



NYSER New Yorkers for Students' Educational Rights

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STATE SUPREME COURT FINDS FOR PLAINTIFFS IN MAJOR SCHOOL FUNDING CASE

November 18, 2014 – New York, NY -- Rejecting the state's attempt to dismiss a major litigation seeking to enforce the funding and other constitutional mandates established in the landmark *Campaign for Fiscal Equity v. State of New York* litigation ("CFE"), Justice Manuel J. Mendez of the New York State Supreme Court, New York County, issued an order today that upholds the right of the plaintiffs in New Yorkers for Students' Educational Rights ("NYSER") to proceed with their litigation against the state, and against Governor Andrew Cuomo and other state defendants.

The NYSER litigation, filed earlier this year, alleges that in 2007, following the Court of Appeals' final decision in *CFE*, the governor and the state legislature enacted a major reform act that committed the state to increasing funding for students in the New York City Public Schools by approximately \$5 billion per year, and for students in the rest of the state by approximately \$4 billion per year, all to be phased in over a four-year period. Since 2009, however, the state has reneged on these commitments. Although the state has never repealed the 2007 legislation, it has failed to fund schools in accordance with its foundation formula. Despite some increases in state funding for education over the past few years, the state is still \$5.6 billion short of the amounts owed under that formula, according to the plaintiffs.

Referring specifically to some of the devices and mechanisms the state has used to reduce its education appropriations, Justice Mendez held that "the 'gap elimination adjustment'.... the cap on state-aid increases, the supermajority requirements concerning increases in local property tax levies," together with penalty provisions imposed on New York City students last year in connection with the implementation of the new teacher evaluation system, all "could potentially be found irrational, arbitrary or capricious and capable of preventing a sound basic education."

The Court also held that, "The claims asserted by plaintiffs are not tenuous, there is a potential risk of harm to public school students and to school districts derived from financial distress."

Justice Mendez also rejected the state's claim that individual plaintiffs from all of the approximately 700 school districts in the state would need to participate for plaintiffs to proceed with this lawsuit and that NYSER as an organization lacked standing to sue. He held that "This Court will not 'close the courthouse doors' on the individual plaintiffs' potentially viable

constitutional claims affecting schoolchildren in New York State,” and that NYSER, whose “stated mission is to ensure that all students in the State of New York receive the opportunity for a sound basic education” also has standing.

The state now has 20 days to file an answer to the complaint, after which preparations for trial can commence.

“We are pleased that the Court has quickly and definitively rejected the state’s motion to dismiss, and we look forward to quickly moving this case along so that students throughout the state can receive the educational opportunities that the state constitution clearly intends them to enjoy,” said Douglas Schwarz, a partner at Bingham McCutchen, who serves as co-counsel for the plaintiffs.

“We hope that this important decision will cause the governor and the legislature to reconsider their current approach to funding for education and to work with us to promptly ensure that all students truly receive the opportunity for a sound basic education. However, if further litigation is necessary, we are prepared to continue to fight this case vigorously,” added Michael A. Rebell, co-counsel for the NYSER plaintiffs. (Rebell also served as co-counsel for plaintiffs in the CFE litigation.)

NYSER v. State of New York was filed earlier this year by 16 parents from New York City and from urban, suburban and rural districts throughout the state, and by NYSER, an organization whose members include the New York State School Boards Association, the New York State Council of School Superintendents, the New York State PTA, the New York State Association of School Business Officials, the Statewide School Finance Consortium, the Rural Schools Association, 11 of New York City’s Community Education Councils, and a number of parent groups and advocacy groups around the state. The plaintiffs are seeking immediate financial relief, as well as the adoption of a series of mechanisms that will ensure adequate and equitable funding for all students in New York State on a sustained, long-term basis. For more information on the suit, see www.nyser.org.