FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARICA, G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOULLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, ANDY WILLARD, NATASHA CAPERS, JACQUELINE COLSON, HAWA JAGANA, NICOLE JOB, HECTOR NAZARIO, CHRIS OWENS, SAM PRIOZZOLO, PATRICIA PADILLA, LYNN SANCHEZ and ROBERT JACKSON

Plaintiffs,

-against-

THE STATE OF NEW YORK, ANDREW M. CUOMO, as Governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, and JOHN B. KING, Jr., as President of the University of the State of New York, and Commissioner of Education,

Defendants.

Index No. A00750/2014

**AFFIDAVIT OF
JOSEPH G. CONROY
IN OPPOSITION TO
PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

JOSEPH G. CONROY, being duly sworn, deposes and says:

1. I am a Chief Budget Examiner for the Education Unit in the New York State Division of Budget (DOB). From February 28, 2012 to April 2, 2014, I was Director of Education Finance for the New York State Education Department (NYSED). Prior to that I was

a Principal Budget Examiner for the DOB and served in the DOB for 14 years. I make this affidavit upon personal knowledge, including documents that I reviewed.

A. Education in New York State is financed by many funding streams, including State Aid, Federal Aid, and Local Revenues

2. In their application for a preliminary injunction, Plaintiffs focus on one stream of State school aid, Foundation Aid. Foundation Aid is a formula-based aid calculated pursuant to Educ. Law §§ 3602(2) and (4) and 211-d, which the State provides to local school districts. Foundation Aid is significant, but in recent school years it has represented less than 30 percent of the total education funds from federal, State and local sources. In the 2012-13 school year, the last year for which complete data is available, total education funding from State, local and federal sources was approximately \$58.4 billion. As detailed below, as part of its General Support for Public Schools, New York State provides billions of dollars annually in education funding to local school districts over and above Foundation Aid, amounting to \$6.05 billion in the 2013-14 school year after taking into account the Gap Elimination Adjustment. Local revenues provided approximately \$32.3 billion of additional funding, or 55 percent of total school funding in 2012-13, the last year for which complete data is available. In addition, federal aid accounted for \$2.5 billion in revenues in the 2012-13 school year. In the 2003-04 school year, when the Zarb Commission issued its recommendation for additional student funding to provide for a sound basic education in New York, combined education funding from State, local and federal sources totaled \$40 billion. Between the 2003-04 and 2012-13 school

years, total funding from all sources increased by more than \$18 billion (46 percent), including a \$6 billion (35 percent) increase in State revenues for education.¹

B. Billions of Dollars of Education Aid are Provided by the State Outside of Foundation Aid, as Well as by the Federal and Local Governments

A brief review of just a few of the programs other than Foundation Aid comprising total School Aid, along with the more than \$34.8 billion of local and federal funds, places Foundation Aid in the context of the entire education finance system.

i. Foundation Aid is Not the Only Stream of State Aid to Schools

3. All School Aid awarded to New York school districts is determined by an act of the State Legislature, through the State budget process. There are three basic categories of School Aid annually enacted into law, referred to collectively as General Support for Public Schools (GSPS): (1) Foundation Aid and other formula-based aids; (2) expense-based aids; and (3) grants-in-aid. Most GSPS apportionments are based on formulae, and consider factors like school district wealth, student need, categorical expenses, and regional cost. Foundation Aid, established by the 2007 Budget and Reform Act (L. 2007, ch. 57), and codified in relevant part at Educ. Law § 3602(4), is just a part of the total School Aid for education (which is also supplemented significantly by federal and local resources). In the 2013-14 school year, in addition to Foundation Aid, there are in excess of thirty categories of aids and grants that support

¹ See New York State Fiscal Profile Reporting System Master File 2003-04 and Master File 2012-13, available at <http://www.oms.nysed.gov/faru/documents/webMasterfile0304.xls> and <http://www.oms.nysed.gov/faru/Profiles/26thMasterfileforweb.xlsx>.

education including formula-based and expense-based aids and grant programs, performance grants and additional aid categories.

4. In the 2013-14 school year, the State provided \$6.05 billion in aids and grants above and beyond the \$15.18 billion in Foundation Aid for that year.² The \$6.05 billion in additional School Aid is calculated after giving effect to the Gap Elimination Adjustment for 2013-14, and helps support activities such as purchase of textbooks and other instructional materials and computer hardware, school construction, pupil transportation, education of students with disabilities, universal pre-kindergarten, bilingual education, and career and technical education programs administered by boards of cooperative educational services.

ii. Federal Education Spending Supplements State Aid

5. In the 2013-14 school year, the federal government awarded \$2.57 billion in grants to New York that were distributed to local educational agencies (“LEA”), including funding under Title I - Part A of the No Child Left Behind Act and under the Individuals with Disabilities Education Act. The vast majority of federal grant money distributed to LEAs goes to public school districts, but a percentage also goes to charter schools and community based organizations that educate or provide enrichment opportunities to New York students. Much of this money is targeted to benefit children from low income families or to improve student achievement in the lowest performing schools. Most federal education funding is paid to the

² See Description of 2013-14 New York State School Aid Programs, Education Unit, New York State Division of the Budget, October 28, 2013, at 24 (Table II-A), available at <http://www.budget.ny.gov/pubs/archive/fy1314archive/enacted1314/2013-14NewYorkStateSchoolAidPrograms.pdf>.

State, appropriated by the State Legislature, and either suballocated by the State Education Department to local educational agencies or awarded as competitive grants.

iii. Local Education Spending Represents a Significant Source of Education Funding And Has Increased Since the CFE Litigation

6. Real property taxes and other local revenues represent the majority of total funding for public elementary and secondary schools in New York State. In the 2012-13 school year, for example, local revenues totaled \$32.3 billion statewide and provided 55.4 percent of the \$58.4 billion of total education funding. State aid, in comparison, provided 40.4 percent of total funding, while federal aid accounted for the remaining 4.2 percent. In New York City, local revenues totaled \$12.9 billion and provided 56.2 percent of the \$22.9 billion of total education funding, with State aid comprising 38.2 percent of total funding and federal aid 5.6 percent.

7. The share of total funding that is locally raised varies substantially among school districts, as less wealthy districts with higher student need tend to rely more on State aid than on local revenues. However, even the Syracuse City School District, the district most reliant on State aid out of the nine represented by Plaintiffs, still received 17.1 percent of its total 2012-13 funding from local sources (State aid provided 72.9 percent and federal aid 10.0 percent). Syracuse's local revenues that year totaled \$72 million. In addition to New York City, four of the other school districts represented by Plaintiffs received more than 35 percent of their total 2012-13 funding from local sources: Middletown (43.6 percent), William Floyd (38.0 percent), Wyoming (37.4 percent) and Yonkers (38.9 percent).

8. In addition, local communities have significantly increased their support of education since the Zarb Commission released its final report. Between the 2003-04 school year and the 2012-13 school year, for example, local revenues grew from \$19.9 billion to \$32.3 billion, an increase of \$12.4 billion or 62.4 percent overall and 5.5 percent per year on average with compounding. In New York City, over the same period, local revenues grew at an even faster rate, rising from \$6.9 billion to \$12.9 billion, an increase of \$5.9 billion or 85.5 percent overall and 7.1 percent per year on average with compounding.³

9. Although complete data for the 2013-14 and 2014-15 school years is not yet available, the State Education Department's Property Tax Report Card indicates that property tax levy increases in those two years have grown local education funding by approximately \$1 billion since 2012-13, excluding the school districts in the State's five largest cities.⁴

C. Education Spending in New York

10. In fiscal year 2014-15, the State's Enacted Budget appropriated \$22.2 billion for School Aid, which helps support elementary and secondary education for New York pupils enrolled in the almost 700 major public school districts throughout the State.⁵ The State's \$22.2 billion in estimated School Aid for the 2014-15 school year represents a year-to-year funding

³ See New York State Fiscal Profile Reporting System Master File for School Year 2012-13, available at <http://www.oms.nysed.gov/faru/Profiles/26thMasterfileforweb.xlsx>.

⁴ See New York State Property Tax Report Card for School Years 2013-14 and 2014-15, available at http://www.p12.nysed.gov/mgtserv/propertytax/docs/2013-14_PTRC_5_10_13_post.xls and http://www.p12.nysed.gov/mgtserv/propertytax/docs/2014-15_PTRC_revised_5_14_14_post.xlsx.

⁵ See Fiscal Year 2014 -2015 Enacted Budget, at 84, available at <http://publications.budget.ny.gov/budgetFP/FY2015EnactedBudget.pdf>.

increase of \$1.1 billion, or 5.3%, over the previous year including an increase of \$853 million of additional general operating support to school districts, which consists of a \$602 million restoration in the Gap Elimination Adjustment and a \$251 million increase in Foundation Aid.

Id. Nearly 70 percent of the allocated increase will go to high-need school districts.⁶

11. The \$22.2 billion in School Aid for public education in the 2014-15 school year is, in absolute numbers, the largest School Aid authorization ever, more than double the \$10.2 billion of State aid revenues school districts received in the 1995-96 school year, when the Court of Appeals' first decision in Campaign for Fiscal Equity was decided.⁷

12. During this period of funding increases, enrollment in public schools has declined in New York State. Pupil enrollment at public schools in New York school districts dropped by more than 160,000 students, or 6 percent, between the 2003-04 and 2012-13 school years.⁸ Despite this drop in enrollment, State aid for education and total education funding from all sources have increased significantly in recent years, as reflected in the following table:

⁶ See "Governor Cuomo and Legislative Leaders Announce Passage of 2014-15 Budget," March 31, 2014, available at http://www.budget.ny.gov/pubs/press/2014/pressRelease14_enactedBudgetReleased.html. High needs school districts include the Big Five city school districts (Buffalo, New York City, Rochester, Syracuse and Yonkers) and other school districts identified by SED based on pupil need and school district fiscal capacity.

⁷ See New York State Fiscal Profile Reporting System Master File 1995-96, available at <http://www.oms.nysed.gov/faru/documents/MASTERFILE95-96FORWEB.xls>.

⁸ See "NY State Public School Enrollment (2012-13)," K-12 Enrollment, available at <http://data.nysed.gov/enrollment.php?year=2013&state=yes>, and "Table 35. Enrollment in public elementary and secondary schools, by level, grade, and state or jurisdiction: Fall 2003", total enrollment excluding prekindergarten, http://nces.ed.gov/programs/digest/d06/tables/dt06_035.asp.

School District Revenues by Source (\$ in Millions)⁹

School Year	State Aid Revenue Excl. STAR ¹⁰	STAR Revenue ¹¹	Local Revenue	Federal Revenue	Total State, Local and Federal Revenue
2003-04	\$14,699	\$2,820	\$19,922	\$2,586	\$40,027
2004-05	\$15,665	\$3,058	\$21,668	\$2,668	\$43,060
2005-06	\$16,605	\$3,215	\$23,520	\$2,830	\$46,170
2006-07	\$18,038	\$3,554	\$24,966	\$2,740	\$49,297
2007-08	\$19,888	\$3,711	\$25,967	\$2,581	\$52,147
2008-09	\$21,781	\$3,527	\$26,987	\$2,606	\$54,902
2009-10	\$20,190	\$3,208	\$28,653	\$4,471	\$56,522
2010-11	\$19,932	\$3,127	\$29,729	\$4,666	\$56,960
2011-12	\$19,855	\$3,235	\$31,756	\$3,210	\$58,056
2012-13	\$20,324	\$3,306	\$32,349	\$2,462	\$58,441
Total Increase	\$5,625	\$487	\$12,427	(\$124)	\$18,415

⁹ See Fiscal Profile Reporting System Master File for School Years 2003-2004 through 2012-13, available at <http://www.oms.nysed.gov/faru/documents/webMasterfile0304.xls> and <http://www.oms.nysed.gov/faru/Profiles/26thMasterfileforweb.xlsx>.

¹⁰ "State Aid Revenue" differs slightly from the estimate of School Aid in the coming school year made at the time the State adopts its budget, for two main reasons: (1) post-adoption changes in the data used to calculate School Aid, and (2) other miscellaneous aid provided to school districts, outside of School Aid, by the State Education Department and other State agencies. For example, 2012-13 School Aid was estimated to be \$20.35 billion at the time of the 2012-13 Enacted Budget and \$20.24 billion at the time of the 2013-14 Enacted Budget.

¹¹ The School Tax Relief program (STAR) was enacted in 1997 to offset rising property taxes for homeowners by exempting from school taxes a portion of the full assessed value of their primary residence. Under the program, the State reimburses school districts for the foregone revenue. STAR also provides tax relief to New York City by offering to qualified City residents a flat refundable Personal Income Tax credit of \$125 for married couples filing jointly and one-half of that amount for single taxpayers, as well as a six percent City Personal Income Tax rate reduction. See 1997-98 Summary of Tax Provisions, New York State Office of Tax Policy Analysis, September 1997, at 8-9, available at http://www.tax.ny.gov/pdf/stats/sumprovisions/summary_of_1997_98_tax_provisions.pdf.

i. Education Funding Has Grown in the Last Three Years since the 2008 Financial Crisis

13. The State began phasing in Foundation Aid in the 2007-08 school year. In 2008-09, the second year of implementation, school districts received 37.5% of the projected, inflation-adjusted Foundation increase to be provided to them at full phase-in. This resulted in total increases in Foundation Aid of approximately \$2.3 billion statewide in the first two years of implementation. Then the effects of the 2008 financial crisis began to be felt in earnest.

14. New York's combined two-year budget gap from 2008-10 was \$20.1 billion, the largest in the State's history.¹² This required budget cuts across the board, including State education spending.

15. As part of a series of budget items to solve the State's \$20.1 billion budget gap, a form of Gap Elimination Adjustment ("GEA") has been part of the State budget for the last six years, though the Executive and Legislative branches have worked every year to restore education funding and to ensure that the GEA and GEA restoration operate to direct a higher proportion of funding to high-need districts.¹³

¹² See Fiscal Year 2009-10 Enacted Budget at 4, available at <http://www.budget.ny.gov/pubs/archive/fy0910archive/enacted0910/2009-10EnactedBudget-FINAL.pdf>.

¹³ For the 2009-10 school year, the State's Budget included a Deficit Reduction Assessment (DRA) on School Aid, but federal American Recovery and Reinvestment Act (ARRA) funds wholly mitigated this DRA. See 2009-10 New York State School Aid Programs, Education Unit, New York State Division of the Budget, October 30, 2009, at 22, available at <http://www.budget.ny.gov/pubs/archive/fy0910archive/enacted0910/schoolaid/2009-10NewYorkStateSchoolAidPrograms.pdf>.

For the 2010-11 school year, the State's Budget included a \$2.1 billion Gap Elimination Adjustment, partially offset by \$726 million of federal ARRA funds to mitigate education funding reductions at

16. Even when the financial crisis necessitated reductions in aid to public schools, the State acted to mitigate the impact on higher-need, lower-wealth school districts. The resulting GEA enacted for the 2011-12 school year was calculated against districts' total formula-based School Aid excluding Building Aids and the Universal Pre-Kindergarten Program. Yet even though high-need school districts received 67 percent of this aid base, they accounted for only 54 percent of the \$2.56 billion 2011-12 GEA.

17. The State has also restored the GEA in a similar manner, with high-need districts generally receiving larger per pupil benefits.

18. Since 2011-12, the State has restored a total of \$1.52 billion of the GEA. High-need school districts have received almost two-thirds (\$1.01 billion) of this cumulative restoration. As a result, high-need school districts' share of the GEA has declined from 54 percent in the 2011-12 school year to 36 percent in 2014-15. As an example, 69 percent of the \$602 million GEA restoration in the 2014-15 Enacted Budget will go to high-need school districts. As of 2014-15, the State had already restored 78 percent of the original GEA of the "Big Four" city school districts (Buffalo, Rochester, Syracuse and Yonkers).

the state level. In addition, in 2010-11 the State also made available to school districts approximately \$600 million of federal funds to help retain teachers and other education personnel whose jobs were in jeopardy due to the State's fiscal constraints. See 2010-11 New York State School Aid Programs, Education Unit, New York State Division of the Budget, October 29, 2010, at 20 (Table II-A) and 22, available at

http://www.budget.ny.gov/pubs/archive/fy1011archive/enacted1011/1011schoolAid/2010-11_DescriptionSchoolAidPrograms.pdf.

19. These restorations and other increases in School Aid have resulted in School Aid increases totaling \$2.9 billion in the last three Enacted Budgets (2012-13, 2013-14 and 2014-15). As a result, the 2014-15 Enacted Budget provided the highest School Aid funding in history at \$22.2 billion for the 2014-15 school year.¹⁴

20. The 2014-15 Enacted Budget Financial Plan also anticipates annual School Aid increases averaging \$1 billion a year over the next three years, including \$864 million for the 2015-16 school year and \$1.1 billion for 2016-17:

School Year	(\$ in Millions)		Year-to-Year	
	Base Year	Enacted & Projected	Change	% Change
2012-13	\$19,541.71	\$20,346.68	\$804.97	4.1%
2013-14	\$20,236.08	\$21,228.24	\$992.16	4.9%
2014-15	\$21,109.24	\$22,236.69	\$1,127.45	5.3%
2015-16	\$22,236.69	\$23,100.76	\$864.07	3.9%
2016-17	\$23,100.76	\$24,182.69	\$1,081.93	4.7%
2017-18	\$24,182.69	\$25,387.78	\$1,205.09	5.0%

21. Plaintiffs' papers do not include an analysis of: (a) the more than \$58 billion in total education funding available this school year to local public school districts; (b) the State's 2014-15 school year School Aid of \$22.2 billion; and (c) the current and projected increases in State education spending.

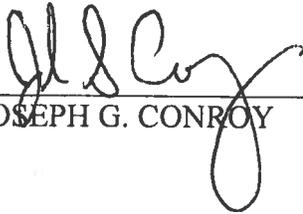
¹⁴ See Enacted Budget of Fiscal Years 2012-13 at 59, 2013-14 at 64 and 2014-15 at 84, available at <http://www.budget.ny.gov/pubs/archive/fy1213archive/enacted1213/2012-13EnactedBudget.pdf> <http://www.budget.ny.gov/pubs/archive/fy1314archive/enacted1314/2013-14EnactedBudget.pdf> <http://publications.budget.ny.gov/budgetFP/FY2015EnactedBudget.pdf>.

22. In 2012-13, the first year following enactment of the Allowable Growth Amount, the statutorily calculated personal income growth index was 4.1 percent and the 2012-13 Enacted Budget included a School Aid increase at that level. In the 2013-14 and 2014-15 fiscal years, the statutorily calculated personal income growth indices were 3.0 percent and 3.1 percent, respectively, significantly below originally forecasted levels. Although these were the statutorily calculated personal income growth indices, the Governor and the Legislature added appropriations in excess of these amounts in each of the last two years. See L. 2013, ch. 53, § 1, at 160-74; L. 2014, ch. 53, § 1, at 158-72; April 28, 2014 Mem. to the Regents State Aid Subcommittee on the 2014-15 Enacted Budget State Aid, at 3.¹⁵ Plaintiffs concede this. Pl. Mem. 15. The last two Enacted Budgets included School Aid increases of 4.9 percent for 2013-14 and 5.3 percent for 2014-15.¹⁶ Over the last 30 years, New York State personal income has grown at an actual average rate of 4.9 percent per year with compounding.¹⁷

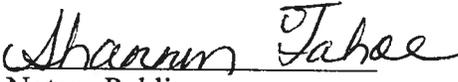
¹⁵ See April 28, 2014 Memorandum to the Regents State Aid Subcommittee on the 2014-15 Enacted Budget State Aid, at 3, available at <http://www.regents.nysed.gov/meetings/2014/April2014/413sad1Revision2.pdf>.

¹⁶ See Fiscal Year 2014-15 Enacted Budget at 84, available at <http://publications.budget.ny.gov/budgetFP/FY2015EnactedBudget.pdf>.

¹⁷ See SA 04 Personal Income Summary (Compound Annual Growth Rate Between Any Two Periods) 1983-2013, available at <http://www.bea.gov/iTable/iTable.cfm?reqid=70&step=1&isuri=1&acrdn=3%23reqid=70&step=1&isuri=1#reqid=70&step=30&isuri=1&7022=56&7023=0&7024=non-industry&7033=1983q3&7025=0&7026=36000&7027=-1&7001=356&7028=10&7031=0&7040=2013q3&7083=agr&7029=56&7090=70>.


JOSEPH G. CONROY

Sworn to before me this
22nd day of August, 2014.


Notary Public

SHANNON L. TAHOE
NOTARY PUBLIC-STATE OF NEW YORK
No. 02TA6086750
Qualified in Saratoga County
My Commission Expires February 03, 2015