

CFE v. STATE VICTORY: GOOD FOR NEW YORK, GOOD FOR THE NATION

On the last day of school in many New York districts—June 26, 2003—the state's highest court affirmed every student's right to a "sound basic education" that prepares them for capable citizenship and self-supporting employment. A "meaningful high school education," the New York State Court of Appeals concluded, is "all but indispensable" in contemporary society.

In *Campaign for Fiscal Equity (CFE) v. State of New York*, the court declared the state's education finance system unconstitutional and adopted plaintiffs' remedial approach when it ordered the state to perform a costing-out study to determine the actual resources necessary to provide a sound basic education, provide those resources, and establish an effective accountability system.

In reaching this landmark decision, the court found for plaintiffs on matters that are critical to adequacy litigations currently before other state courts, which have been explored in depth in previous issues of *ACCESS Quarterly*. These include findings that school funding must be need-based, that students' socioeconomic status is not a defense for inadequate educational opportunities, and that "money matters." We explore the court's specific rulings in these areas in this issue.

In one of the strongest school funding adequacy decisions to date, the New York Court of Appeals, the state's highest court, has added its considerable weight to the continuing trend toward plaintiff victories in school finance cases across the country. In *Campaign for Fiscal Equity, Inc. (CFE) v. State of New York*, the court reviewed and accepted the research-based testimony of leading national experts on issues central to all adequacy lawsuits, finding that "quality of teaching correlates with student performance," "smaller class sizes in the earliest grades correlate with better test results during those years and afterwards," and "all children can learn given appropriate instructional, social and health services."

High-Level Definition of Adequacy

The *CFE* court held that all students are entitled, as the state constitutional minimum, to the opportunity for a "meaningful high school education" that prepares them for civic participation and employment. The court explored these concepts in depth, relying on the extensive evidence gathered at trial regarding the precise skills students need to be voters and jurors and to sustain competitive employment. The trial court concluded that productive citizenship "means more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably" by being able to understand complex issues such as tax policy, global warming, and DNA evidence. The Court of Appeals affirmed the trial court's conclusions that the "rising generation" must be provided skills they

need today to function as capable civic participants and that to be prepared for employment in the 21st century economy they require "a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime." Courts in Wyoming and New Jersey have also used high school as a measure of a constitutionally adequate education for the purpose of preparing students for citizenship and employment.

Over a dozen years ago, when most school finance litigations shifted from a legal theory of equal funding to one based on the adequacy of educational opportunity, some advocates feared that the result might be "minimal adequacy." They worried that the educational rights of at-risk students might be defined at such a low level that inadequate funding systems could be upheld and that funding reforms, if any, would not enable these students to obtain a truly adequate education. By now, however, court decisions in *CFE* and other states—including Kentucky, New Jersey, Arizona, Montana, New Hampshire, and Arkansas—demonstrate that state high courts are in fact interpreting their constitutions to require educational opportunity at levels high enough to prepare students for the contemporary challenges of citizenship and employment. They are ordering their states to ensure the appropriate educational resources to provide for this opportunity.

Need-Based Funding

The New York Court of Appeals repeatedly emphasized that resources

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should be “calibrated to student need” and quoted with approval the trial court’s holding that the opportunity for a sound basic education must “be placed within reach of all students.” By focusing on the high needs of many New York City students and how to address them, the *CFE* decision is reminiscent of the April 2002 order of the North Carolina Superior Court, which ruled in *Hoke v. State* that “at-risk children can learn with effective, individualized and differentiated instruction delivered by a certified, well-trained, competent teacher with high expectations” and that “at-risk children require more resources, time and focused intervention to learn.”

Perhaps the most pernicious argument made by New York State in its defense—an argument also faced by plaintiffs in other states—was the proposition that “poor student performance is caused by socioeconomic conditions independent of the quality of the schools.” The *CFE* court decisively rejected this argument, stating that “we cannot accept the premise that children come to the New York City schools uneducable, unfit to learn.”

Three-Part Remedial Order

The New York high court’s three-part remedy articulates and substantially reinforces an emerging remedial model in school funding litigations: (1) a cost study must determine the actual cost of providing a sound basic education; (2) once the dollar amounts are known, the state must ensure that all schools have the resources they need; and (3) the state must establish a system of accountability “to measure whether the reforms actually provide the opportunity for sound basic education.” Although because the plaintiffs in this case represented New York City schoolchildren the court technically limited this part of the remedy to New York City schools, the constitutional standard for a “meaningful high school education” applies statewide. As several of the judges themselves noted, it is unlikely that the state will be able to change the funding system for the almost 40% of New York State students educated in the City without changing it statewide.

By specifically requiring a costing-out study, provision of necessary resources, and development of an accountability system, the court sought to give general remedial directions without attempting to “micromanage” the development of a new funding system, in order to avoid prolonged litigation. The court cited Kentucky’s

Education Advocates Ally with Tax Reformers

As states face both major revenue shortfalls and growing public pressure to simplify arcane school funding formulas, education advocates are increasingly finding allies in tax reform proponents and the business community.

In Maine, for example, business leaders support the proposed tax plan because it offers property tax cuts to communities based on cost-saving incentives like regional consolidation of police, sanitation, and other public services. Schools advocates support the plan because it includes the adoption of the “Essential Programs and Services” model that pro-education groups have backed for years. Both groups expect voters to support the plan because of the attractiveness of a clear, understandable school funding system.

In Alabama, Gov. Bob Riley, supported by both advocates and business leaders, convinced the legislature in June 2003 to place a tax reform referendum on the September ballot that would raise roughly \$1.2 billion annually in additional state revenue. Certain business leaders back the referendum because they foresee a positive impact on Alabama’s economy resulting from improved education in the state.

This summer, Texas legislators will study proposals to increase sales and motor vehicle taxes, eliminate the funding system’s recapture (“Robin Hood”) provision, and generate more revenue for schools. The proposals are expected to draw support from education and business organizations.

Kentucky: Prichard Committee Turns 20

This summer, Kentucky’s Prichard Committee for Academic Excellence, one of the nation’s most influential K-12 advocacy groups, celebrates its twentieth anniversary. At a June 2003 celebration, North Carolina Gov. Jim Hunt spoke to the national influence of the Committee’s accomplishments in Kentucky, saying “No state...has reformed K-12 education as thoroughly as Kentucky. The Prichard Committee led this effort...and they have set the standard for America.”

The Committee’s landmark achievements include organizing broad-based, ongoing public engagement initiatives, which have served as a model for similar initiatives in other states, and developing major policy proposals for systemic overhaul of the state’s school system. The Committee also founded the Commonwealth Institute for Parent Leadership, which trains hundreds of parents each year to work with local schools to improve student achievement and led to formation of Parent Leadership Associates (www.plassociates.org) to market the Committee’s community participation models nationwide.

Now, as Kentucky faces budget shortfalls and the need for tax restructuring, the Prichard Committee continues to advocate actively for the systemic education reforms that have boosted student achievement in the state over the last two decades.

Montana: Funding Commission Appointed

In June 2003, Montana announced the formation of a commission to study the state's education funding system and to recommend changes in time for the next legislative session in 2005. The commission was created amidst pressure from educators and advocates, including the recent filing of the *Columbia Falls* school funding lawsuit. In examining the existing state funding formula, commission members are expected to focus on several main factors, including declining enrollment patterns, certain fixed per-district funding that does not consider enrollment figures or numbers of schools, and the lack of guaranteed annual inflation-based increases for K-12 education that are in place for most other state-funded programs.

The Montana Quality Education Coalition, which represents most education organizations in the state and 50 school districts and is backing the *Columbia Falls* suit, has requested a seat on the commission. The Coalition has expressed concerns that policy makers ignored recommendations from similar statewide commissions, convened as recently as 2002.

Federal: NCLB Mandates Costly, Report Shows

The federal "No Child Left Behind" (NCLB) mandates will require substantial education funding increases, according to a report in the May 2003 issue of *Phi Delta Kappan*, a national education journal. The report analyzed recent studies in ten states and found that NCLB's requirement to bring all students to proficiency on state standards by 2014 would require as much as \$84-\$148 billion more in

education spending nationally, as much as a 13-fold increase for current federal Title I appropriations of \$11 billion. All ten studies reviewed concluded that current funding levels are grossly inadequate in meeting the new federal mandates.

The report's author, William Mathis, called the federal government's expectations "the cruelest illusion" because of the high costs of full NCLB implementation and the failure to commit adequate federal funding to meet these costs. Mathis argues for a "repeal or massive revision" of NCLB. The report is available at www.pdkintl.org/kappan/k0305mat.htm.

Vermont: Compromise Ends Act 60 "Wars"

On June 18, 2003, Vermont Governor James Douglas signed a major school funding reform bill that revises the controversial Act 60, which established a new education finance system in 1997 and was enacted in response to plaintiffs' victory in the *Brigham v. State* school funding case. Among the 2003 changes, primary residential homes will be taxed at a lower rate than businesses and vacation homes. Most homeowners will see lower property taxes by 2005. Statewide property tax relief is coupled with an increase in the Vermont sales tax from 5 to 6 percent, effective later this year.

The new funding system will raise basic state school aid to \$6,800 per pupil in 2004 and abolish the controversial "sharing pool" that critics called a re-distribution of local taxes from wealthy to poor districts. Both pro-education and pro-taxpayer advocates lauded the Act 60 reforms as "win-win" changes.

Massachusetts: Education Adequacy Trial Underway

From now through October, witnesses will be testifying in a Boston Superior Court, in *Hancock v. Driscoll*, on the adequacy of the education being provided to Massachusetts students in four school districts. As agreed by the parties, these districts represent the educational status in plaintiffs' 19 districts. Pre-trial proceedings determined that the court will base its judgment of constitutional adequacy on the state's curriculum standards in seven academic areas. It will hear evidence on student outcomes and educational inputs, including quality teaching, class size, and programs for low-income and ELL students, as well as plaintiffs' claim that the state has failed to establish an accountability system.

Nebraska: New School Funding/Adequacy Lawsuit

Plaintiffs in *Douglas County School District v. Johanns*, filed by the Nebraska Schools Trust and others in June 2003, allege that the state funding system is unconstitutional because it "fails to provide the resources required to afford thousands of public school students . . . the opportunity to obtain the free instruction guaranteed by Nebraska's Constitution and laws, and an equal opportunity to meet the academic standards set by law." According to the com-

plaint, Nebraska has adopted sound educational standards but does not adequately fund schools to enable them to provide the programs and services necessary for students to reach those standards. Plaintiffs assert that students are placed "at grave risk of failure to become active and productive citizens in our democracy, to find meaningful employment and to qualify for higher education."

Superintendents from plaintiff school districts point to the dramatic increase in low-income and ELL students in their classrooms and the higher standards imposed by the state and the federal NCLB Act.

Texas: Case Returns to Trial Court

The Texas Supreme Court has reversed a dismissal and remanded *West Orange-Cove Consolidated ISD v. Nelson* to the trial court. The lawsuit, filed by property-wealthy districts in 2001, alleges that the State's 1993 school finance law has become unconstitutional.

To keep abreast of events surrounding these important cases, see the litigation calendar on the ACCESS website at www.schoolfunding.info/calendar.html.

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1989 *Rose v. Council for Better Education* decision as an example of a school funding case in which guidelines from the court led to swifter implementation and resolution of the litigation. The court ordered the Legislature and Governor to meet the 13-month deadline of July 30, 2004 to implement the remedial order.

To expedite the process of reforming New York's funding system, CFE and the New York State School Boards Association have partnered with 32 other organizations across the state to conduct a cutting-edge costing-out study, led by an independent panel of national experts who have successfully undertaken studies in other states, to determine the level of funding each school district needs to provide the opportunity for a sound basic education. The study's findings will be presented to the governor and legislature in early 2004.

Unlike NCLB, Resources Matter

The CFE opinion offers a realistic analytical framework for educational success, quite unlike the dictates of the federal government's abrupt new direction in "No Child Left Behind" (NCLB). While the stated goals of NCLB, such as higher student achievement and closing achievement gaps, are laudable, its current implementation requires vast achievement gains with no guarantee of essential educational resources—thus setting many schools up to fail. In contrast, the New York courts in *CFE* have thoroughly analyzed critical school "inputs" and "outputs," and the connection between these proven indicators and the state finance system, to develop a roadmap for the state to provide adequate resources and an accountability system that can lead to significant improvements for students and schools. This roadmap clearly also has important nationwide implications.



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