

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS  
("NYSER"), by its President, JAY WORONA, RUBNELIA  
AGOSTINO, MIRIAM ARISTY-FARER, KATHRYN  
BARNETT, AVA CAPOTE, MILAGROS ARCIA. G.  
CHANGLERTH, MONA DAVIDS, JANET DURAN, ROLANDO  
GARITA, SARA HARRINGTON, SONJA JONES, NICOLE  
IORIO, HEIDI MOUILLESSEAU-KUNZMAN, GRETCHEN  
MULLINS-KIM, ANNETTE RENAUD, ELLEN  
TRACHTENBERG, HEIDI TESKA-PRINCE, ANDY WILLARD,  
NATASHA CAPERS, JACQUELINE COLSON, NICOLE JOB,  
CHRIS OWENS, SAM PRIOZZOLO, PATRICIA PADILLA,  
LYNN SANCHEZ, and ROBERT JACKSON,

Plaintiffs,

-and-

THE CITY OF YONKERS,

Intervenor-Plaintiff,

vs.

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

AFFIDAVIT IN  
SUPPORT OF  
MOTION FOR  
PARTIAL  
SUMMARY  
JUDGMENT

Consolidated Index No.  
100274/2013 (formerly  
650450/2014)



on each school district's pupil needs and each school districts' relative ability to support educational expenditures.

5. Underscoring this commitment to funding a sound basic education through a foundation formula approach was the fact that except for an academic journal article that identified ways of improving foundation formulas by recognizing the fact that the cost of achieving given educational outcomes varies among districts based on student needs, the background materials distributed to the working group members consisted exclusively of materials from the Regents and the State Education Department that were supportive of a needs-based foundation approach. In particular, the "Memorandum of Law on behalf of Amicus Curiae, NYS Board of Regents," that the Regents had submitted in the CFE case, provided us a clear over-all description of the Regents' basic position on all of these issues. Both school finance specialists and lawyers from the State Education Department attended and participated in all of the meetings of the technical working group.
6. The technical working group met frequently during November and December of 2006 and decided from the outset to accept the basic foundation aid approach. The group's discussions focused on the technical details of implementing the foundation approach such as the student need weightings to be used for the calculation of each district's foundation amount and the approach to be used for dividing responsibility for funding that foundation amount between the state government and the local school districts.
7. When Mr. Spitzer became Governor in January, 2007, the detailed work involved in finalizing the Spitzer Administration's proposal continued among the Division of the Budget, the State Education Department and the incoming Governor and his staff. On January 31, 2007, in conjunction with the release of his 2007-2008 Executive Budget, Governor Spitzer officially

presented the details of his "foundation formula" proposal in his proposed "Education, Labor and Family Assistance" Article VII bill (S.2107/A.4307). That proposal fully adopted the Regents' foundation formula approach and the technical details we had discussed in the meetings of the technical working group.

8. In enacting the foundation formula as part of the 2007-2008 budget, the only significant change the legislature made was to increase the amount of foundation aid to be provided by the state to certain districts by adding an alternative method (i.e., a "state sharing ratio" method) for dividing responsibility between the state government and the local districts for the funding of the districts' foundation amounts. Thus, in the plan as enacted in 2007 and as it stands today, each district's "fully implemented" foundation aid amount is determined by whichever of two methods (i.e., either Governor Spitzer's original proposal for an expected local contribution based on a wealth adjusted tax rate or the "state sharing ratio" method) provides it with more aid.
9. Pursuant to the school aid provisions of the enacted version (S.2107-C/A.4307-C which was signed into law as Chapter 57 of the Laws of 2007) of the 2007-2008 "Education, Labor and Family Assistance" Article VII bill (which was codified in section 3602.4 of the N.Y. Education Law), the new foundation aid formula was to be phased-in over a four-year period. At that time, the State Education Department (NYSED) projected that when fully implemented in the 2010-2011 school year, the new foundation formula would distribute \$18.045 billion which would represent a \$5.5 billion increase over the 2006-2007 "foundation aid base" of \$12.5 billion which was the amount distributed in 2006-2007 pursuant to the 30 aid programs that were being replaced by the new formula.

10. In the 2008-2009 Enacted Budget, the base per pupil amount (i.e., the unweighted, statewide average foundation amount) that serves as the starting point for each school district's total foundation amount, was increased from the 2007-2008 level of \$5,662 per pupil to \$5,695 per pupil as a result of a greater than anticipated increase having occurred in the Consumer Price Index. This revision and other data updates resulted in NYSED increasing its estimate of the 2010-2011 "fully implemented" cost of the Foundation Aid program from \$18.045 billion to \$18.483 billion.
11. Adjusting NYSED's 2008 projections of the 2010-2011 "fully implemented" amount of foundation aid for changes in the cost of living between 2010-2011 and 2015-2016, using the same inflation adjustment methodology as is used under current law to update the unweighted foundation formula "per pupil" amount during the years between NYSED's updates of its Successful Schools cost analysis, results in an estimated foundation aid level for the 2015-2016 school year of approximately \$20.4 billion.
12. The foundation formula and the successful schools cost methodology upon which it was based, as codified in section 3602.4 of the N.Y. Education Law, has remained basically unchanged since 2007, except that the Governor and the Legislature have (a) several times delayed the dates for fully phasing in the foundation system and (b) for three school years (2009-10, 2010-2011 and 2011-2012) froze foundation aid at the previous school year's levels and (c) for the second and third of those "freeze" years and for the four years since then imposed across the board cuts in school aid distributions (referred to as "Gap Elimination Adjustments" (GEAs)) which made actual foundation aid distributions less than the nominal amounts reported. Based on the budget the legislature recently adopted for the 2015-2016 school year, the state is now projecting that the nominal amount of foundation aid to be

distributed during the 2015-2016 school year will be \$15.86 billion while the full phase-in of the foundation formula during the 2016-2017 school year would cost an estimated \$20.087 billion not counting the \$211 million in additional foundation aid payments to be made in 2015-16 to 216 school districts under various “due minimum” payment provisions the legislature has adopted which benefit certain low need districts. . Thus the nominal foundation aid shortfall anticipated for 2016-2017, using these figures but without taking the impact of the GEA into consideration, is \$4.44 billion.

13. Based on the statutes and appropriations acts currently in place, the state education department has projected that the gap elimination adjustment (GEA) will reduce state aid to local school districts for the 2015-2016 school year by approximately \$434 million. The statute and the state aid runs do not state specifically how much of the GEA reduction should be attributed to foundation aid and how much should be attributed to other components of the state aid to education budget. For this analysis, I relied on the facts that (a) the initial GEA cuts took the form, for each school district, of a single formula-derived percentage reduction (which varied from district to district) in all of its aids except for building aid, building reorganization aid and Universal Pre-Kindergarten (UPK) aid; and (b) that a historical GEA amount determined in that way has served as the starting point for districts’ GEA calculations in more recent years.

14. Using this original GEA base, approximately 79 percent, on average, of districts’ 2015-2016 GEA cuts will come out of their nominal foundation aid allotments. Reducing each district’s nominal foundation aid allocation for 2015-2016 by a portion of its GEA (with that portion equal to the share of its GEA base that is represented by foundation aid), reveals that the actual amount of foundation aid to be distributed in 2015-2016 is an estimated \$15.54 billion,

or \$4.86 billion less than the \$20.4 billion estimate derived per paragraph 11 above by trending forward to 2015-2016 the 2008 estimate of the 2010-2011 fully implemented cost of the program. Using NYSED's estimates, as summarized in paragraph 12 above, of (a) the fully implemented cost of the foundation formula "before phase-in" in 2016-2017, and (b) the fact that 216 districts will actually receive more foundation aid in 2015-2016 than their fully implemented "foundation aid before phase-in" amounts, the actual gap is estimated to be \$4.76 billion. Thus the two methodologies yield very similar estimates (\$4.86 billion and \$4.76 billion) of the current foundation aid shortfall.

15. Since 2012-2013, the state has each year provided some amount of increase in foundation aid, even though during each of those years it has also continued to delay the full implementation of the formula and has continued to subtract a "GEA" amount from the sums nominally due to school districts. Moreover, for each of the three most recent years, these annual foundation aid increases have not been distributed to all districts as either a uniform percentage, or a percentage calculated on the basis of a coherent formula, of the total amount of foundation aid due each district. Rather, different districts or categories of districts receive different percentages of their aid due and/or different minimum annual increases in their foundation aid and/or different restorations of their GEA cuts, etc., in what appears to be a complicated effort to ensure compliance with the so-called "shares agreement" that is seemingly being continued each year by the governor and the legislative leaders. For 2015-2016, for example, New York City will receive a nominal increase representing 13.274% of the difference between (a) its nominal 2014-15 foundation aid distribution and (b) its fully implemented "foundation aid before phase-in" amount. Small city school districts will receive 4.751% of their similarly calculated foundation aid shortfalls, while for the "big four city" school districts (Buffalo,

Rochester, Syracuse and Yonkers) this “phase-in factor” is being set at 14% and for two categories of other needy districts it is set at either 4% or 7.75%.

16. As a result of this and other manipulations, for 2015-2016, New York City’s share of the over-all increase in state aid as projected on NYSED’s official school aid runs for the enacted budget will be 38.86%, the precise percentage increase that had been the city’s share of state aid increases for 8 of the 10 years preceding the CFE trial, according to the evidence introduced at that trial. In fact, according to the official NYSED school aid runs for the enacted budgets for every year since 2011-2012, New York City has been projected to receive exactly 38.86% of the total increase in computerized state aids.
17. In 2009 and 2012, the State Education Department updated its determination of which school districts in the state were deemed “successful” (based on more recent test data) for purposes of updating its Successful Schools cost analysis which is used to to update the unweighted “per pupil” foundation amount which is the essential starting point for calculating each school district’s foundation aid apportionment. This methodology, however, determines which schools are “successful” solely on the basis of test scores from prior years. It does not calculate additional costs that school districts have incurred in recent years and that they are currently in the process of incurring for major new educational mandates imposed by the state like the new common core, and annual professional personnel review requirements, nor does it include in these calculations any operating efficiencies or cost effectiveness practices that may have been put into effect in recent years.
18. Since the 2008 recession, the Regents have not revised their successful schools methodology to take these factors into account, nor have they or any other state agency undertaken any cost



studies of the actual cost of a sound basic education under current educational policy and economic conditions.

Respectfully submitted,

Frank J. Mauro

Frank J. Mauro

Sworn to before me this

11<sup>th</sup> day of May, 2015

JAY WORONA  
Notary Public, State of New York  
Qualified in Albany County  
No. 4785288  
Commission Expires Nov. 30, 20 17