

STATE OF NEW YORK: COURT OF APPEALS
COUNTY OF NEW YORK

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CAMPAIGN FOR FISCAL EQUITY, INC., *et al.* :

Index No. 111070/93

Plaintiffs-Appellants. :
vs.

THE STATE OF NEW YORK, *et al.*, :

Defendants-Respondents. :
-----X

**MEMORANDUM SUBMITTED BY *AMICUS CURIAE*
NEW YORKERS FOR SMALLER CLASSES**

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Preliminary Statement

Based upon a wealth of evidence and testimony in the case, the Supreme Court and the Court of Appeals found that class sizes at all grade levels in the New York City public schools were too large to be able to offer their students a sound basic education. As parents, educators, advocates, and concerned citizens, we are also acutely aware that our children's ability to receive an adequate education and their need for more individualized attention and instruction are being hampered by the overly large classes that presently exist in New York City public schools.

Yet none of the various compliance plans submitted by the parties to the case or by the city would satisfy the requirement of smaller classes in all grades in our schools, identified by the Court as critical to ensure that they receive an adequate education. The Court of Appeals defined the constitutional standard of adequacy as the opportunity for "a meaningful high school education." Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 916 (2003) ("CFE II"). The city's plan does nothing to lower the size of our excessively large classes in high school, nor does it reduce average class sizes in any elementary grade higher than third. More recently, Justice DeGrasse asked that the panel of Special Referees specifically address the need for city schools to provide smaller classes in their recommendations to the Court, in order to safeguard our students' constitutional rights to a sound basic education.¹

Accordingly, our coalition, New Yorkers for Smaller Classes, made up of 23 parent groups, unions, advocacy organizations, and faith-based associations, hereby submits two different class size reduction plans for the Panel and the Court to consider, both of which are wholly achievable within the contours of the city's overall spending plan.

Further, we point out how all of the various accountability proposals submitted by the parties and the city fall short, by confusing political accountability with the legal accountability demanded by the Court. None of them would provide sufficient oversight

¹ Transcript of August 3, 2004 hearing before J. DeGrasse.

as to how the additional funds would be spent, and are too weak to guarantee that our students will actually receive a sound basic education, as defined by the Constitution and the Court. Instead, these proposals will invite yet more paper-shuffling and delay, rather than the fundamental improvement of classroom conditions that New York City students so desperately require.

Finally, we suggest an alternative approach to accountability that would guarantee that our public schools will actually supply our children with the class sizes they need for a meaningful opportunity to learn.

POINT I

THE COURT RECOGNIZED THE NEED TO REDUCE CLASS SIZES IN ALL GRADES IN NEW YORK CITY SCHOOLS

New York City schools have long had the largest classes in the state and some of the largest in the nation. The court record in the case was replete with evidence that the average class size in every grade and district in the city exceeded the level recommended by educators and experts. Campaign for Fiscal Equity v. State of New York, 187 Misc.2d 1, 53 (Sup. Ct. N.Y. Cty 2001) (the "CFE Trial"). Indeed, the court found that in New York City, class sizes have been consistently higher than the state average at every grade level for more than 20 years. Id.²

The huge gap in class size between our schools and those in the rest of the state has not diminished, according to the latest available data from the New York State Education Department. During the school year 2001-2002, Kindergarten classes averaged 21.3 students per class in New York City, compared to 18.7 in the rest of the state. In grades 1-3, our classes averaged about 23 students, compared to 20 in the rest of the state, and in grades 4-6, classes averaged 27-28 students, compared to 21- 22 elsewhere.³ In the 2002-3 school years, one quarter of our K-3 public schoolchildren, or over 77,000, were still in classes larger than twenty five.⁴

As of the 2003-4 school year, despite a rapidly falling enrollment, only 38% of kindergarten students in NYC were in classes that met the state goal of 20 or less; only 33% of first and second graders, and only 28% of third graders were in classes this small.⁵

² In nearly every 655 Report, the SED has noted the City's comparatively large class sizes, which it has labeled as being "substantially larger than classes in other school categories."

³ These figures are for the school year 2001-2002. NY State Education Department, Information Reporting and Technology Services. (See Appendix). See also NYSED, Chapter 655 Report, Volume 1, p. 34, Table 2.9 for other class size averages in selected grades and courses, with NYC compared to other districts and regions in the state. <http://www.emsc.nysed.gov/irts/655report/2003/volume1-2003/655report-volume1.pdf>.

⁴ New York City Independent Budget Office, "K-3 Class Size Drops, but 77,500 Children Still in Classes with Over 25 Students," Sept. 19, 2002, Newsfax No. 107, available at www.ibo.nyc.ny.us These figures reflect the school year 2001-2002; similar class size distribution data has not yet been released to the public for any subsequent school year.

⁵ Id. See tables with class size averages and distributions K-3, 2003-2004.

In middle schools and high schools the gap between New York City and the rest of the state is even more glaring, with class size averages of about ten more students per class. In the school year 2002-3, more than 60% of our middle school students, or 147,000, were in classes of 28 or more, according to the Independent Budget Office, and about half of them were in classes larger than 30. Fully 15% of our middle-school students were in classes that violated the union contractual cap of 33.⁶

The high school classes which are supposed to prepare our students to pass their Regents exams, required if they are to receive a diploma, are also much larger than those in the rest of the state. For example, in the school year 2001-2002, we had more than 29 students per class in Regents biology, compared to 18.7 in the rest of the state.

New York City class sizes are also much larger than the national average. Nationwide, the average class size in elementary grades is 21; and in secondary grades it is 28.⁷ Moreover, while nationally, secondary teachers have an average teaching load of 89 students, many high school teachers in New York City have five classes of 34 students, amounting to 170 students each, a teaching load nearly twice as large.⁸ These excessive teaching loads also considerably diminish the amount of feedback that our students are able to receive on a regular basis on their homework and exams.

After weighing the evidence on the importance of appropriate class size, the trial court in this case concluded that: “[C]lass size has an effect on student outcomes, and... small class size can boost student achievement, particularly among at-risk children. The advantage of small classes are clear. A teacher in a small class has more time to spend with each student. Fewer students mean fewer administrative tasks for each teacher. Student discipline and student engagement in the learning process improve in smaller classes.” CFE Trial at 51.

The trial court’s findings on this issue were unanimously supported by the Federal government, the State of New York, the Board of Education, and every City school superintendent who testified, as well as national experts.⁹

⁶ New York City Independent Budget Office, “Despite Free Space in Some Middle Schools, Many Packed Classrooms”, October 31, 2003, Newsfax No. 122, www.ibo.nyc.ny.us/newsfax/insidethebudget122.pdf.

⁷ National Education Association, “Status of the American Public School Teacher, 2000-2001”; <http://www.nea.org/edstats/images/highlights.pdf>.

⁸ For the average teaching load in NYC high schools, and this effects the ability to teach effectively, see James Eterno’s presentation, “Notes from a Town Hall meeting: Why Reduce Class Size in NYC public schools?” October 28 2003, <http://www.classsizematters.org/townhallmeetingpage2.html>

⁹ 187 Misc. 2d at 51; Pub. L. No. 106-113, 113 Stat. 1501, 1501A-263 (1999); N.Y. Educ. L. § 3602; CFE Tr. 11397:20-11398:16 (Sanford); 315:22-316:11(Cashin); 2276:16-22, 2277:7-9 (Spence); 1396:7-15 (Evans-Tranum); 3297:17-3298:12 (Ward); 6991:9-6993:25 (Zardoya); 7769:5-22 (Fink); 13715:12-13717:6 (Santandreu). (“CFE Tr.” Denotes references to the transcript of proceedings before Justice DeGrasse.) For example, District 10 Superintendent Irma Zardoya was one of the many superintendents who identified class size reduction as a priority for her district: “I think that the reality is that the less kids a teacher has to work with, the more focus and attention that teacher can give to the youngsters, and students are able to also work better in class.” Zardoya 6991:14-18. Similarly, District 23 Superintendent Kathleen Cashin stated: “Our kids have tremendous needs. They have tremendous obstacles to overcome. The

Similarly, the judgment of the Court of Appeals was based to a significant degree upon the overwhelming evidence that ***overly large classes in all grades in New York City has a deleterious effect on our students***, many of whom perform below par, and end up dropping out of school. The Court held that the “plaintiffs presented measurable proof, credited by the trial court, that New York City schools have excessive class sizes, and that class size affects learning.” CFE II at 911.

The Court of Appeals also deemed that “plaintiffs’ evidence of the advantages of smaller class sizes supports the inference sufficiently to show a meaningful correlation between the large classes in City schools and the outputs” of poor academic achievement and high dropout rates. Id.

As the Court concluded: “[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.” Id. at 915.

A. The Benefits of Smaller Classes in Closing the Achievement Gap

The research is abundantly clear that class size makes a critical difference in terms of academic achievement, particularly among poor and minority students. Indeed, studies show that providing smaller classes are one of the most effective ways to narrow the achievement gap. In 1985, the best designed, large-scale randomized experiment ever carried out in the history of education was begun: the STAR study in Tennessee. Over four years, thousands of students were randomly assigned to either small or large classes in grades K-3rd. Those who were assigned to smaller classes did better in every way that could be measured: they received higher test scores and better grades, they had improved attendance records, fewer were held back, and they exhibited much fewer disciplinary problems.¹⁰

Two other results were even more striking: The students whose performance improved the most were those from poor and minority backgrounds. Recently, Alan Krueger, economist at Princeton, re-analyzed the STAR data, and found that smaller classes in the early grades shrunk the achievement gap between racial and ethnic groups by about 38% by third grade.¹¹

smaller the class size, the better for them in terms of individual attention that they need, supervision, correcting books, identification of their strengths and weaknesses pedagogically. To me, with all the obstacles the kids have, the smaller the class size, the better.” Cashin 316:4-11. Both Zardoya and Cashin are now regional superintendents in the reorganized NYC school system.

¹⁰ Jeremy Finn, “Class Size Reduction, Grades K-3,” in: School Reform Proposals: The Research Evidence, ed. A. Molnar, 2002. Available at <http://www.asu.edu/educ/eps/Reports/epru/EPRU%202002-101/epru-2002-101.htm>. See also J. Finn, Reducing Class Size: What Do We Know? US Department of Education, 1999, available at: <http://www.ed.gov/pubs/ReducingClass/>

¹¹ Alan B. Krueger and Diane M. Whitmore, January 2001. “Would Smaller Classes Help Close the Black-White Achievement Gap?” in Bridging the Achievement Gap, 2002, eds. John E. Chubb and Tom Loveless, 2002; available at <http://www.irs.princeton.edu/pubs/pdfs/451.pdf>.

The other extremely compelling result of the STAR study was that some of these gains lasted long after 3rd grade, when these students were put back into the general population. In 4th, 6th, and 8th grade, students who attended small classes in the early grades were significantly ahead of their regular-class peers in all subjects.¹² In high school, they had higher graduation rates, better grades, and higher scores on their college entrance exams.¹³ For those who attended a smaller class in grades K-3, the difference in rates between black and white students headed towards college was cut in half.¹⁴

Many of the achievement gains first noted in Tennessee in the STAR study have since been replicated in studies carried out in Wisconsin,¹⁵ California,¹⁶ and elsewhere.

Large-scale studies have also confirmed the importance of class size. David Grissmer at RAND examined student achievement in 44 states, as reflected in average test scores on the national exams known as the NAEPs (National Assessment for Education Progress). He concluded that the states that had the lowest class size in the early grades were also those with the highest levels of student achievement, particularly among poor and minority children.¹⁷

¹² Finn, *op.cit.*, 2002.

¹³ Helen Pate-Bain, 1999, "Effects of Class-Size Reduction in the Early Grades (K-3) on High School Performance," HEROS Inc., <http://www.heros-inc.org/star-hs-p.pdf>.

¹⁴ Krueger and Whitmore, 2002, *op.cit.* Krueger and Whitmore also show that students who were in smaller classes in the early grades later exhibit lower criminal and teen pregnancy rates as well.

¹⁵ Alex Molnar, et.al., "1999-2000 Results of the Student Achievement Guarantee In Education (SAGE) Program Evaluation," December 2000, Center for Education Research, Analysis, and Innovation, University of Wisconsin-Milwaukee. <http://www.uwm.edu/Dept/CERA1/documents/cera1-00-34.html>

¹⁶ There are now at least six controlled studies in California that show that students who were placed in smaller classes showed significant achievement gains over those who remained in larger classes. See Brian Stecher and George Borhnstedt eds., CSR Research Consortium, Technical Report, 2002; p. 72; http://www.classsize.org/techreport/year3_technicalreport.pdf; Christopher Jepsen and Steven Rivkin, "Class Size Reduction, Teacher Quality, and Academic Achievement in California Public Elementary Schools," Public Policy Institute of California, 2002, esp. p.48, figure 4.3; http://www.ppic.org/content/pubs/R_602CJR.pdf; Harold Urman, "The Effects of Class Size Reduction on Students' Achievement, English Proficiency Designation, Retention in Grade, and Attendance," Vital Research, July 2000; Penny Fidler, "The Impact of Class Size Reduction on Student Achievement," Los Angeles Unified School District, Publication No. 109, September 7, 2001, http://www.lausd.k12.ca.us/lausd/offices/perb/files/reports/CSR_22702.pdf; Penny Fidler, "The Relationship Between Teacher Instructional Techniques and Characteristics and Student Achievement in Reduced Size Classes," Los Angeles Unified School District, Publication No. 120, March 2002; Julian R. Betts et.al., *Determinants of Student Achievement: New Evidence from San Diego*, Public Policy Institute of California, 2003, http://www.ppic.org/content/pubs/R_803JBR.pdf. For more on what the evidence from California shows about the efficacy of smaller classes, see http://www.classsizematters.org/Ca_fact_Sheet_-_10.03.doc

¹⁷ David Grissmer, et.al., *Improving Student Achievement: What State NAEP Test Scores Tell Us*, RAND, 2000, available at www.rand.org/publications/MR/MR924/

Although there has been no experimental study carried out on class size reduction in the middle and upper grades similar to the STAR study, there are a large number of studies which show that smaller classes in these grades are also correlated with higher student success and rates of achievement. See "The importance of class size in the middle and upper grades," Class Size Matter fact sheet (Exhibit 1hereto).

Two of these studies are most instructive: In an analysis of more than 200 school districts, researcher Harold Wenglinsky of the Educational Testing Service concluded that smaller classes were correlated with a significantly higher level of achievement for fourth and eighth graders. In the eighth grade, smaller classes were also associated with a much improved "school social environment", as measured by factors such as better attendance and less school vandalism.¹⁸

An authoritative study put out by the US Department of Education looked at the achievement levels of students in 2,561 schools across the nation, as measured by their performance on the NAEP exams.¹⁹ The data included at least 50 schools in each state, including those from large and small, urban and rural, affluent and poor areas.

After controlling for student background, the only objective factor that was found to be correlated with higher student success was class size, not school size, not teacher qualifications, nor any other variable that the researchers could identify. ***What was perhaps even more striking is that these achievement gains were more strongly correlated with small classes in the upper rather than the lower grades.***²⁰

Smaller classes have also been shown to have a host of other benefits. Researchers in Wisconsin, California and New York have found that reduced class size leads to more parent volunteers in the classroom, and more parental involvement overall. Teachers

18 Harold Wenglinsky, "When Money Matters," Educational Testing Service, 1997; <http://www.ets.org/research/pic/wmm.pdf>

19 Donald McLaughlin and Gili Drori, School-Level Correlates of Academic Achievement: Student Assessment Scores in SASS Public Schools, U.S. Department of Education, 2000. <http://nces.ed.gov/pubs2000/2000303.pdf>

20. See also Francine M. Deutsch, "How Small Classes Benefit High School Students," National Association of Secondary School Principals Bulletin, Vol. 87, no. 635, June 2003. Some of the other studies that show a correlation between smaller class size and higher student achievement in the middle and upper grades include: R. F. Ferguson, "Paying for public education: New evidence on how and why money matters," Harvard Journal on Legislation, 1991, 28 (2): 465-498. (*for grades 1-7*); M. Boozer and C. Rouse, "Intraschool Variation in Class Size," NBER working paper #334, 1995 (*for grades 8-10*); R.F. Ferguson, & H.F. Ladd, "How and why money matters: An analysis of Alabama schools" in: H.F. Ladd (Ed.), Holding Schools Accountable, Brookings Institution, 1996; (*for grades 4-9*) and Steven G. Rivkin, Eric A. Hanushek and John F. Kain, "Teachers, schools, and academic achievement," October 2001 (*for grades 4-5*). For studies from Canada and Great Britain that show these effects of smaller classes in the secondary grades, see Douglas Willms and A.C. Kerckhoff, "The Challenge of Developing New Social Indicators," Educational Evaluation and Policy Analysis, 1995, 17, 113-131. Also G. Frempong and D. Willms, "The Importance of Quality Schools" in: J. D. Willms (Ed.), Vulnerable Children: Findings from Canada's National Longitudinal Survey of Children and Youth, 2002.

explain that this results from their ability to keep in closer communication with parents about their children's educational progress and needs.²¹

In the New York City Chancellor's District, composed of low-achieving elementary schools where class sizes in all grades were reduced to 20 or less, not only did test scores rise, but special education referrals also declined sharply.²²

B. Smaller Classes Enhance Safety and Lower Dropout Rates

As the Educational Testing Service study suggests, behavior problems are also significantly reduced in smaller classes. In California, students were less disruptive in smaller classes.²³ In Burke County, North Carolina, disciplinary problems declined by more than 25% after class size reduction occurred.²⁴ In a national survey, 62% of teachers say that overcrowding and overly large class sizes are important contributors to discipline problems in schools.²⁵

²¹ For California, see Cathleen Stasz, et.al., "Teaching Mathematics and Language Arts," p. 67 in: Brian M. Stecher and George W. Bohrnstedt eds., *Class Size Reduction in California: Findings from 1999-00 and 2000-01*, February 2002; www.classize.org. For Wisconsin, see Alex Molnar et al, 2000-2001 Evaluation Results of the Student Achievement Guarantee in Education (SAGE) Program, p. 132 -139; <http://www.uwm.edu/Dept/CERA1/documents/sage/cerai-02-01.pdf>. For New York City, see Leonie Haimson. "Smaller is Better: First-hand Reports of Early Grade Class Size Reduction in NYC Public Schools." Educational Priorities Panel, 2000; http://www.edpriorities.org/Pubs/Report/Report_Smaller.html

²² Institute for Education and Social Policy, New York University, "Virtual District, Real Improvement: A Retrospective Evaluation of the Chancellor's District, 1996-2003," June 2004.

²³ See Stasz, et.al., p. 67 in: Brian M. Stecher and George W. Bohrnstedt eds., op. cit. 2002; http://www.classize.org/techreport/year3_technicalreport.pdf. See also Executive Summary, the 1998-99 Evaluation findings. <http://www.classize.org/summary/98-99/> In New York City, a principal in East Harlem reported that disciplinary referrals dropped 60% in her school in one year the first year they instituted smaller classes in the early grades. Leonie Haimson., Ibid., http://www.edpriorities.org/Pubs/Report/Report_Smaller.html This same school, PS 198, was profiled in an article in the NY Daily News, as having increased the number of students reading at grade level from 23% to 69% - a turnaround that its principal attributed specifically to the class size reduction program at her school. Alison Gendar, "Fearing gov's math: Adds up to return of larger classes, parents worry," Daily News, February 13, 2003, <http://www.nydailynews.com/02-13-2003/news/local/story/59326p-55569c.html>

²⁴ Paula Egelson, Patrick Harman and Charles M. Achilles. 1996. *Does Class Size Make a Difference? Recent Findings from State and District Initiatives*. Washington, DC: ERIC Clearinghouse. ED 398644 and SERVE, <http://www.serve.org/publications/DCS.pdf>. See also Harold Wenglinsky, "When Money Matters," ETS, 1997, on the connection between smaller class size and lower rates of student violence. <http://www.ets.org/research/pic/wmm.pdf>

²⁵ Only 3 in 10 teachers think assigning armed police officers to patrol the most troubled schools would be very effective solution. Public Agenda, "Teaching Interrupted: Do Discipline Policies in Today's Public Schools Foster the Common Good?" 2004. http://www.publicagenda.org/research/pdfs/teaching_interrupted.pdf

Since smaller classes foster greater academic and social engagement, they also lead to lower dropout rates.²⁶ A recent statistical analysis using data from the National Center for Education Statistics reveals that in school districts across the country, the best graduation rates are found where teacher-student ratios are highest, particularly among minority students. See "High School Graduation Rates by Student-Teacher Ratio" NEA analysis from NCES Common Core data, 2000-2001 (Exhibit 2 hereto). This finding has been confirmed by a host of additional studies.²⁷

C. Smaller Classes Improve Teacher Morale, Retention and Quality

Reducing class size improves teacher morale, because less time is spent on discipline and classroom management, enabling teachers to focus more on learning and individualized instruction. Overly large classes are frequently cited by teachers as one of their major impediments to success.²⁸

Smaller classes have also helped to improve the supply of qualified, experienced teachers, particularly in high-needs schools, by making it less likely that teachers leave the profession after only a few years, or move to other school districts where working conditions are easier. In California, class size reduction led to significantly improved rates of teacher retention statewide. Smaller classes in California also led to much lower rates of teacher migration, especially in schools with 30% or more low-income students.²⁹

Like many other school districts that serve a primarily poor and minority student population, New York City schools have a very high rate of teacher turnover³⁰. The two-year attrition rate for our teachers is 25%, with 18% of them departing in their first year, compared to a national rate of ten percent. A survey undertaken by the New York City Council revealed that more than 25% of mid-career teachers (with 6-24 years

²⁶ Russell W. Rumberger, *Why Students Drop Out of School and What Can Be Done*, 1-3 (Presented at the Conference on Dropouts in America, Harvard University, January 13, 2001);

²⁷ Other studies that show a significant correlation between lower dropout rates and lower student-teacher ratio include: R.W. Rumberger, "Dropping out of middle school: A multilevel analysis of students and schools," *American Educational Research Journal*, (1995). 32, 583-625. R.W. Rumberger & S.L. Thomas, "The distribution of dropout and turnover rates among urban and suburban high schools," *Sociology of Education*, (2000).73, 39-67; R.B. McNeal, "High school dropouts: A closer examination of school effects." *Social Science Quarterly*, (1997b).78, 209-222. Teacher-student ratio is not the same thing as class size, but given the lack of studies that examine the relationship between class size and dropout rates, it is an acceptable proxy for these purposes.

²⁸ See Jeffrey Weld, "Beyond the Salary Carrot" *Education Week*, June 3, 1998; http://www.edweek.org/ew/ew_printstory.cfm?slug=38weld.h17

²⁹ Class Size Reduction Consortium, "What We Have Learned About Class Size Reduction in California," Technical Appendix http://www.classize.org/techreport/CSRYear4_appxfin.pdf. see especially Table C6 -- showing that by 1999-2000 teacher migration rates were at 4.8%, almost a full percentage point lower than the pre-CSR era of 5.7%, and Figure C11, which shows that the drop in migration rates has been sharpest in schools serving low-income students. For the rise in teacher retention rates overall, see figure C20, on C-29.

³⁰ New York City Council Investigation Division, Report on Teacher Attrition and Retention, May 2004; http://www.nycouncil.info/pdf_files/reports/teachersal.pdf

experience) and nearly 30% of newer teachers (with 1-5 years experience) report that they will likely leave the city public school system within the next three years. For these two groups, providing smaller classes is one of the top three reforms that they say would cause them to consider remaining longer in their jobs.³¹

Indeed, when teachers are surveyed throughout the country, they respond that the most effective way to improve the quality of teaching is to lower class size, far above all other methods.³²

Another way in which smaller classes leads to more effective teaching relates to the finding that in large classes, the racial disparity between teachers and students can contribute to a wider achievement gap. A recent analysis of the Tennessee STAR data showed that both white and black students did better when they were randomly assigned to teachers of their same race. According to this study, students performed better every year they taught by a same-race teacher, and these benefits were cumulative; others fell further behind every year that they had a teacher of a different race. Yet for black and white students who were assigned to a smaller class, the race of their teacher no longer made a significant difference in terms of their achievement. Instead, all of them learned more in small classes, no matter what their teachers' racial background.³³ See also, Michael Winerip, "Good Teachers + Small Classes = Quality Education," The New York Times, May 26, 2004 (Exhibit 3 hereto).

Teachers gain greater feedback from their students in smaller classes, as well as vice versa. This allows them to modify their teaching styles to the needs of their individual students, as well enabling them to adjust their classroom techniques over the course of the year to best keep their students focused and engaged. In a national survey, principals responded that reducing class size is the best way to improve the quality of teaching, over increasing teacher salaries or introducing merit pay.³⁴

³¹ Id. For both new and mid-career NYC teachers, the conditions they say would most likely to entice them to stay in their jobs longer were a higher salary, smaller classes, and better discipline and safety. As we see above, smaller classes also lead to better discipline.

³² The national survey of teachers with 1-5 years of experience found that 86% responded that class size is a very effective way to improve teacher quality, far outstripping any other reform, including providing more professional development (57%), requiring a major in their subject (59%), or increasing salaries (52%). The survey also found that 99% of teachers believe that reducing class size is an effective way to improve teacher quality (combining the categories "very effective" and "effective.") Public Agenda, *A Sense of Calling: Who Teaches and Why*, 2000; <http://www.publicagenda.org/specials/teachers/teachers3.htm>

³³ For the full analysis, see Thomas Dee, "Teachers, Race, and Student Achievement in a Randomized Experiment," *The Review of Economics and Statistics*, Volume 86, Issue 1, February 2004; available at <http://www.educationnext.org/unabridged/20042/dee.pdf>

³⁴ Public Agenda, "Rolling Up Their Sleeves: Superintendents and Principals Talk About What's Needed to Fix Public Schools," 2003; http://www.publicagenda.org/research/pdfs/rolling_up_their_sleeves.pdf. New York City business leaders agree that smaller classes have a high importance in student learning, according to 79% of respondents overall. Zogby International, "The Role Of The Private Sector In Evaluating New York City Public Schools," <http://www.pencil.org/publicschools/CFS%20Final%20wZogby.pdf>

D. Efforts to Reduce Class Size in Other States and Localities

Class size reduction has now been successfully implemented in 30 states across the country, according to Education Week, and many localities.³⁵ We would like to call the attention of the Panel and the Court to a few of the most noteworthy of these programs.

Since 2000-2001, the Montgomery County Public School District in Maryland has reduced class size in grades K-3 to no more than 15 students. When those children who had been in smaller classes since kindergarten reached 2nd grade, the first year they were tested, they scored at some of the highest levels seen in the nation, according to the district's accountability office. The district's high-needs students saw the greatest improvements, with "consistent and, in some cases, extraordinary gains by African American students, Hispanic students, poor students, special education students, and those learning English as a second language."³⁶

Second graders at the 17 highest poverty schools in the district as a group scored at and above the 50th percentile in all five subject areas tested, for the first time – helping to propel the district as a whole to the 83rd percentile nationally. The largest gains were made by African American and Hispanic second graders, who narrowed the achievement gap with their classmates in reading, language, and mathematics.³⁷

This past spring, when this same cohort reached third grade, the students who had been in smaller classes since Kindergarten outpaced those in all other grades in their assessments. Again, the improvements were especially large in the highest poverty schools, where gains were twice the average for the district as a whole. Also, the greatest gains were made by African American and Hispanic students, with 64.5% of African American third graders reaching proficiency in reading and a 62.8% in math. Hispanic students attained a proficiency rate of 59.7% in reading and 64.8% in math.³⁸

Even more impressive were the achievement gains made by English language learners, students with disabilities, and high-poverty students. Among those students who

³⁵ Education Week, "Quality Counts 2004: Building Blocks for Success," the annual 50-state report card on public education. The section on class size can be found at <http://www.edweek.com/sreports/qc04/reports/climate-t1f.cfm>

³⁶ Montgomery County Public Schools, "Kindergarten Reform Effort's First Class Reaches Grade 2 as Students Achieve Notable Gains, Narrow Academic Gaps." May 30, 2003; <http://www.mcps.k12.md.us/info/CTBS2003/reformgains.shtml>

³⁷ Ibid. Hispanic students increased in four of the five subject areas on the CTBS, African American students increased in three of the five areas. According to Dr. Jerry D. Weast, superintendent of Montgomery schools, "This is an important accomplishment given that the demographic make-up of this year's second grade students tested continued to grow in size and reflected the substantial growth of academically at-risk students, including a 32-percent increase in English language learners tested in Grade 2 since last year alone."

³⁸ See MCPS, "Third Graders Lead County Progress on State Assessments," June 15, 2004; available on the MCPS website at <http://www.mcps.k12.md.us>. See also MCPS Office of Shared Accountability, "Results of the 2004 Administration of the Maryland School Assessment in Grades 3, 5, 8, and 10," 2004, <http://www.mcps.k12.md.us/info/pdf/2004MSAReport.pdf>

received free and reduced-price meals (FARMS). 57.4% achieved proficiency in reading and 60.1% in math. Immigrant students in the ESOL category (for English for Speakers of Other Languages) achieved a proficiency rate of 43.2% in reading, and 52.7 % in math. For the first time, the majority of third grade students receiving special education services achieved proficiency: 53.2% in reading and 51.1% in mathematics—the highest levels of achievement among special education students at any grade level. See “Montgomery Co. student gains,” Data source: Montgomery County Public Schools. (<http://www.mcps.k12.md.us/info/CTBS2003/charts.shtm>)(Exhibit 4 hereto).

Starting in 2001, North Carolina has reduced class size in all grades for its lowest performing schools, to an average of 15 students in grades K-3, 17 students in grades 4-8, and 20 students in grades 9-12. This was implemented both to improve student achievement, as well as to improve teacher recruitment and retention at these same schools.³⁹

A statewide survey of teachers and administrators was carried out to find out what would be the most effective measure to attract teachers to work in low-performing schools. The number one response was lowering class size, with 83.7% of teachers and 83.1% of administrators replying that this would be an effective incentive, outstripping any other proposal, including providing salary enhancements.⁴⁰

Since the North Carolina class size reduction program began, student achievement has risen significantly, and the achievement gap between racial and ethnic groups has narrowed.⁴¹ The improvements due to smaller classes were seen in many other areas as well, including improved classroom discipline. Charlotte-Mecklenburg, the state's largest school district, significantly outperformed every other urban school district tested in the nation, in both reading and math, in its recent NAEP assessments.⁴²

³⁹ More information on North Carolina's class size reduction programs can be found in the SERVE publication, “How Class Size Makes a Difference,” 2002; <http://www.serve.org/publications/HCSMAD.pdf>.

⁴⁰ For the full results of North Carolina ABC survey of teachers and administrators, see <http://www.ncae.org/news/abcsurvey/abcsurvey.shtml>

⁴¹ Metis Associates, “First Annual Evaluation Report of the High Priority Schools Initiatives 2001-2002 and 2002-2003.” (Sept 2003), commissioned by the North Carolina Department of Public Instruction. It shows that by the end of year 2, all of NC's high priority (high poverty and lower performing) schools were successful in realizing their achievement growth expectations, and showed significantly greater numbers of students at or above grade level in reading and math than comparison schools. The improvements due to smaller classes were seen in many other areas as well, including improved classroom discipline. See also the NC public schools website, showing that progress has continued, with achievement gaps among different racial groups narrowing across all groups in 2003-04. (<http://www.ncpublicschools.org/abcs/03-04/pressrelease.html>)

⁴² National Center for Education Statistics, “The Nation's Report Card: Trial Urban District Assessment, Reading Highlights 2003, December 2003; <http://nces.ed.gov/nationsreportcard/pubs/dst2003/2004459.asp> and “The Nation's Report Card: Trial Urban District Assessment, Mathematics Highlights 2003,” December 2003; <http://nces.ed.gov/nationsreportcard/pubs/dst2003/2004458.asp>

Since 1990, the Minneapolis school district has used a dedicated surcharge on the city's property tax to reduce class size, with the goal of achieving class sizes of 19 in grades K-2, 25 in grades 3-8, and no more than 26 students in high school.⁴³

More than 79% of all students who had seven or more years of lower class size scored at or above grade level in reading, compared to 53.5% who had 1-3 years of lower class size, and 42.3% who had no years of small classes. Similar gains were noted in math. The achievement gains, particularly among black and Hispanic students, have been impressive, with an approximate doubling of pass rates among black and Hispanic students who had the benefit of smaller classes for seven or more years. See "Minneapolis Public Schools student gains by ethnicity and years in reduced class size," Data source: Minneapolis Public Schools (Exhibit 5 hereto).

In 1998, the New Jersey Supreme Court mandated class sizes no larger than 21 for grades K-3, 23 for grades 4-5, and 24 for grades 6-12 for its state's low-performing schools. *Abbott v. Burke V*, 153 N.J.480, 710 A.2d 450 (1998) ("Abbott V"). The size of reading classes in grades 1-3 was reduced even further, to 15 students per class; 15 was also the size of remedial classes ordered for low-performing students in other grades.⁴⁴ These class sizes, along with other reforms ordered by the court, have been followed by significant improvements in student achievement in these school districts over the past five years.⁴⁵

Finally, in November 2002, Floridians approved a referendum to amend their constitution to require smaller classes in all grades. The constitutional amendment calls for gradual reductions in class size over the course of the next eight years, requiring each district

⁴³ Information on the Minneapolis class size reduction program can be found on the MPLS website at http://www.mpls.k12.mn.us/Benefits_of_Reduced_Class_Size.html

⁴⁴ See also "Abbott Standards-Based Education Supported by Parity Funding," Education Law Center, <http://www.edlawcenter.org/ELCPublic/AbbottK12Program/StandardsBasedEducation.htm>; and "History of Abbott," Education Law Center, <http://www.edlawcenter.org/ELCPublic/AbbottvBurke/AbbottHistory.htm>

⁴⁵ In 1999, 66.2% of Abbott students scored in the lowest category in the language-arts section of the NJ standardized tests. In 2002, this percentage was cut nearly in half, to 37.2%, reducing the gap between Abbott and non-Abbott districts from 36.6 points to 20.7 points in three years. See "A promise to schools that must be upheld," Philadelphia Inquirer, June 18, 2003. Since then, achievement gains in the Abbott districts have continued, with some school administrators specifically citing smaller classes as key: See "Report Card Hits and Misses," New Jersey Journal, March 4, 2004; and "Urban schools' successes draw interest from all over," Newark Star-Ledger, March 04, 2004. In 2004, for the first time, a majority of Newark fourth-graders were found to be proficient in both language arts and math, and in elementary grades, 62 percent passed in language arts and 54 percent in math. See "Newark and Jersey City test scores rise," Newark Star-Ledger, June 22, 2004; http://www.edlawcenter.org/ELCPublic/elcnews_040622_test_scores_rise.pdf For more evidence on the achievement gains in the Abbott school districts since 1999, see Education Law Center, "Abbott Schools 2002 Achievement Gains," http://www.edlawcenter.org/ELCPublic/AbbottK12Program/Abbott_Achievement_Gains.htm and "Benchmarks: The Quarterly Newsletter of the National Clearinghouse for Comprehensive School Reform," Volume 4, Issue 4 Fall 2003; <http://www.goodschools.gwu.edu/pubs/bench/benchfall03.pdf>

throughout the state to shrink classes annually, until classes contain no more than 18 for grades pre-K-3, 22 for grades 4-8, and 25 in high school.

The guidelines are designed to be flexible, with class size averages calculated in stages: first averaged by district, then by school, and finally, capped in each individual classroom. For the first year of implementation, despite rapidly growing student enrollment, the state has successfully complied with the plan with minimal disruption, and most districts across the state have lowered average class size by two students in all grades.⁴⁶ Statewide surveys show that the Florida class size limits are even more popular among voters than when they first passed, and though it is too early to demonstrate academic results, last winter the Florida School Boards Association voted to "vigorously support" the class size amendment by a 66-14 vote.⁴⁷

POINT II

PROPOSALS TO REDUCE CLASS SIZE

A. New Yorkers for Smaller Classes Proposals to Reduce Class Size

If New York City students are to have an adequate chance to succeed, our class sizes must be significantly reduced in all grades and in all schools. To ensure that every student receives the benefits of smaller classes, we need to achieve not merely smaller class size averages across the city, but eventually, in each district, school and classroom as well. In order to minimize disruption to the system as a whole, these reductions should be phased in gradually over a period of years, as is presently occurring in Florida. Like that state's class size reduction program, the implementation should be flexible to start, and become increasingly strict over time.⁴⁸

Average class sizes should first be imposed system wide, then at the district or regional level, then at the school level and finally in each classroom. As to specific class size goals, we have developed two such compliance plans for the court to consider. The first plan provides optimal limits for class size to ensure that our high-needs students receive

⁴⁶ Fifty of Florida's 67 school districts were able to fully comply with the class size limits in every grade in the first year of implementation, according to the Florida Department of Education. ADD This is despite the fact that in many parts of the state, the student population was rising by up to 10% at the same time. In contrast, in NYC, enrollment is declining. Associated Press, "Most School Districts Complying With Class Reduction Standards," Feb 5, 2004. See also AP story, "State tells Senate: Class size compliance way better than thought," Feb 6, 2004;

http://www.naplesnews.com/npdn/florida/article/0,2071,NPDN_14910_2633293

⁴⁷ The latest poll results show that Florida residents favor the program by 43-29%, an extremely high level of support given the large number of retirees in the state without children or grandchildren in the public schools. See Associated Press, "Floridians want class size amendment to stay," March 1, 2004; <http://www.miami.com/mld/miamiherald/news/state/8074919.htm>
See also Associated Press, "School boards give overwhelming support to class-size amendment," Dec. 05, 2003; <http://www.bradenton.com/mld/bradenton/7423871.htm>

⁴⁸ For details on the regulations associated with Florida's class size reduction program, see the Florida Department of Education website at <http://www.firm.edu/doe/arm/class-size.htm>.

the instructional support and attention they require; the second would be the minimum necessary to make certain that they be given at least comparable class sizes and support as students in the rest of the state receive.

1. PLAN A

Our first plan employs the same class size goals for grades K-3 that Montgomery County adopted district wide, and the same goals for all grades that North Carolina has implemented in their high-priority schools, which serve a similar student population as public schools in New York City. In order to ensure that New York City students have an adequate opportunity to succeed, they need to be provided class sizes that are significantly smaller than the average size in the rest of the state.

Class Size Goals

K through 3 rd grade:	classes limited to 15
Grades 4 through 8:	classes limited to 17
Grades 9 through 12:	classes limited to 20

Implementation: 5 years

Reducing average class size by two each year, these goals would take about five years to achieve.

Staffing Cost estimates

We estimate that staffing costs would require approximately \$230 million per year, reaching \$1.15 billion annually after five years, plus additional costs at a much lower level to achieve school- and classroom-specific reductions.⁴⁹

Rationale

Research shows that high-needs students, especially those who are poor, minority and/or English Language Learners, require substantially greater resources and smaller classes than average students to receive an adequate education.

The expert testimony in the case recognized that smaller classes, below the state goal of 20 and the federal goal of 18 students per class, would be appropriate for New York City's at-risk students, especially since the research unambiguously supports the proposition that class size matters most for this population.⁵⁰

Justice DeGrasse specifically held that students who enter the public schools with substantial socioeconomic deficits are constitutionally entitled to "an expanded platform

⁴⁹ The calculation was done by using the present-day average starting teacher salary of \$55,400 including benefits, a current average class sizes of 22 in K-3rd grade, 25 in upper elementary, 27 in middle school and 29 in high school, and general education teacher counts as used by DOE's Bureau of Operations and Review. It also includes coverage, i.e. the costs of providing 1.2 teachers for every additional classroom teacher hired. Over time, the estimated costs are likely to increase, given higher starting salaries.

⁵⁰ See CFE Tr: 1394:8-1396:22 (Evans-Tranumn); 2277:16-2279:5, 2286:17-2287:2 Spence; 315:22-316:11 (Cashin); 1072:22-1073:22 (Sobol); 1622:16-1623:8 (Kadamus); 7768:7-22 (Fink); 7965:23-7966:7 (Finn); 10066:21-10067:12 (Casey); 11399:3-11 (Sanford); 13716:5-13717:6 (Santandreu); 15971:20-23 (Hanushek). See also Pub. L. No. 106-113, 113 Stat. 1501, 1501A-263 (1999); N.Y. Educ. L. § 3602.

of programs,” to put the opportunity for a sound basic education “within their reach.” CFE Trial at 115.

The Court also recognized that New York City schools have the highest student needs in the State. According to recent data, approximately 82% of New York City students qualify for free or reduced price lunch, compared to 35% in the rest of the State. Fourteen percent of public school students in New York City are Limited English Proficient, compared to 1.2 % for the rest of the State; and 30% of the City’s students meet the Federal definition of poverty, compared to a 12% for the rest of the State. See, “Plan of the City of New York to Provide a Sound Basic Education to all its Students,” August 25, 2004 at 6 (“City Plan”); and “Brief of the City of New York”, September 10, 2004 at 6 (“City Brief”).

The Court of Appeals approved the trial court’s holding that the opportunity for a sound basic education must “be placed within reach of all students,” CFE II at 24, and that resources should be “calibrated to student need” Id. At 15. Just as the Court concluded that New York City was entitled to a greater share of resources than its share of the population, since “under Levittown and CFE, plaintiffs have a right not to equal State funding but to schools that provide the opportunity for a sound basic education,” Id. at 34-5, so too should New York City’s “at risk” student population be provided with significantly smaller classes in all grades than the state average in order to have a meaningful chance at a high school education. Id. at 49-50.

Accordingly, Plan A proposes class size goals that are lower than those that presently exist in the state’s public schools outside New York City. Our proposed class sizes are smallest in the early grades, where research indicates that the need for intensive instructional support is greatest, particularly among poor and minority children.⁵¹

As noted above, our proposed class size goals are those deemed necessary by North Carolina educators to provide an adequate education and retain experienced teachers in their high-needs schools, and their implementation has had a notable effect in improving student achievement and narrowing the racial and ethnic achievement gap. Moreover, our proposed high school class sizes of 20 are what the National Council of Teachers of English recommends as a maximum size for high school English classes.⁵² Twenty is also the recommended class size for the “Ramp up” programs for high school students

⁵¹ In New York State as a whole, class size averages range from 19.5 for Kindergarten to 22-24 in the other elementary, middle and high school grades. These averages include New York City schools. For New York State outside of the largest five urban districts, class sizes average 18.8 for Kindergarten, and 21-22 for first grades through high school. See Table 2.9, appended. The other cities included in the Big five school districts, along with New York City, are Buffalo, Rochester, Syracuse and Yonkers. NYSED, Chapter 655 Report, Volume 1, p. 34, Table 2.9 for class size averages in selected grades and courses, with NYC compared to other areas in the state.
<http://www.emsc.nysed.gov/irts/655report/2003/volume1-2003/655report-volume1.pdf>.

⁵² National Council of Teachers of English, “Statement on Class Size and Teacher Workload: Secondary,” prepared by the NCTE Secondary Section, 1990;
<http://www.ncte.org/about/over/positions/category/class/107623.htm>

in literacy and math, developed by the National Center for Education and the Economy and implemented in New York City schools.⁵³

In the CFE case, the plaintiffs commissioned a series of panels of educators, known as the Professional Judgment Panels. These educators, drawn from districts throughout the state and esteemed in their fields, concluded that much smaller classes in all grades would be necessary to ensure that students in New York City could receive an adequate education.⁵⁴ The educators on the Professional Judgment Panels recommended much smaller classes in high poverty schools, with class sizes in the elementary grades that average 14 students, in middle school grades 22.6 students per class, and in high school 18.4 students per class.⁵⁵

Their class size proposals, similar to ours, formed the basis of the CFE costing-out study that, in turn, was the foundation for the additional \$4.46 billion in 2001-02 dollars that the plaintiffs now argue should be awarded the city to improve its schools.⁵⁶ Thus, the staffing costs for our class size proposals should be clearly affordable within this level of funding as well.

2. Plan B

Class Size Goals

K through 3rd grade: classes limited to 18

Grades 4 through 8: classes limited to 22

Grades 9 through 12: classes limited to 25

⁵³ Personal communication from Judy Aaronson, Deputy Director, National Center on Education and the Economy, September 2, 2004.

⁵⁴ American Institutes for Research and Management Analysis and Planning, Inc., “The New York Adequacy Study: Determining the Cost of Providing All Children in New York an Adequate Education,” Volume 1 – Final Report, March 2004; See appendix; also Exhibit 2-10, and pp. 33-34.
<http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf>

⁵⁵ The PJP recommendations on class size differ substantially from ours only in the middle grades, where theirs are larger by 5.6 students per grade than the class size averages we propose, since we believe that they underestimate the need for close academic and personal support during these years, as well as how critical this period is as a “turning point,” ensuring that children do not fall behind and eventually drop out when they reach high school. ADD The PJP panelists also maintained that unlike during the elementary and high school years, middle school students of a high poverty and immigrant status did not require smaller classes than schools with students of an average socioeconomic background, “because of the fairly generic nature of the middle school curriculum.” Instead, they added more specialists and counselors instead to their model. We would argue otherwise – that the academic and social needs of students are best addressed in the regular classroom, and that these needs are especially keen among poor and minority students, who otherwise tend to become disengaged from their studies and fall behind in achievement during just these very years.

⁵⁶ American Institutes for Research and Management Analysis and Planning, Inc., “The New York Adequacy Study: Determining the Cost of Providing All Children in New York an Adequate Education,” Volume 1 – Final Report, March 2004; <http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf>
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Implementation: 5 years

By reducing class size by one on average for each grade each year, these goals could be reached on average after five years.

Staffing Cost estimate

We estimate that this proposal would cost approximately \$115 million per year for staffing to achieve system wide averages, after five years reaching \$575 million. Limiting each class would require further investment, as in Plan A, but the additional cost would be considerably below \$115 million.

Rationale:

This plan provides the maximum class size limits that could possibly be deemed acceptable, given that these classes are close to the average sizes in the rest of the state outside New York City. If our students are to receive an adequate education, their classes must be at least as small as those afforded students in the rest of the state, where levels of poverty and immigrant status are much lower.

Our proposals differ from the statewide averages only by being somewhat smaller in grades K-3, and somewhat larger in high school. This reflects the professional consensus that the lowest class sizes should be afforded children early on to ensure that they produce the maximum educational benefits. These goals are also quite close to those recommended by the plaintiffs' Professional Judgment Panel for schools with an "average" student population, in order to provide an adequate education (34.2% students eligible for free and reduced-price lunch).⁵⁷

Finally, these class size goals are also close to those that the New Jersey Supreme Court ordered in Abbott V in 1998.⁵⁸

3. Facility needs

Along with the staffing costs, there would of course be substantial capital costs with either Plan A or Plan B, to provide sufficient classroom capacity for smaller classes in all grades. Expert consultants hired by the plaintiffs have made such estimates for slightly different class size goals, and these estimates are entered into the evidence before the court, as the CFE "Bricks" proposal. In this report, the expert consultants concluded that reducing class size to 20 in grades K-5, 23 in grades 6-8 and 24 in high school would cost approximately \$2.72 billion above the current NYC five year capital plan for schools.⁵⁹

⁵⁷ For these schools, the PJP panel recommended a class size of 15.7 students in the elementary grades, 22.6 students in the middle grades, and 24.3 students in high school. AIR and MAP Inc., op. cit., Vol I, March 2004; Exhibit 2-10, and pp. 33-34.
<http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf>

⁵⁸ See above, p. 11.

⁵⁹ Campaign for Fiscal Equity, Inc., Sound Basic Education Task Force, "Ensuring Educational Opportunity for All, PART II. Adequate Facilities For All: Reforming New York State's System for Providing Building Aid to School Districts and for Meeting Schools, Urgent Capital Needs," April 13, 2004, p.46; <http://www.cfequity.org/finalbuildingaidproposal.pdf>

CFE Brick's proposal:

K-3 class size reduction to 20: 28,014 seats. (Included in city's capital plan)

4-5 class size reduction to 20: 1,897 seats. Cost of \$108.92 million

6-8 class size reduction to 23: 230 seats. Cost of \$14.86 million

9-12 class size reduction to 24: 50,662 seats. Cost of \$2.60 billion

Assuming that the funding for this expansion would be bonded and amortized over a 30-year period, at a current interest rate of 5%, the total annual cost over and above the current city's capital plan would be about \$180 million for the facilities to reduce class size to these levels.

The facilities cost for Plan B in our proposal would be comparable to this amount.⁶⁰ Even within the city's current proposed five year capital plan for schools, providing sufficient space for these class sizes would be achievable, if expanding capacity and building new schools were given a higher priority within the plan. As it stands, the current city's capital plan for schools as presently conceived expends more resources, or \$4.6 billion, for "restructuring" schools, than it does towards increasing capacity in order to relieve overcrowding and reduce class size.⁶¹

The facilities cost for Plan A would probably be more than twice as large, or about \$8.8 billion. The annual cost for facilities for Plan A amortized over 30 years would be approximately \$564 million per year. This would require a considerable expansion of the current city's capital plan for schools.⁶² For some suggestions as to how this could be achieved within the overall budget of the city's compliance plan, see below.

B. The City's Compliance Plan for the CFE Funds

On August 25, 2004, the Mayor of New York City and the Department of Education submitted their compliance plan, detailing how they would spend an additional \$5.3 billion in annual operating aid from the state, which they argued the city should receive as a result of the CFE case. See City Plan. Yet they completely omitted addressing in their plan one of the key constitutional deficiencies identified by the court, namely addressing the need to reduce our excessively large class sizes in all grades. ***More specifically, the city's plan would devote a total of only \$117 million out of an estimated \$17 billion in educational spending, or less than 1%, to provide smaller classes for our children.***

⁶⁰ Our rough estimate for the facilities cost for either plan are in 2003 dollars, as is the BRICKs proposal submitted by the plaintiffs in the case.

⁶¹ See City of New York and Department of Education, "Children First Ten-Year Needs Assessment and 2005 – 2009 Five-Year Capital Plan, June, 2004; <http://www.nycsca.org/pdf/doed5yearplan.pdf>.

⁶² The CFE report, "Reforming New York State's System for Providing Building Aid to School Districts and for Meeting Schools' Urgent Capital Needs" op. cit. estimates that to achieve class sizes of 16 in grades K-5, the capital costs would be an additional \$4.172 billion. See footnote 26, p.29; <http://www.cfequity.org/finalbuildingaidproposal.pdf>

Interestingly, both of the city's current proposals on class size were originally made long before their submission to this court, with or without the additional operating aid from CFE. The city's proposal to reduce class size to 20 in grades K-3 over five years was first announced in November 2003, in reference to its capital plan. And in the spring of 2003, DOE officials promised to limit class size to 28 in middle grades starting the following fall, as part of the "Children First" plan, but then they failed to follow through with this proposal or actually fund it.⁶³

Moreover, while the new compliance plan submitted by the city would spend \$51 million of CFE funds to hire 859 new teachers to lower class size in grades K-3 to 20, it includes no additional classroom teachers to reduce class size in either grades 4-5 or in high school, where class sizes are often 32 and above. In grades 6-8, class sizes could still contain as many as 28 students.⁶⁴

The middle school class size limit of 28 compares to a statewide average of 21-22 outside of New York City, and is far too large for the average middle school student, no less those with a high poverty and/or immigrant background, to receive sufficient classroom attention during these crucial years.⁶⁵

Most importantly, the city's plan blatantly ignores that it was not merely the method of funding that the Court identified as requiring reform; it was the actual conditions of overcrowding and overly large classes in all grades that existed then and continue to this day that were acknowledged by the Court to violate our children's constitutional right to a sound basic education.

Finally, the constitutional standard for a sound basic education in this case, as defined by the Court of Appeals, was the opportunity to receive "a meaningful high school education." CFE II at 916. By no standards does the city's plan afford our students with the opportunity to receive "a meaningful high school education," with class sizes in high school that are often 34 or more, with ten to fourteen more students per class than schools in the rest of the state provide.⁶⁶

Our high schools here in New York City are in crisis, with dropout rates of over 50%, and with four year graduation rates for black students at about 32% and Hispanic students at 30%.⁶⁷ ***Given these deplorable statistics, the city's refusal to address the need to***

⁶³ See Independent Budget Office, "Despite Free Space in some Middle Schools, Many Packed Classrooms", Newsfax no.122, October 31, 2003, available at <http://www.ibo.nyc.ny.us/>.

⁶⁴ 28 students per class was average for NYC 7th grade classes last year, and higher than the average in 6th and 8th, according to figures released by the Department of Education. See NYC DOE Memo from Kathleen Grimm, Deputy Chancellor for Finance and Administration and Rick Stewart, Auditor General, "RE: Update and Clarification of Reported Average Class Size Data," dated May 13, 2004.

⁶⁵ See Ibid., and New York City Department of Education, "Proposed CFE Initiatives: Increased Operating Budget at 5 Year Full Implementation (FY '05)," March 31, 2004.

⁶⁶ According to the latest Mayor's Management Report, last year 1,353 high school classes had more than 34 students. See The Mayor's Management Report, Fiscal 2004: Supplementary Indicator Tables, p. 13. http://www.nyc.gov/html/ops/downloads/pdf/2004_mmr/0904_indicators.pdf

⁶⁷ For NYC's extremely high dropout and low four year graduation rates, see:

alleviate our hugely overcrowded classrooms in these grades should be rejected as entirely unacceptable, or else another generation of students will still be waiting, decades from now, for their right to an adequate chance to learn.⁶⁸

Last year alone, according to the Mayor's Management Report, we had an increase of over 6,000 high school students who were enrolled in General Educational Development (GED) and non-diploma programs, with the number rising from 14,028 to 20,558.⁶⁹ In news accounts, New York City students who have entered such programs observe how these programs are superior to their classes in the public schools, because of the extra support they receive from their instructors. As one student commented to the New York Times last year, "You don't get as much attention in high school as here."⁷⁰

Indeed, a recent survey of school administrators throughout the state revealed that while school districts serving more affluent communities have responded to the more rigorous graduation Regents requirements by reducing class size, those serving higher concentrations of poor students are more likely to direct students to GED programs instead.⁷¹

Rather than providing our students with the smaller classes that they need to graduate from high school, the New York City compliance plan is a grab bag of proposals, with very little accompanying rationale or explanation, and little or no attention given to the central issues in the case. The plan contains numerous suggestions for spending billions of dollars that have no evidentiary basis in either the court proceedings or in research.

The Civil Rights Project at Harvard University, "Losing Our Future: How Minority Youth are Being Left Behind by the Graduation Rate Crisis," February 2004, p.57;
<http://www.resultsforamerica.org/calendar/files/1/Losing%20Our%20Future%20-%20Main%20Report.pdf>.
See also: Christopher B. Swanson, The Urban Institute, "Who Graduates? Who Doesn't? A Statistical Portrait of Public High School Graduation, Class of 2001," February 2004;
http://www.resultsforamerica.org/calendar/files/1/UI_WhoGraduates.pdf
For similar data on a state level, see National Board of Educational Testing and Public Policy, "Education Pipeline in the United States, 1970–2000," January 2004;
<http://www.bc.edu/research/nbetpp/statements/nbr3.pdf>.

⁶⁸ See the recent finding that while school districts in New York serving more affluent communities have responded to the Regents graduation requirements by reducing class size, those serving higher concentrations of poor students are significantly more likely to direct students to programs offering General Educational Development diploma instead. See John W. Sipple and Kieran M. Killeen, "Context, Capacity, and Concern: A District-Level Analysis of the Implementation of Standards-Based Reform in New York State" *Educational Policy*, Vol. 18, No.3, July 2004.

⁶⁹ The Mayor's Management Report, Fiscal 2004: Supplementary Indicator Tables, p. 11.

⁷⁰ See Karen W. Arenson, "More Youths Opt For G.E.D., Skirting High-School Hurdle," The New York Times, May 15, 2004

⁷¹ See John W. Sipple and Kieran M. Killeen, "Context, Capacity, and Concern: A District-Level Analysis of the Implementation of Standards-Based Reform in New York State" *Educational Policy*, Vol. 18, No.3, July 2004.

For example, while investing in only \$51 million to hire 859 classroom teachers to reduce class size to 20 in grades K-3, the compliance plan expends \$21 million to hire 354 new teachers to support its 3rd grade retention policy, and an additional \$287 million to hire 1700 new teachers and 3350 other professional staff for the elementary grades as a whole. This totals almost \$300 million annually to pay for 5,404 new elementary schools teachers and staff, which would significantly inflate the teacher-student ratio without using any of these professionals to lower class sizes.

How all of these additional staff will be spending their time is a bit unclear; the plan mentions that every elementary school would have its own foreign language and science teachers. While this would surely be desirable, neither the evidence in the case nor the research supports the notion that providing foreign language or science teachers in elementary schools should be as high a priority as reducing class size in order to ensure that children in these grades are provided with a sound basic education. Certainly, there is no backing in the court record or in the research that elementary grade teachers for science and foreign languages would have a similar effect in terms of improving student achievement overall or narrowing the achievement gap.

Similarly, while investing only \$60 million in hiring 1,100 new classroom teachers to limit class sizes to 28 in grades 6-8, and taking no steps to lower class size in high school, the city's compliance plan devotes \$391 million to fund several thousand more "safety" and guidance staff in secondary schools, including a "negotiation specialist" in each school. Again, no evidence is presented that this would remedy the central issues in the case, or eliminates the need for smaller classes in order to improve student outcomes. Indeed, as we have already shown, the research suggests that by reducing class size and eliminating overcrowding, safety is considerably enhanced and disciplinary referrals decline.

Taken together, the cost of the additional specialists and other non-classroom teachers provided in the city's elementary and secondary school plans is almost \$700 million per year, sufficient to pay the entire staffing costs of Plan B at full implementation, and more than half of Plan A.

The city's compliance plan also expends \$52 million annually to support 42 new small schools and charter schools in the elementary grades, as well as \$346 million for 800 new small schools and charters in the secondary grades. It would devote an additional \$77 million towards providing additional administrative staff for these "smaller learning communities," and \$88 million for their higher ratio of counselors and support staff.

Creating new, smaller schools and charters may be a priority for this administration, but was not mentioned either in the evidence or in the court's decision as a critical need for our schools.⁷² The level of funding to staff and support these new schools, totaling \$565

⁷² There is little or no research showing that creating small schools without providing smaller classes at the same time leads to higher student achievement; on the other hand, there is evidence suggesting the reverse - that large schools with smaller classes may lead to better outcomes; see, for example, Donald McLaughlin and Gili Drori, School-Level Correlates of Academic Achievement: Student Assessment Scores in SASS Public Schools, U.S. Department of Education, 2000. <http://nces.ed.gov/pubs2000/2000303.pdf>. See also the recent Public Agenda survey of parents and teachers, in which only 14% of teachers responded that breaking up large schools into smaller ones would be the best first step towards improvement, far below reducing class size, which 29% of teachers endorsed.

million per year, together with the nearly \$700 million cost of the additional staffing that the city proposes above, would be more than sufficient to pay for the entire staffing costs of plan A.

Moreover, there is insufficient space to put all the additional non-classroom staff that this proposed compliance plan includes, either in existing schools or the new school buildings projected in the city's capital plan. Thus, the city's plan also devotes \$298 million per year for leasing office space, computer and administration costs for all the additional teaching, specialists and miscellaneous staff hired for elementary schools, as well as \$223 million in annual costs for leasing space, computer and administration for all the additional specialists, counselors and other assorted staff proposed for middle and high schools.

How this office space will be found near enough existing schools to be practicable is unclear. Furthermore, if one took the total of \$521 million in annual expenditures for these leasing, computer and administrative costs, and put them towards securing the capital cost of actually building new schools, this would provide approximately \$8 billion dollars for school construction and expansion, which in itself would provide nearly enough space to reduce class size to the levels called for in Plan A, and far more than needed for Plan B.⁷³

Other questionable priorities of the city's proposed compliance plan

The city's compliance plan also spends an inordinate amount on computers and technology. For "instructional technology and support", the plan devotes approximately \$137 million annually for elementary schools, and \$227 million per year for secondary schools to train students and teachers in technology, as well as to acquire additional computers and equipment. This totals \$364 million per year, more than three times the amount spent to reduce class size.

In addition, the Mayor's capital plan also expends \$736 million for "technology enhancements," enough to install wireless capability for every school and buy laptops for nearly every student in the system, even though there is little evidence that this would be necessary in order to comply with the specific inadequacies identified in the case. The city offers no evidence, and there is none provided by research, showing that the high-needs student population of New York City would receive as much benefit from laptop computers as they would from smaller classes and the increased attention from their teachers that such classes would provide.

In Maine, a much more modest program has cost the state \$15 million over the last two years to buy laptops for middle school students and teachers. The program has had disappointing results so far in terms of its impact on achievement, with eighth-grade scores in all subjects flat since the program began, including reading, writing, math and

Public Agenda, "Sizing Things UP: What Parents, teachers, and students think about large and small high schools," 2002; <http://www.publicagenda.org/specials/smallschools/smallschools.htm>

⁷³ This amount is calculated by using \$521 million as annual payments to secure bonding capacity at 5% over 30 years.

science.⁷⁴ Some critics observe that students now spend inordinate time in class playing games on their laptops without their teachers noticing.⁷⁵

As the CFE consultants who wrote the BRICKS plan commented:

“We do not believe that the Court of Appeals’ order can be read to support this range of extensive laptop purchases. The court ruling does, however, clearly support supplying New York City students with the same ratio of standard computers to students in the rest of the state. For that purpose, we believe that \$125.696 million is needed to purchase an additional 72,053 computers.”⁷⁶

Subtract \$126 million from the \$736 million that the city’s plan proposes for technology yields another \$611 million in the existing capital plan, which could instead be invested in acquiring new classroom space to reduce class size. This, along with half of the annual funds spent on “instructional technology and support,” or \$182 million in operating expenses, would secure almost \$3.5 billion in capital funds for school construction. Together with the \$8 billion obtained by converting annual payments for leased office, administration and technology costs for all this additional staff not housed in schools, would yield a total of \$11.5 billion for school construction and expansion, more than enough to provide adequate space for either Plan A or Plan B.⁷⁷

⁷⁴ See “Laptop students still test the same,” Portland Press, August 10, 2004.
<http://pressherald.mainetoday.com/news/state/040810laptops.shtml>

⁷⁵ For more information and observations of students, parents, and teachers on the controversial topic of Maine’s laptop program, see <http://news.mainetoday.com/indepth/laptops/>

⁷⁶ <http://www.cfequity.org/finalbuildingaidproposal.pdf>, p.45. As support, the authors of the CFE report cite the judgment of the court itself, *CFE II* at 913, and the following statistics: “According to the most recent New York State of Learning (2003) p. 94, the state averages 21.9 computers per 100 students, compared with 15.3 per 100 students in New York City. Given New York City’s 2002-03 enrollment of 1,091,717, it should have 239,086 computers instead of its current 167,033 to reach the state average. This is a difference of 72,053.”

There are other problems and inefficiencies in the city’s compliance plan for the CFE funds. In its capital plan, the city proposes building new high school buildings of about 1,650 students each, while allocating billions in additional funds to break down already existing large high schools into smaller schools of about 500 students each. See City of New York and DOE, op.cit., 2004; <http://www.nycsca.org/pdf/does5yearplan.pdf>. The city also proposes to spend an additional \$30 million for full kindergarten enrollment, but estimates the cost for this based upon an average class size of 25, rather than the class size of 20 that the city says will be provided for all students in grades K-3 in the very same document. See City Plan at 13.

⁷⁷ There is also the issue of state-mandated debt limits for bonds, which could prevent the city from borrowing more than 10 percent of the value of its total property wealth. If the city were to come up against this limit, the state could easily raise the debt ceiling, as they have repeatedly through the Transitional Finance Authority. With the court guaranteeing annual payments from the state to pay the capitalization costs for these bonds, there would appear to be little risk of a default. These proposals and estimates are not made so that the city necessarily must be compelled to redirect funds away from these particular programs, but simply to demonstrate that there is sufficient “fat” or at least spending on non-priority areas in the city’s plan that could be devoted to more essential needs that were identified by the court as needing correction, like reducing class size. There are many other areas of discretionary spending in the city’s compliance plan that could easily be redirected towards reducing class size.

There is another possible source of funding for the smaller classes that we propose in either plan A or plan B --- the share of additional funds that the city should be required to spend on its schools, according to both the plaintiffs and the state.

In the plaintiff's proposal, the City would be required to provide approximately \$1.6 billion per year more to its schools, to reach the appropriate level of local contribution. In the Governor's plan, the City is called upon to contribute an additional \$1.5 billion per year.⁷⁸ Either amount would be sufficient in and of itself to cover the full staffing costs of plan A or plan B, and nearly enough to cover both the staffing and facilities cost for either plan.

According to an analysis by Lawrence D. Littlefield, former regional economist with the New York City Department of City Planning, the percentage of New York City residents' personal income expended on our public schools is lower than it is nationally, and much below what it is in the rest of the state. Moreover, this percentage has been dropping steadily since 2001-2, and is projected to drop even further, based on the four year financial plan submitted by the city's Office of Management and Budget. See "Public Expenditures on Education, Percent of Residents' Personal Income." Chart by Lawrence Littlefield, former regional economist, New York City Dept. of City Planning. Data sources: US Census Bureau and US Dept. of Commerce (Exhibit 6 hereto). Yet the city does not propose supplying any additional support for its public schools in its own submission to the court.⁷⁹

C. The CFE Compliance Plan

On January 10, 2001, Justice Leland DeGrasse of New York State Supreme Court declared that "New York State has over the course of many years consistently violated the Education Article of the State Constitution by failing to provide the opportunity for a sound basic education to New York City public school students." CFE Trial at 113.

He further directed that "In order to ensure that public schools offer a sound basic education the State must take steps to ensure at least the following resources, which, as described in the body of this opinion, are for the most part currently not given to New York City's public school students: 1. Sufficient numbers of qualified teachers, principals and other personnel., 2. Appropriate class sizes...." Id. at 114.

⁷⁸ See Bob Cohen and Frank Mauro, "Alliance for Quality Education Report Card on School Plans," June 2004. See also CFE, Plaintiff's Plan for Compliance, Executive Summary, August 12, 2004, especially Table 1.3, which shows that NYC should be required to contribute \$6,240 per student to its schools, compared with \$4,362, which they contributed in the 2001-2 school year, a difference of \$1,878. This multiplied by approximately 1.1 million students is about \$2 billion per year in additional local contribution over the year 2001-2. <http://www.cfequity.org/ExecSummarySpMaster.pdf>

⁷⁹ There are other problems and inefficiencies in the city's plan for the CFE funds. In its capital plan, the city proposes building new high school buildings of about 1,650 students each, while allocating billions in additional funds to break down already existing large high schools into smaller schools of about 500 students each. See City of New York and DOE, op.cit., 2004; <http://www.nycsca.org/pdf/does5yearplan.pdf>. The city also proposes to spend an additional \$30 million for full kindergarten enrollment, but estimates the cost for this based upon an average class size of 25, rather than the classes of 20 that the plan entails for all students in grades K-3. See City Plan at 13.

The Court of Appeals affirmed Justice DeGrasse's decision that the state must not merely reform the system of funding to ensure that every school in New York City has the funds required to provide a sound basic education, but also that these essential resources, including smaller classes, must actually be offered in our schools. The Court defined the constitutional standard of the opportunity for a sound basic education as "a meaningful high school education." CFE II at 908. ***We have already seen that by no measure can the city's current compliance plan be seen as providing a meaningful high school education to our students, because of its failure to address the excessive class sizes at these grade levels.***

Likewise, the plaintiffs and the defendants have also failed to address the need for smaller classes to be implemented in New York City schools. In the plaintiffs' case, this is surprising, given the fact that, as already mentioned, they commissioned a detailed costing-out study, whose results they submitted as evidence in the case. This costing-out study was based upon the conclusions of ten professional judgment panels – in the words of the plaintiffs, "comprised of 56 highly qualified superintendents, principals, teachers, school business officials, and special education directors from across the state – to provide the core expertise for determining the content and cost of a sound basic education."

More specifically, these professionals identified "the elements of the educational programs that are necessary to provide students in New York City with the opportunity to obtain a sound basic education, recognizing the specific needs associated with the large percentage of at risk students in the City."⁸⁰

These panels of educators, called the Professional Judgment Panels, concluded that especially small classes in all grades should be required in high-needs school districts such as New York City if our students are to be provided with a sound basic education. Indeed, their class size recommendations for such districts were quite close to those we have proposed in Plan A.⁸¹ In turn, it was their specific recommendations on class size, along with the other programs that they deemed necessary, that allowed the plaintiffs to calculate the amount that they now argue that the state should provide in dollars to our public schools.

We agree with the plaintiffs that their funding proposal is superior to those submitted by the other parties and should be ordered by the Court, since it was the result of a detailed costing-out process, based specifically upon the conclusions of these respected panels of educators, who decided what programs and resources were necessary to offer an adequate education to our students. ***Yet just as important as providing these***

⁸⁰ CFE, Memorandum Concerning the Sound Basic Education Compliance Proposals, September 1, 2004, P. 11. <http://www.cfequity.org/ComplianceBrief9.01.04.pdf>

⁸¹ The Professional Judgment Panels enlisted by the plaintiffs recommended class sizes ranging from 14 - 16.8 at the kindergarten to fifth grade level, 22.6 for middle school and 18.4 - 29 in high school, with the lower sizes in each range required for "high needs" schools. See American Institutes for Research and Management Analysis and Planning, Inc., "The New York Adequacy Study: Determining the Cost of Providing All Children in New York an Adequate Education," Volume 1 – Final Report, March 2004; See appendix; also Exhibit 2-10, and pp. 33-34. <http://www.cfequity.org/FINALCOSTINGOUT3-30-04.pdf>

additional funds is to ensure that they actually be spent on the smaller classes that these experts deemed so essential to improve the educational prospects of our students.⁸²

Yet, inexplicably, the plaintiffs appear to argue otherwise. In a footnote, they write:

“The Chancellor and local superintendents elsewhere in the state would be expected to use their sound discretion to construct educational programs relevant to their districts’ needs. But whether they chose to substitute more time on task for the class size reductions proposed in the AIR/MAP prototypes, or make any other such changes, the important point is that the recommended level of resources is necessary to provide the opportunity for a sound basic education to all students.”⁸³

But surely, as the court has explicitly held, the important point is not merely to provide additional funds to our schools, but to make sure the proper resources and programs are offered our students, so that another generation does not suffer without having access to the appropriate class sizes that will afford them an adequate opportunity to learn and receive a meaningful high school education.

Moreover, it is not clear what the plaintiffs mean here by “more time on task,” for there is nothing in the city’s compliance plans that would actually make this available. Perhaps they are referring to the city’s proposal to expand extended day and summer school programs as remediation for low-performing students. But no evidence is offered by the city, the plaintiffs, or indeed in the court record, to show that extending the school day or providing summer school for failing students is an effective substitute for smaller classes, which have been shown to ensure that more students succeed in the first place, without the need for remediation. Indeed, no such research exists.⁸⁴

⁸² “The educational prototypes that resulted from this extensive educational analysis [of these panels] emphasized extensive professional development, substantial investment in early childhood programs...reduced class sizes and additional teaching assistants, specialists, and other pupil support personnel, especially in early grades and in high-poverty schools. Id. at 32-36. The researchers did not recommend imposing these prototypes on New York City or other local districts.” Which researchers they mean here is uncertain, whether the Professional Judgment panelists or the consultants who assembled the panels. Why the panelists themselves would oppose implementing these models after deciding that they were required to give students an adequate chance to succeed is unclear. Ibid., p.4, footnote 6.

⁸³ Ibid., p.4, footnote 6.

⁸⁴ See, for example, the summary by the noted educational researcher Gene Glass on the absence of documented results from extended day or year: “The import of a couple of decades of research on the effect on student achievement of small, marginal increases in the amount of time allocated to schooling is clear. Such increases have virtually no benefits for student achievement, and what small benefits there might be would not be justified by the increased cost of small increases in the length of the school day or the number of days per school year... Within reason, the productivity of the schools is not a matter of the time allocated to them as much as it is a matter of how they use the time they already have.” In: “Time for School: Its Duration and Allocation,” in: School Reform Proposals: The Research Evidence, ed. Alex Molnar, 2002; available on the Education Policy Studies Laboratory website at http://www.asu.edu/educ/eps/EP/EP/EP_Research_Writing.htm

Instead, the plaintiffs now argue that we must rely on the “sound discretion” of the Chancellor, rather than the smaller classes that both CFE’s own expert panel and the court itself concluded were necessary for our children to succeed.

Curiously, the plaintiffs also argue that the court should adopt their capital funding proposal, based on their BRICKS study, because “the BRICKS analysis responds exclusively to the constitutional violations identified by the Court of Appeals and seeks to fully remedy them within a five-year period. The BRICKS plan accelerates some projects that would relieve overcrowding that the Mayor’s plan would defer for the future and omits other projects for improving school facilities that do not relate to the immediate overcrowding and related issues identified by the Court of Appeals.”⁸⁵

The only other major issue besides overcrowding (which the city’s capital plan does indeed claim to resolve, in terms of eliminating the need for schools to operate on double and triple shifts) is the necessity of providing smaller classes in all grades, as the BRICKS proposal was specifically designed to create sufficient room to reduce class size to about the average in the rest of the state, similar to our Plan B.

The “Bricks” report has been submitted by the plaintiffs as a supporting document to the court. As this document rightfully asserts,

“The court decisions in CFE v. State repeatedly discussed the need to reduce class sizes in New York City in terms of comparisons with class sizes at each schooling level in the rest of the state. We believe, therefore, that the Court of Appeals’ holding that “large class sizes negatively affect student performance in New York City schools” requires that class sizes in the city be reduced, at least to the average class sizes in the rest of the state.”⁸⁶

In their most recent submission to the court, the plaintiffs appear to agree, at least in part, with the above statement: “Both because of the inherent validity of the BRICKS study, and the fact that Defendants have essentially defaulted in responding to the Court of Appeals requirements in this area, the panel should recommend adoption of the \$8.9 billion in capital funding, to be phased in over a five-year period, as determined by the BRICKS study.”⁸⁷ But what would be the possible reason for the State to provide these capital funds, and the facilities that would follow, without also requiring the smaller classes for which they were specifically designed?

Finally, the plaintiffs falsely contend that “all of the proposals,” including their own compliance plan, as well as those submitted by the city and the state, “share a general

⁸⁵ The Campaign For Fiscal Equity, “Memorandum Concerning the Sound Basic Education Compliance Proposals,” September 1, 2004 , p. 9.

⁸⁶ Campaign for Fiscal Equity, Sound Basic Education Task Force, “Ensuring Educational Opportunity for All, Part II : Adequate Facilities For All: Reforming New York State’s System for Providing Building Aid to School Districts and for Meeting Schools’ Urgent Capital Needs,” April 13, 2004, p. 35, <http://www.cfequity.org/finalbuildingaidproposal.pdf>

⁸⁷ The Campaign For Fiscal Equity, “Memorandum Concerning the Sound Basic Education Compliance Proposals,” September 1, 2004, p. 33. <http://www.cfequity.org/ComplianceBrief9.01.04.pdf>

agreement as to how that additional money should be spent: improving teacher quality, reducing class size, building new classrooms and renovating existing facilities to provide adequate libraries and laboratories. And all of the proposals recognize that “at-risk” children require additional resources in order to meet academic standards such as even smaller class sizes, extended time in school and remedial assistance.”⁸⁸

Yet, as we have seen, there is nothing in the City’s compliance plan (or, as we will show, in the State’s) ***that suggests any such recognition that New York City “at risk” children require smaller class sizes than other children, nor even that they should be afforded class sizes equal to students in the rest of the state.***

D. The State’s Compliance Plan

Despite its voluminous submissions to the court, the State gives even shorter shrift to the need for the City’s schools to reduce class size, and entirely ignores the Court’s findings that smaller classes must be provided to our students to provide them with the educational opportunities they require.

Though the State’s most recent submission acknowledges that “the Court did hold... that ‘plaintiffs presented measurable proof . . . that New York City schools have excessive class sizes, and that class sizes affect learning,’ ”⁸⁹ the attorneys for the State reject any requirement that the city should address this key deficiency. Their failure to do so is particularly egregious considering that they also cite approvingly the conclusions of the Standard & Poor report, which recognized that the “high needs” student population so prevalent in New York City schools, including English language learners and those economically disadvantaged, require considerably more resources in order to succeed, including smaller classes: “These students often cost more to educate than other students, due to specialized needs such as differentiated curricula, smaller class sizes....”⁹⁰

Yet, as in the plaintiff’s proposals, the State would leave it entirely up to the discretion of New York City officials to decide what programs should be implemented in our schools, with smaller classes only one option among a long laundry list of possible reforms.⁹¹ Their plan thus fails as well to comply with the need to address this critical issue, in order to assure that our children receive their right to a meaningful high school education.⁹²

⁸⁸ Ibid., p. 1

⁸⁹ Memorandum in Support of Defendants’ Sound Basic Education Plan, September 1, p. 5. <http://www.cfequity.org/StateBrief.9.1.04.pdf>.

⁹⁰ Ibid., p. 20.

⁹¹ Ibid. See p. 32, “Defendants’ plan allows local officials to determine which programs (pre-kindergarten, summer school, tutoring) or resources (teacher assignments, recruitment incentives, smaller class sizes, new computers or textbooks) are necessary to achieve results in a particular school.”

⁹² Supreme Court of the State of New York, Campaign for Fiscal Equity, Inc. v. State of New York, court transcript, August 3, 2004.

POINT III
ACCOUNTABILITY

The Court of Appeals held that the new funding system should include a method of accountability to ensure that our schools actually provided the opportunity for a sound basic education.

A. The City's Accountability Proposal

What does the city's compliance plan say about accountability, which the Court deemed crucial? The city's submission to the court goes on at some length about how this enhanced accountability will be automatically fulfilled as the Mayor now has sole control over the school system, and thus "uniquely accountable for the schools and answerable to the voters of New York City."⁹³

As this brief contends, "Nothing must undermine the authority and accountability the Legislature granted the Mayor and the Mayor so fully embraced... The CFE remedy must not become a vehicle for adding yet more regulatory and compliance-based requirements. Any such increase will erode Mayoral control and thus undermine, not strengthen, ultimate accountability."⁹⁴

Yet here the city's argument confuses political accountability with the legal accountability that the court requires. Merely because he has sole political authority over the schools and the voters can choose not to re-elect him to a second term, does not guarantee that the Mayor or whoever else succeeds him in that office will act to address the constitutional deficiencies identified by the court.⁹⁵ Indeed, as we have seen, the plan that the city now offers neglects to address one of the central deficiencies in our school system, that the court recognized as depriving our children of an adequate opportunity to learn – our excessively large classes at all grade levels.

The city also proposes to submit a Sound Basic Education (SBE) Report, to "focus comprehensive reporting in a user-friendly accountability document." This SBE report would describe DOE's major initiatives, program areas "targeted to improving student achievement, and detailed reporting of expenditures..." Included would be "measurable benchmarks connected to the major initiatives. Such benchmarks "might include reducing class sizes in the early grades" among other programs.⁹⁶

Of course, that the city would issue regular reports on its initiatives and spending, along the lines already laid out in its compliance plan, would not guarantee that such spending would actually deliver the sound, basic education that the court outlined in its decision,

⁹³ City of New York and the New York City Department of Education, op.cit., August 25, 2004; <http://www.cfequity.org/CityCompliance%20Plan8.26.04.pdf>, p. 30.

⁹⁴ Ibid., p. 30.

⁹⁵ Indeed, given term limits, there is not even this limited amount of political accountability with a Mayor in his second term of office.

⁹⁶ Ibid., p.33.

or provide our students with the specific programs and resources that they need. Instead, the Court should require a broader vision of accountability to make certain that another generation of students do not have to endure excessively large classes, which deny them a real chance to succeed.

Providing additional funding without also giving any assurances that these funds will actually be spent to implement the smaller classes deemed necessary by the Court, as well as the professional panels of educators enlisted by the plaintiffs, would leave significant uncertainties as to whether the educational needs of our students will be addressed. Indeed, as we have seen, if the city's current compliance plan goes into effect, their right to a meaningful high school education will be denied. ***Any robust system of accountability must ensure that not only increased funding, but an improved opportunity to learn in the form of smaller classes will be afforded New York City students.***

B. The CFE Accountability Proposal

Unfortunately, the plaintiffs' proposals for accountability are no better. They too lack efficient mechanisms to make certain that the deficiencies identified by the court will be cured. Although the attorneys for the plaintiffs concede that "the Court of Appeals also held [that] current funding and school management structures must be reformed to ensure that sufficient resources such as qualified teachers, appropriate class sizes, instructional materials, and adequate facilities are actually available in each school in accordance with the needs of students," they discourage the Panel from even recommending that these resources actually be provided in our schools.

Indeed, they instruct the Panel otherwise: "The Panel should not, and need not, recommend that any specific educational strategy be adopted to ensure that a particular educational resource is sufficient. To ensure that educators make the right choices with increased funds and that appropriate resources are provided in the New York City schools – e.g., increased funding isn't used simply to build office towers for education bureaucrats – the Panel should, however, adopt the accountability measures that Plaintiffs propose."⁹⁷

Yet there is nothing in the plaintiffs' accountability plan that would prevent such an inappropriate allocation of funds from occurring. While the plaintiffs appear to recognize that Justice DeGrasse did indeed order that "new initiatives must be undertaken in critical instructional areas – such as improving teacher quality, ensuring adequate facilities and reducing class sizes...in order to improve the capacity of New York City's schools to truly offer all of their students a sound basic education," they offer nothing that would achieve these goals. And there is nothing in their accountability proposal that would compel the city to comply with the Justice's instructions in this area.

⁹⁷ The Campaign For Fiscal Equity, Inc., et al. "Memorandum Concerning the Sound Basic Education Compliance Proposals," September 1, 2004, p.3; <http://www.cfequity.org/ComplianceBrief9.01.04.pdf> This statement also ignores that there is no need for a new office tower for education bureaucrats since they are already housed in a building that cost millions to renovate for this purpose, known as Tweed.

All the plaintiffs would require of the city is to “develop a comprehensive four-year plan that would specify how additional funding would be utilized to improve teacher quality, reduce class sizes, and take other actions to ensure that all students are provided with the opportunity for a sound basic education.”⁹⁸

Presumably, this would be similar to the five year plan just submitted by the city to the court. As to this plan, the plaintiffs say, “.....the Mayor and the Chancellor have already promulgated a basic planning document, which would be an appropriate starting point for the development of the formal comprehensive plan contemplated by the parties’ proposals.”⁹⁹

The plaintiffs further call for each individual district, or in New York City, each “region,” as well as each individual school to develop its own 4-year plan consistent with this larger plan. While generating a lot of paperwork, the proposal essentially leaves all other decisions, from judging whether the city’s plan is adequate, to monitoring, enforcing and imposing appropriate penalties, up to the State Education Commissioner to determine.¹⁰⁰

The plaintiffs propose no targets, timetables, or other mandatory objectives. They suggest no guidelines by which the Commissioner should judge the acceptability of the city’s plan, nor do they recommend any specific penalties or procedures if the plan is disapproved. They put forward no requirement that the Commissioner should examine whether the plan adequately addresses the classroom conditions which triggered the court’s findings of constitutional violations in the case. Neither do they say if the Commissioner should consider whether alternative programs offered by the city to address the systemic failure of our schools to provide a meaningful high school education are based upon research or pure conjecture.

Rather than coming up with any proposal that might lead to adequate oversight over the use of these state funds, to see that at minimum, the key issues in the case are addressed, they argue that such oversight would be an infringement of “sound management practices.” On these grounds, they even criticize the state’s proposal for a new agency to supervise the city’s use of these funds:

⁹⁸ CFE, “Plaintiffs’ Plan for Compliance Executive Summary,” August 12, 2004, p. 4; <http://www.cfequity.org/ExecSummarySpMaster.pdf>

⁹⁹CFE, Memorandum Concerning the Sound Basic Education Compliance Proposals,” September 1, 2004, p. 29, <http://www.cfequity.org/ComplianceBrief9.01.04.pdf>, p. 29. In a footnote, they add: “The City’s Plan describes in summary form a number of anticipated initiatives regarding teacher quality and other priority areas; although it acknowledges the need for specific benchmarks and performance outcome indicators, the present plan does not contain them. Although the City’s 5-year capital plan (which is part of the overall SBE Plan) was the subject of an extensive public hearing process, many of the major educational initiatives and the plan as a whole has it been subject to a thorough-going public engagement process. *Amicus curiae* United Federation of Teachers has also submitted a number of significant suggestions that are relevant to the teacher quality issue. See Letter of Alan M. Klinger, Esq. to the Panel, dated August 11, 2004, Exs. B and C.”

¹⁰⁰ It also suggests that SED might “appoint a Sound Basic Education Implementation Task Force...to advise the Regents on appropriate regulations and guidelines to implement the new accountability system,” and that there should be “appropriate consequences for poor performance,” though it does not specify what these might be.

“We strongly oppose... requirements that the City adhere to State-approved lists of effective programs in developing its comprehensive plan, and extensive state oversight and sanctions for low-performing schools. These proposals are inconsistent with sound management practices and with the fundamental policy direction of the recent governance reforms that lodged control of the New York City school system in the Mayor and that ultimately hold him accountable for its performance.”¹⁰¹

Here too, the plaintiffs give undue deference to the Mayor, and confuse the political accountability enacted by the recent governance changes with the more substantive, legal accountability demanded by the Court. ***In the process, they cede to one single person the near complete authority to spend these funds in any way he might choose, whether or not his choices address the conditions set forward by Justice DeGrasse’s instructions or rectify the constitutional violations the Court identified.***

The plaintiffs’ arguments even appear to undermine the sole accountability requirement they do propose, the State Education Commissioner’s power to approve or disapprove the city’s plan for these funds.

Their position on this matter -- that the Mayor should have ultimate authority to devise his own plan to spend the additional funds, with no real oversight by the court-- might be more tenable if there was any evidence to suggest that the city had acted in good faith, or that its compliance plan represented a bona fide effort to address the underlying issues in the case. But the city has sacrificed this prerogative by submitting a plan that, by its glaring omissions, neglects to offer our students the smaller classes they require to ensure their constitutional rights to an adequate education.

The only remediation the plaintiffs suggest is highly particular in nature; i.e., if the city’s plan does not lead to improvement in an individual school, “advisory teams” should be sent by the State Education Department (SED) to the school to help. Yet it is unclear how this would differ significantly from what SED already does, in sending advisors to aid failing schools in New York City and elsewhere. More importantly, it was the ***systemic*** failure of the State and the City to ensure that the adequate resources and programs were put into place in our public schools that was the central finding in this case, and the method of ensuring improvement must be accordingly systemic as well.

In short, instead of requiring authentic accountability measures, the plaintiffs substitute a pro forma planning process, in which in which the ultimate authority for devising a compliance plan would remain in the hands of one individual, the Mayor, along with his appointed representatives, with no checks and balances, and all authority to approve or disapprove such a plan would be in the hands of another, the State Commissioner of Education.¹⁰²

¹⁰¹ The Campaign For Fiscal Equity, “Memorandum Concerning the Sound Basic Education Compliance Proposals,” September 1, 2004, p.42.

¹⁰² “Consistent with the State’s ultimate constitutional and fiscal oversight responsibilities, however, the Legislature and/or the Regents should identify broad priority areas and appropriate general standards for capacity building that must be addressed in the plan, and the Commissioner of Education should review the plan and confirm that these priorities and standards are being appropriately addressed. Although the final

This suggestion flies in the face of the record that the Commissioner, or the State Education Department as a whole, lacks the capacity, the resources, or the meaningful interest to adjudicate and enforce the city's compliance in this matter.¹⁰³ Instead, by ceding all judicial authority to another state agency, this proposal would invite further dawdling and delay in redressing our children's constitutional rights, encouraging yet more paper-shuffling rather than the fundamental improvement of classroom conditions that they so desperately need.¹⁰⁴

C. The State's Accountability Plan

The state's plan for accountability is similarly toothless, and differs only in a few details from the plaintiff's plan. The state's submission also lauds the New York City school governance changes as "restoring accountability to the New York City public school system by vesting more control and responsibility in one elected official – the Mayor," without distinguishing this form of political accountability from the legal accountability that the court requires.¹⁰⁵

Under the state's plan, all local school districts including New York City would develop "resource allocation plans" to "describe how sufficient educational resources --including qualified teachers and sufficient instructional materials – would be allocated to every single school in the school district, so that every child, in every school, received the opportunity to obtain a sound basic education."¹⁰⁶ Yet instead of leaving it up to the State Education Commissioner to decide, the defendants would vest all legal oversight authority in another new state agency, called the "Office of Educational Accountability" which would "review and approve local education plans, identify failing schools and oversee school improvement plans."¹⁰⁷

decisions rest with the Mayor and the Chancellor, the planning process should include a thorough-going public engagement process because the success of these reforms obviously will require the full commitment and engagement of administrators, teachers, students, parents and the supportive public. (Ibid., pp. 36-37.)

¹⁰³ Indeed, the NY State Education Department has never required that New York City report class size averages on its school report cards, as is required for every other school district in the state.

¹⁰⁴ Another submission by CFE recommends the establishment of yet another commission, called an "Accountability Review Panel", with the Governor and the plaintiffs each appointing two members and the Regents appointing three. "The panel would (a) identify major statutory, regulatory, or contractual provisions that need to be reconsidered in order to meet constitutional objectives; (b) retain professional auditors to conduct periodic operational efficiency audits of New York City and other school districts; and (c) report annually to the Governor and the Legislature on the implementation of the new constitutional accountability system." (pp. 23-24) <http://www.cfequity.org/finalaccountabilityproposal.pdf>

¹⁰⁵ See New York State, "State Education Reform Plan," August 12, 2004, p.9; <http://www.cfequity.org/compliance/stateplan081204.pdf>

¹⁰⁶ Ibid., pp.16-17.

¹⁰⁷ The director of this new Office would be appointed by the Board of Regents, with the approval of the Governor. Ibid., p. 4.

The only penalties or response in the case of continued failure to improve outcomes would be made on a school by school basis, much as occurs presently: "After three years, a school that failed to improve would be closed. Parents would be offered the opportunity to convert the school to a charter school. If they did not, a new school with a new principal and staff would be opened. If after an additional three years, the newly restructured school still failed to improve, an interim administrator would be appointed, with all of the powers of the local school board and superintendent."¹⁰⁸ This proposal unwisely puts the entire burden back at the school level, without acknowledging that individual schools may continue to lack the resources and the autonomy to significantly improve student achievement, especially if the city's current compliance plan is put into effect.

Again, as in the plaintiff's proposal, all judicial authority is ceded to yet another state agency, which in this case, does not yet even exist, which is likely to lead to even more delay. Nor is there any discussion of what might happen if this new agency disapproved of the compliance plan submitted by the City, either in the form of penalties or procedures. Instead, the state's accountability proposal, like that of the plaintiffs, invites yet more paper-shuffling, rather than the fundamental improvement of classroom conditions that our children so desperately require.

Let us do a thought experiment. ***Suppose the State and the City of New York were found to be violating prisoners' constitutional rights, with the court having identified particular conditions of overcrowding and excessive number of prisoners per cell that had to be remedied, along with the inadequate funding of the prison system as a whole. Let us further suppose that, in the midst of such litigation, the State had given the Mayor additional political authority over running this system. Would the Mayor's enhanced political authority somehow erase the need for these deplorable conditions to be addressed? Would the Court find that once the funding for prisons was increased, the rest of the remedy should be left entirely in the hands of the Mayor and the State Correctional authorities to resolve, without further judicial oversight? We think not. So why should our children's constitutional rights be treated with less regard than those of our prisoners?***

As the Court of Appeals rightfully held, "it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them." CFE II at 925. Ceding these constitutional safeguards to the city and the state, whether in the form of the State Education Commissioner or a new agency created by the Governor and the Regents for this purpose, especially when both the city and the state have publicly displayed their refusal to deal with the issues that the court identified as so critical, would leave the contours of the remedy entirely in the hands of the same political bodies whose processes have short-changed the city's schoolchildren for decades.

D. Our Vision of Accountability

In order to satisfy the court's directive in terms of both adequacy and accountability, we believe that New York City public schools should not only receive a substantially

¹⁰⁸ Ibid., p.17.

increased level of state and city funding, but also that a significant part of these resources must be earmarked towards redressing the specific inadequacies found by the court. Otherwise, we risk depriving yet another generation of children of the schools and classrooms they need to provide them with an adequate chance to learn.

The example of the Abbott case is instructive in this regard. The New Jersey Supreme Court first found in 1985 that the state had been depriving its high-needs students of their constitutional right to an education that would enable them to compete with their suburban peers. In its decision, it ordered the State to redress this situation immediately. Yet not until Abbott V, almost twenty years later, when the Court mandated that the necessary reforms, including smaller classes, actually be implemented in the state's low-performing schools, did the students in these districts begin to see any real improvement in the educational opportunities afforded them.¹⁰⁹

Similarly, NY State and NYC should be required to remedy the key deficiencies found by the trial court, particularly with respect to class size. To do otherwise would be to ignore the evidence in this case, the court record, and the example of other cases throughout the nation. To quote an earlier amicus brief in this case:

"In light of the horrendous gap between the sound basic education that New York's Constitution guarantees and the woefully inadequate education currently offered to New York's schoolchildren, the speedy implementation of an effective remedy is vital: vital for the hundreds of thousands of children who will be scarred every year the legislature fails to fund an adequate education, vital for the New York economy, and vital to the civic health of our State, as the Court of Appeals has recognized.....a preferred remedial order in this case would reflect the lessons of the Green court's forceful desegregation order, the aggressive and specific mandate announced by the Kentucky Supreme Court in Rose, and the New Jersey Supreme Court's eventual command that the political branches "level up" the regular education funding in the Abbott districts. Such an order would facilitate the implementation of true reform by the political branches by setting forth specific benchmarks to cure the constitutional deficiencies that the trial court found -- particularly with respect to class size... Such an order would also mandate the appropriation of specific dollar amounts to meet those benchmarks."¹¹⁰

While these words were written in 2002, they still hold true. In fact, they are even more relevant now than before, given the entirely deficient nature of the city's intended plan for these funds, and the feeble accountability proposals put forward by the parties in the case.

¹⁰⁹ See Education Law Center, "History of Abbott," <http://www.edlawcenter.org/ELCPublic/AbbottvBurke/AbbottHistory.htm>

¹¹⁰ Supreme Court of the State of New York, Appellate Division, First Department X CFE Inc. Vs. the State of New York,, Index No. 93/111070, Brief Amici curiae submitted on behalf of the American Jewish Committee, the Citizens' Committee for Children of NY, Jews for Racial and Economic Justice, People for the American Way Foundation, Pencil, Presbytery of NYC, SCAA -- Schuyler Center for Analysis and Advocacy, Teachers network, and Women's City Club, 2002, by Wachtell Lipton, Rosen and Katz; <http://www.cfequity.org/GENERAL.DOC>

As these earlier *amici* so eloquently argued, since the constitutional rights and true needs of our public schoolchildren have been ignored for generations by our public officials and their representatives, ***to leave it up to these same officials to solve this problem will nearly guarantee that the situation of ongoing crisis in our schools will not abate:***

" ... the citizens harmed most directly by the constitutional insufficiency of New York's schools are systematically underrepresented by the political branches.... Where the political process malfunctions in such manner, an increased judicial assertiveness is perfectly appropriate to protect the underrepresented. Indeed, as the New Jersey, Alabama, Arkansas, and early-Wyoming experiences illustrate, it is essential."¹¹¹

It is only when the courts in other states have established clear and objective guidelines for the political branches to follow that students have actually received the benefit of improved conditions in their schools.

Thus, as parents, educators, advocates, and others deeply concerned with the future of our children and the need to safeguard their constitutional rights to an adequate education, we respectfully submit that this Panel, and the Court, should summarily reject the compliance plan put forward by the city, and substitute one that recognizes the court's holding that smaller classes in all grades must be implemented in our schools without delay if our children are to receive the opportunity for a meaningful high school education, that they so desperately need and deserve.

The Court should order the state to supply the resources needed to reduce class sizes in all grades, given how important class size is in ensuring that our students receive a sound basic education. The Court should then require the city to use a significant portion of these funds for this purpose, by meeting clear benchmarks showing annual progress in reducing class size, with two students fewer on average per class in every grade over five years along the lines of Plan A, so that our teachers and schools are better able to deliver the instructional support required by our high-needs student population.

The annual cost of Plan A, including staffing and facilities, would be approximately \$1.7 billion at full implementation after five years – clearly affordable given the likelihood that the city is likely to receive between \$4.3 and \$5.6 billion in additional funds from the state. The cost of reducing class size to these, much lower levels and thus being able for the first time to provide our students the opportunity for a sound basic education would represent only 10% out of an estimated \$17 billion total spending on our public schools.

At the very least, the court should order Plan B, requiring annual decreases of one student per class in each grade, and costing an estimated \$755 million at full

¹¹¹ *Ibid.* The amicus brief cites Unfulfilled Promises, 104 Harv. L. Rev. at 1087-88 (citing United States v. Carolene Prods. Co., 304 U.S. 144, 153 n.4 (1938) and John Hart Ely, Democracy and Distrust 73-85, 101-04, 135-79 (1980)) as references for this argument, among others.

implementation, so that at the end of five years, class size averages would more closely approximate what they are in the rest of the state.

The court should require gradually decreasing class size limits and increasing geographical specificity over time, along the lines of the Florida law, as well as establish procedures for the city to report regular progress in this area. Twice a year, the city should be mandated to release reports, detailing average class sizes and distributions by grade for every school and district, as well as system-wide. The city should also be required to report on actions taken and expenditures made towards hiring additional staff and acquiring sufficient classroom space to comply with the next round of reductions.

By the end of five years, the city should be required to have achieved the required class size goals in every grade and every school in the city. The court itself should determine appropriate penalties for non-compliance, as well as thorough oversight mechanisms to ensure that if the city misses its goals in any reporting period, it is obligated to spend sufficient resources to catch up quickly by the next.

CONCLUSION

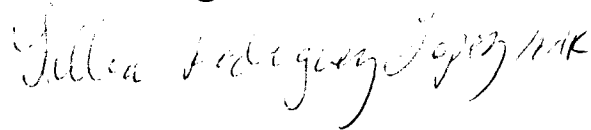
Only if the court orders the city to implement a specific plan to reduce class size and then oversees the process by which this actually occurs, can we be certain that the additional resources owed to our children are spent without delay, with full accountability and in accordance with the findings of the Court of Appeals. Only then can their full constitutional rights be assured.

Dated: New York, New York
September 20, 2004

New Yorkers for Smaller Classes
52 Broadway
New York, New York 10004

Lillian Rodriguez-Lopez, Chair

By: Leonie Haimson, Class Size Matters
leonie@att.net

A handwritten signature in cursive script, appearing to read "Lillian Rodriguez-Lopez", with a date "9/20/04" written at the end.

MEMBER ORGANIZATIONS OF NEW YORKERS FOR SMALLER CLASSES

ACORN

Advocates for Children

Alliance for Quality Education

Central Brooklyn Churches

Chancellor's Parent Advisory Council

Class Size Matters

Community School Board 6

Community Service Society

District 3 President's Council

District 25 President's Council

Educational Priorities Panel

Goddard Riverside Community Center

The Greater New York Labor-Religion Coalition

Hispanic Federation

Institute for Education and Social Policy, NYU

New York City Central Labor Council

New York State Conference of NAACP Branches

Parents As Primary Teachers

Parent to Parent of New York State

People for the American Way

United Federation of Teachers

United Parents Associations

Working Families Party

EXHIBIT 1

Exhibit One



class size matters

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The importance of class size in the middle and upper grades

In addition to the overwhelming evidence that class size matters in the early grades, the research shows a strong correlation between smaller classes, higher student achievement, and lower rates of disciplinary referrals and school crime in the middle and upper grades.

- One comprehensive study, commissioned by the US Department of Education, looked at the achievement levels of students in 2,561 schools across the nation, as measured by their performance on the NAEP (national) exams. The data included at least 50 schools in each state, including those from large and small, urban and rural, affluent and poor areas. After controlling for student background, the *only objective factor that was found to be correlated with higher student success was class size*, not school size, not teacher qualifications, nor any other variable that the researchers could identify. What was even more striking is that **these achievement gains were more strongly linked to smaller classes in the upper rather than the lower grades**¹
- Other studies that show a correlation between smaller class size and significantly higher student achievement in the middle and upper grades include: R. F. Ferguson, “**Paying for public education: New evidence on how and why money matters**,” (for 1st -7th grades), R.F. Ferguson, & H.F. Ladd, “**How and why money matters: An analysis of Alabama schools**” (for grades 4,8, and 9), Michael Boozer and Cecelia Rouse, “**Intraschool Variation in Class Size**,” (for 8th-10th grades).²
- Minneapolis has a city-funded class size reduction program for all grades through high school, with limits of 19 students in K-2, 25 in grades 3-8, and an average of

¹ Donald McLaughlin and Gili Drori, “School-Level Correlates of Academic Achievement: Student Assessment Scores in SASS Public Schools.” Washington, DC: U.S. Department of Education, 2000; <http://nces.ed.gov/pubs2000/2000303.pdf>.

² M. Boozer and C. Rouse, “Intraschool Variation in Class Size,” NBER working paper #334, 1995; R.F. Ferguson, & H.F. Ladd, *How and why money matters: An analysis of Alabama schools* in: H.F. Ladd (Ed.), *Holding Schools Accountable*, Brookings Institution, 1996; R. F. Ferguson, *Paying for public education: New evidence on how and why money matters*, *Harvard Journal on Legislation*, 1991, 28 (2): 465-498.

26 in high school.³ From 1997-2001, students demonstrated a 25% gain in math passing rates (vs. 3% gain statewide); and a 70% gain in reading passing rates (vs. 51% gain statewide).

- The evidence from Minneapolis also shows that gains are greater the longer students have the benefit of smaller classes. For example, 79.4% of those students who have had seven years of lower class size scored at or above grade level in reading, compared to 53.5% of students who had only one to three years of lower class size, and 42.3% who had no years of small classes. Similar trends were noted in math. The improvement among minority students has been particularly impressive – with an approximate doubling of pass rates among black and Hispanic students who had the benefit of smaller classes on a sustained basis.⁴
- In an analysis of more than 200 school districts, researcher Harold Wenglinsky of the Educational Testing Service concluded that for eighth graders, smaller classes were associated with higher rates of achievement in math, as well as a much improved “school social environment”, as measured by factors such as higher attendance and lower rates of school vandalism.⁵
- Other studies show fewer disciplinary problems and school crime associated with smaller classes. A report to Congress found that after holding other factors constant, smaller class size was correlated with lower rates of school violence.⁶ More recently, Paul Barton, director of the Policy Information Center of ETS, has said, “school size is less important than class size in terms of improving discipline”⁷ As another expert has written, “Indeed, many educators are convinced that, without reducing class size, all other attempts to ensure school safety can at best offer marginal improvement.”⁸

³ See Minneapolis Public Schools, “Expect Great Things”, http://www.mpls.k12.mn.us/about/achievement_report.pdf

⁴ See “Benefits of Reduced Class Size,” data from the Minneapolis Public Schools, http://www.mpls.k12.mn.us/about/referendum_class_size.shtml

⁵ Harold Wenglinsky, “When Money Matters,” ETS, April 1997; <http://www.ets.org/research/pic/wmm.pdf>;

⁶ Martha R. Asner and James Broschart, editors. VIOLENT SCHOOLS—SAFE SCHOOLS: THE SAFE SCHOOL STUDY REPORT TO THE CONGRESS. Vol I. Washington, D.C.: United States Government Printing Office, 1978. ED 149 464.

⁷ Paul Barton, American Youth Policy Forum “Order in the Classroom: Violence, Discipline and Student Learning ,A Forum Brief — March 26, 1999, : <http://www.aypf.org/forumbriefs/1999/fb032699.htm>

⁸ Carol Ascher, “Gaining Control of Violence in the Schools: A View from the Field”, 1994. ERIC Digest No. 100. ERIC Clearinghouse on Urban Education, NY (ERIC No. ED 377 256).

EXHIBIT 2

Exhibit Two:

High School Graduation Rates by Ethnicity, Gender, and Student Teacher Ratio

- The data (from the NCES Common Core, 2000-2001) shows that for each of the six ethnic and gender groups, the highest graduation rates are in districts that also have the lowest student-teacher ratios.
- The more teachers there are per student, the graduation rate climbs, especially for ethnic and racial minorities.
- Black female students graduate at nearly the same rates as white males in districts with the lowest student-teacher ratios.

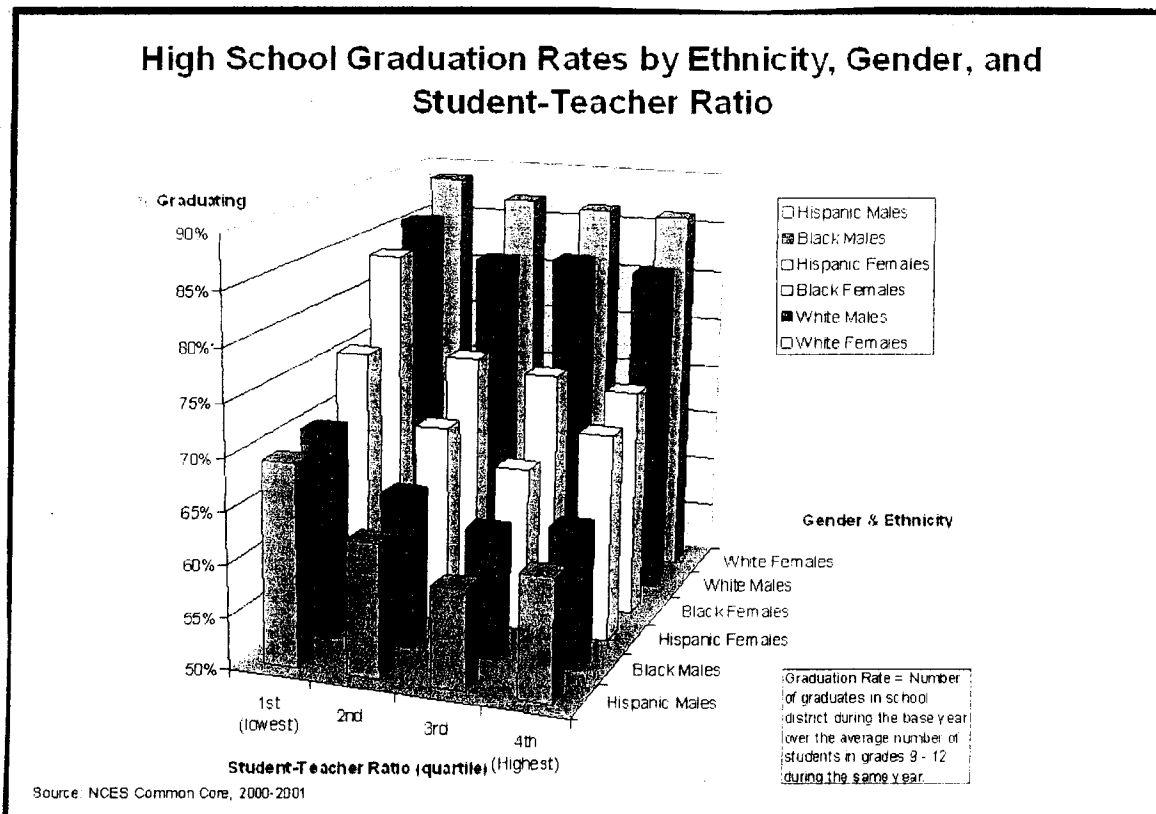


EXHIBIT 3

Exhibit Three:

The New York Times

May 26, 2004

Good Teachers + Small Classes = Quality Education

By MICHAEL WINERIP

The secret to quality public education has never been a big mystery. You need good teachers and you need small enough classes so those teachers can do their work. Period. After that, everything seems to pale, including the testing accountability programs, technology, building conditions. Even curriculum seems secondary, as our best public colleges demonstrate. We have West Point and we have Berkeley, and the question isn't which has the correct curriculum; the question is which curriculum is the best fit for the student and teacher.

Education Memo

Parents get this. Joe Gipson, a black parent from Sacramento who feels that black students are too often shortchanged, told me the best thing that happened to his children's school was the California law capping class size at 20 through third grade. You can still have incompetent teachers, he said, but with small classes you can spot them faster and weed them out.

Good teachers and small classes. Those were the two main factors New York's highest court cited last year when it ruled that the state had financially shortchanged New York City schools.

The state must provide more money, the court ruled, so the city can afford to attract more good teachers and improve classroom conditions, particularly reducing class size.

Michael Rebell, the lead lawyer for the Campaign for Fiscal Equity, which brought the suit on behalf of the city's poor children, says that research has shown it's hard to attract the best teachers until you have good working conditions. And the crucial element for good working conditions? "Small class size," he says.

In the original 2001 trial court opinion, Judge Leland DeGrasse put it succinctly: "The advantages of small classes are clear. A teacher in a small class has more time to spend with each student. Fewer students mean fewer administrative tasks for each teacher. Student discipline and student engagement in the learning process improve in smaller classes."

There were 72 witnesses and 4,300 exhibits for the trial, but as Leonie Haimson, a parent advocate, says, the most important piece of evidence may have been a single table showing how much larger classes are in

New York City than the rest of the state. In middle school — when so many children are lost — city classes averaged 28 versus 21 statewide.

Academic studies show small class size carries many benefits, even mitigating racial problems that interfere with learning. A recent study by Tom Dee, a Swarthmore professor, in "The Review of Economics and Statistics" concluded that both white and black children achieved more when they were taught by teachers of their own race. This is bad news for black children since the vast majority of teachers, even in big cities, are white and the vast majority of urban

So what's the obstacle to small class size? Money, of course.

children — 85 percent in New York City — are minority.

But there is a hopeful exception. If classes are small, Dr. Dee found, black children do equally well with a white or black teacher. "It may be because there's more personal interaction, less chance for stereotyping," Dr. Dee said.

Market forces tell us that small class size is worth a lot. Well-to-do parents pay for private schools with good teachers and small classes. At Horace Mann in the Bronx, a leading private school, tuition is \$25,000 and class size averages 15 in the middle grades, or half of what it is in nearby public middle schools.

So what's the obstacle to small class size? Money, of course. New York's top court did not specify how much was needed and the politicians have spent the last year creating committees that have concluded that city schools need \$2 billion to \$6 billion more a year in operating funds. Similar cases in other states have dragged on for years. The New York case took 10 years to get through the courts, with Gov. George E. Pataki fighting it every step of the way.

Mayor Michael R. Bloomberg is losing patience, as well he should. Having made his own billions in the private sector, he under-

stands that quality costs. He estimates city schools need \$5.3 billion from the state in extra yearly operating funds and \$6.5 billion more in construction aid. Smaller class size requires more classrooms, and many city schools are overcrowded.

Which raises the question: Are we as a people willing to pay the price — are we willing to sign the social contract — to give city children more good teachers and small classes?

The answer is supposed to be the federal No Child Left Behind law, passed in 2002. It mandates that every American child be proficient in reading and math by 2014, that the achievement gap between white and black be eliminated once and for all.

To do this, President Bush's budget calls for spending \$13 billion for all Title I poverty schools in America. In other words, what Mayor Bloomberg says he needs extra for the New York City schools is what the president has offered for all the nation's poor schools.

At heart, leaving no child behind is about eliminating poverty's effects. To President Lyndon B. Johnson, that meant war — a war on poverty — since war is the best model we have for the kind of mobilization it would take. We understand that military wars cost; that's why the president has asked Congress for an extra \$25 billion for Iraq.

And for the education war? All the rhetoric and data are in place for the education war: high standards, tough accountability, disaggregated data by the truckload. But financing?

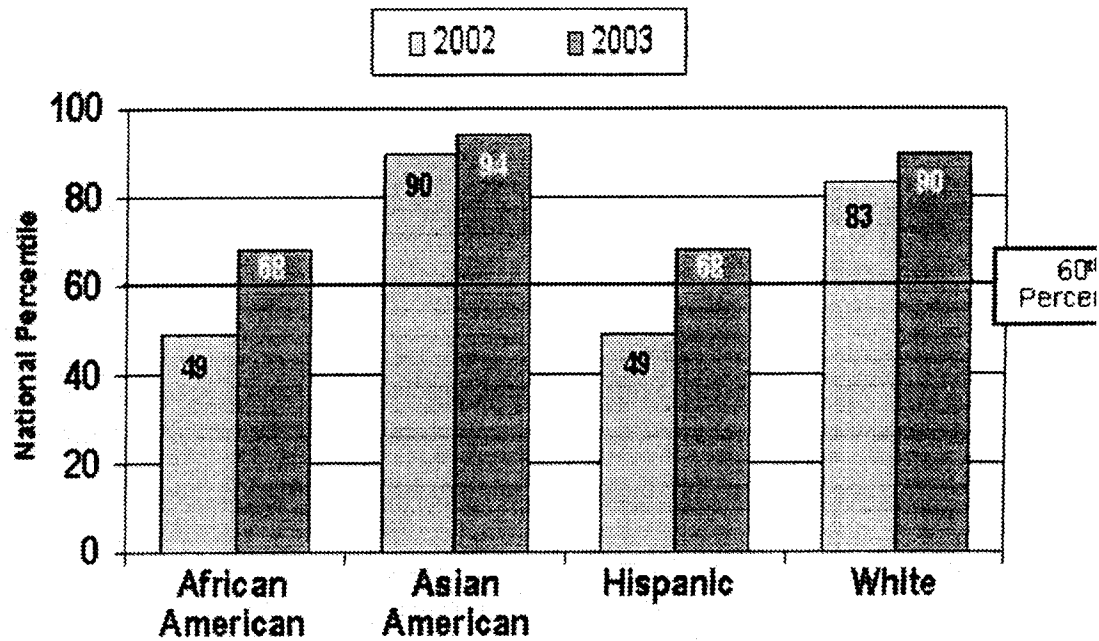
No Child Left Behind is superb at finding fault. It has labeled a third of America's schools failing. It has labeled over half of New York City's middle schools failing. Within a few years, almost all city middle schools are expected to carry that label. Fine, fail them all. But where is the money from the states and the federal government to arm city schools with small classes and more good teachers?

Blaming public schools, their principals and teachers for losing the education war feels a lot like blaming the ground troops for losing the Vietnam War. Are we committed to an education war? Do we have the will? I fear that the late Walt Kelly, creator of the comic strip Pogo, had it right: We have met the enemy and he is us.

EXHIBIT 4

Exhibit 4: Montgomery Co. student gains in 2nd grade

All Racial/Ethnic Groups Above 60th Percentile in Mathematics Computation for First Time



All Special Services Groups Above 50th Percentile in Mathematics Computation for First Time

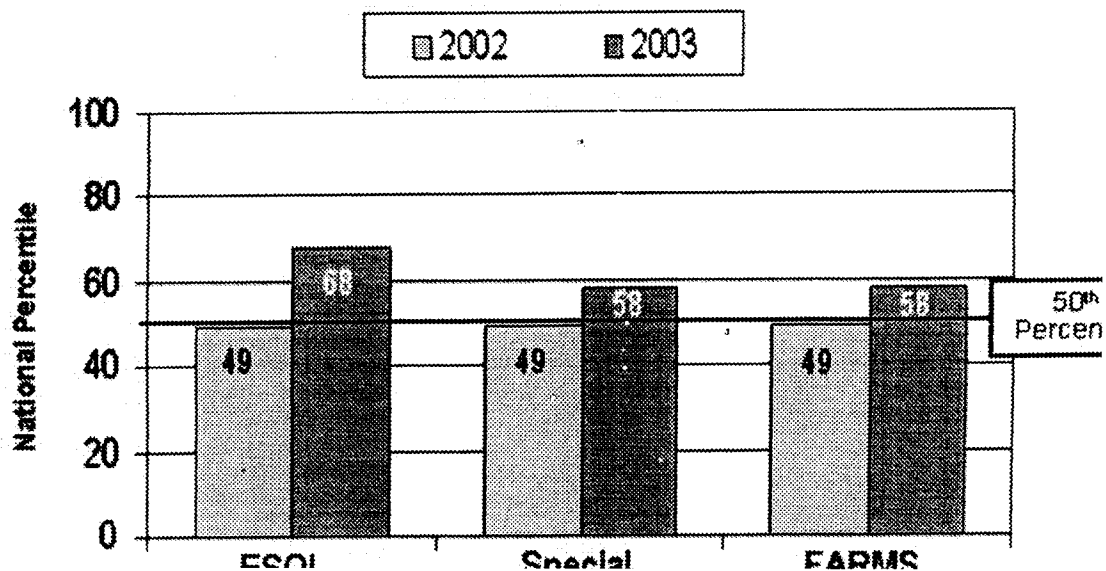


EXHIBIT 5

Exhibit 5: Gains by ethnicity in Minneapolis Public Schools

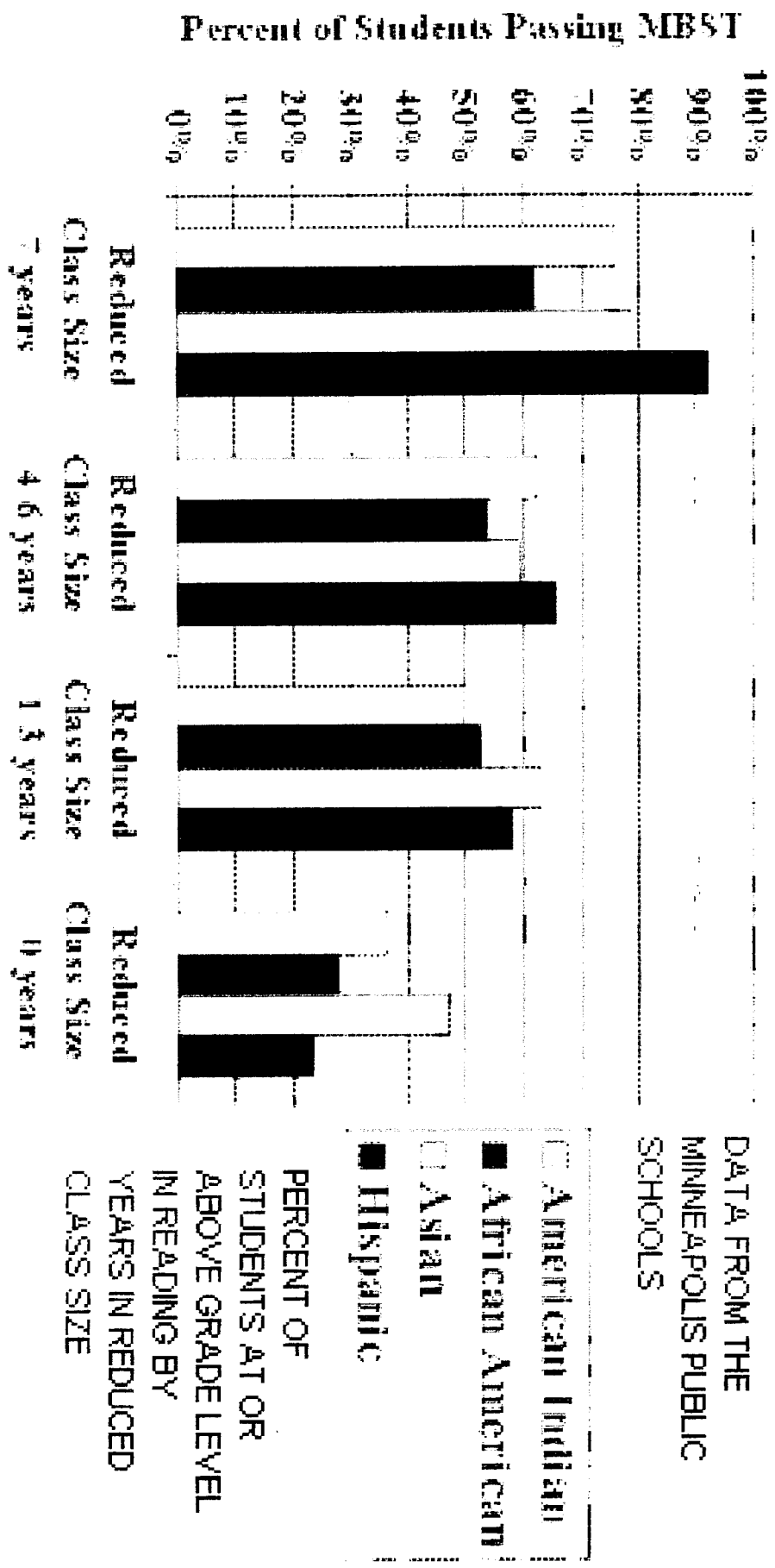
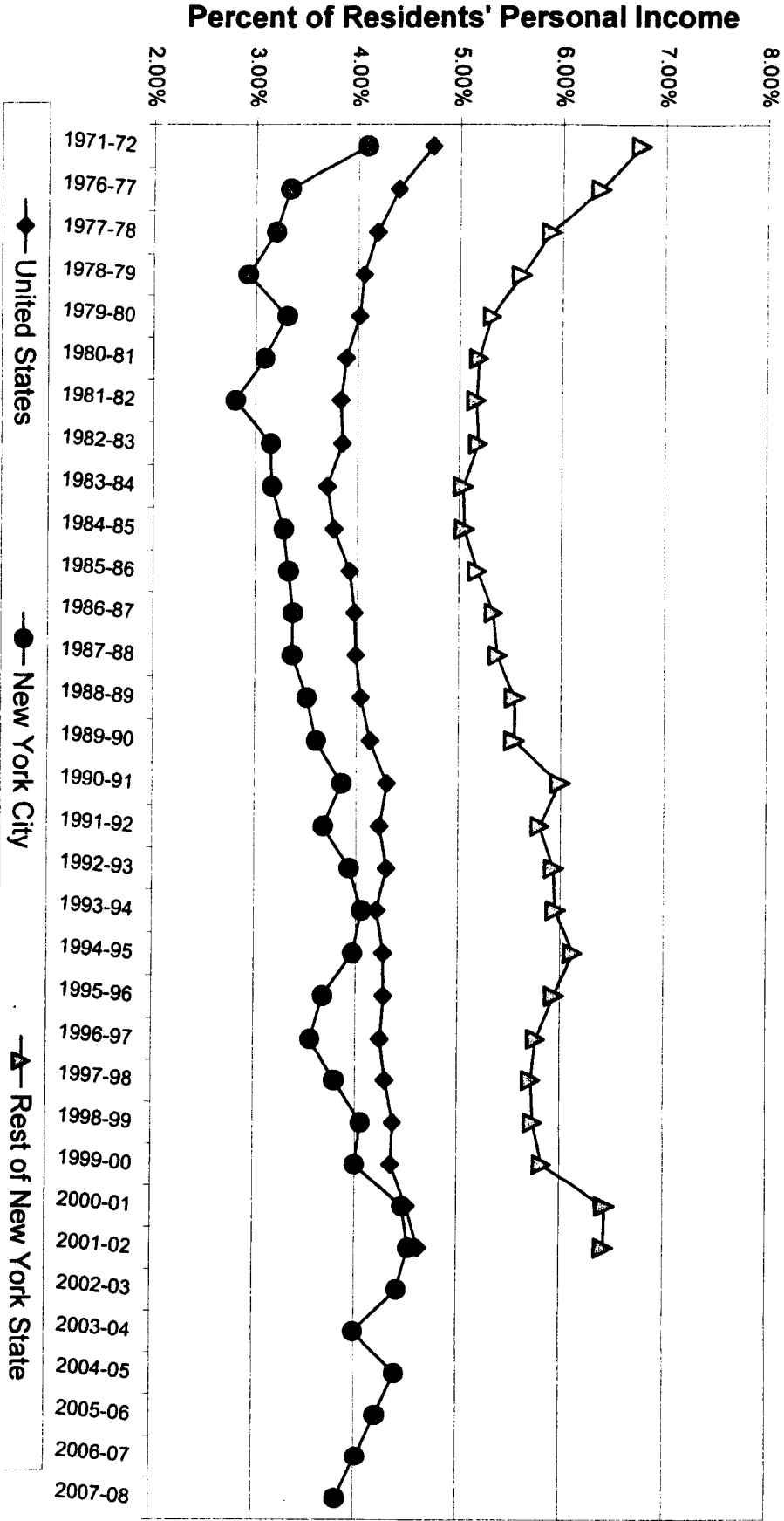


EXHIBIT 6

Exhibit 6: Public Expenditures on Education, Percent of Residents' Personal Income

PUBLIC SCHOOL EXPENDITURES, PERCENT OF RESIDENTS' PERSONAL INCOME



Sources: Spending -- Governments Division, U.S. Census Bureau. Personal Income -- U.S. Department of Commerce, Bureau of Economic Analysis. Spending as a share of income is lower than in prior versions of this chart, because it was redone to divide fiscal year spending by the following calendar year personal income, rather than the previous calendar year personal income, to match Census Bureau practice. Post 2002 data as reported by the NYC Comptroller and projected by NYC OMB. The large drop in FY04 and increase in FY 05 is based on capital spending projected in the January '04 financial plan. Note that post-2002 data is a projection only, and may not reflect what actually happens.