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## **INTEREST OF *AMICUS CURIAE***

This brief *amicus curiae* is submitted on behalf of the Council of the Great City Schools (“Council”), the only national organization in the country representing the needs of America’s urban public schools. The Council, which is a nonprofit 501(c)(3) and is not a publicly held company that issues stock, is a coalition of sixty-three of the nation’s largest urban public school systems, incorporated in 1961 for the purpose of improving the quality of urban education through research, legislation, technical assistance, and advocacy. The school districts of Rochester, Buffalo, and New York City comprise the Council’s membership in New York State. Other members include school systems in Chicago, Los Angeles, Detroit, Miami-Dade County, and Houston.

To assist its members and the larger education community in understanding issues and best practices in urban education today, the Council collects data on public education and publishes regular reports. The topics of recent Council reports have ranged from studies of urban school progress in closing the achievement gap to common reforms in fast-improving urban school districts.

The Council has a strong interest in supporting efforts to adequately fund the education of millions of children in America’s urban public schools. Toward that end, the Council has prepared major studies of school finance in four of its member

districts, including New York City, and has assisted other Council members in data analysis of finance issues.

The Council's interest in this litigation is substantial. Council data were received by the trial court in Defendants' Exhibits 10176 and 10190. In its briefing to the Appellate Division of the Supreme Court, the State of New York defendants described the Council's data inaccurately in an effort to support the proposition that New York City students did not need extra resources because they were already outperforming students in other urban districts. The Council submitted an *amicus curiae* brief to the Court of Appeals to set the record straight, to provide the Court with information from its own analysis of State funding of the New York City Public Schools, *Adequate State Financing of Urban Schools: An Analysis of State Funding of the New York City Public Schools* (January 2000), and to share with the Court a national perspective on the issues that the Court faced on appeal.

## ARGUMENT

### **I. The Additional Funding Necessary to Provide a Sound Basic Education to Students in the City's Schools Is at Least as Much as the Parties Propose.**

To provide a meaningful remedy to cure the reality that children in New York City ("City") are not being afforded the opportunity to obtain a sound basic education, the defendants must adopt a funding system that is based on the actual cost of satisfying that constitutional right. *Campaign for Fiscal Equity, Inc. v.*

*State of New York*, 100 N.Y.2d 893, 914, 927, 930 (N.Y. 2003) (hereinafter “*CFE II*”). In response to the Court of Appeals decision, both the defendants and the plaintiffs undertook analyses to determine how much funding is necessary to provide a sound basic education to the students of New York City. The plaintiffs recommended a funding increase of \$5.6 billion over current State expenditures, *see* Campaign for Fiscal Equity, *Sound Basic Education Task Force: Ensuring Educational Opportunity for All* (May 2004), basing its recommendation on a costing-out study conducted by the American Institutes for Research (“AIR”) and Management Analysis and Planning, Inc. (“MAP”). *See* American Institutes for Research *et al.*, *The New York Adequacy Study: Determining the Cost of Providing All Children in New York an Adequate Education* at 1 (March 2004) (hereinafter “AIR/MAP Study”). Alternatively, the Governor proposed a \$4.3 billion increase in total aid to the City in 2009-2010 dollars. *See* State of New York, *State Education Reform Plan* (August 12, 2004) at 16. The Governor’s proposal was based in part on a study conducted by Standard and Poor’s School Evaluation Services. *See* Standard & Poor’s, *Resource Adequacy Study for the New York State Commission on Education Reform* (March 2004) (hereinafter “S&P Study”).

The Council commends the plaintiffs and the defendants for agreeing, through their respective studies, that the City’s schools are in desperate need of

increased funding to meet the constitutional mandate. The Council's research on City schools supports a remedy on the high end of the range – \$4.3 to \$5.6 billion per year – proposed by the two parties. In 2000, the Council published its own analysis of school financing in the City's schools, concluding that a considerable increase in resources was necessary to provide an adequate education to all students. *See Council of the Great City Schools, Adequate State of Financing of Urban Schools: An Analysis of State Funding of the New York City Public Schools* (January 2000) (hereinafter "Council's New York Study") at 45-48.

To determine how much additional funding was necessary, the Council employed a standards-based or output-oriented approach. *Id.* at 45. This measurement of financial adequacy was based on the resources available to the highest performing (not the highest spending) school districts in New York State and then adjusted for the needs of the City's students. *Id.* In calculating the amount of funding necessary to provide an adequate education, the first step involved establishing a basic foundation of funding for all school districts in New York. Assuming that every school district should have the same resources as the highest achieving school systems in the state, a foundation amount was calculated based on the total per pupil expenditures of those more successful school systems. *Id.* at 46. Upon ranking the school districts by their state achievement scores, the study determined that schools performing in the top 10% in the State had average

per pupil expenditures of \$12,537. The bottom 10% of school districts, as measured by achievement scores, spent on average \$8,526 per pupil. The City's per pupil expenditure was \$8,171. *Id.*

After calculating the \$12,537 foundation level, the second step required adjusting that foundation amount to account for the special needs of students in the City's schools. *Id.* at 45-46. It is well-settled that students in suburban and urban school districts have different needs, especially because of the large number of poor students attending urban schools. On the whole, higher-income families spend about twice as much as lower-income families in total dollars on their children between birth and age 17, when one considers the money spent on housing, food, transportation, clothing, health and medical, education, and child care. The effects of poor parents spending less on education are obvious, but even the noneducation spending has consequences because of how it affects neurological growth and learning capacity. *Id.* at 37 (citing Rima Shore, *Rethinking the Brain: New Insights into Early Development* (1997)). This investment gap is made even wider by the fact that higher-income families spend about three times as much as lower-income families on enriching activities and items like children's books, learning aids, instructional toys, museum visits, family vacations, home computers, and developmental day care. Council's New York Study at 37-38. In the end, when combining the family and school expenditures,

the disparity in education spending between the City and the suburbs in New York was \$58,318 by the time the child graduates from high school. That difference was a staggering \$97,888 on average when including spending on education as well as noneducation items. *Id.* at 39.

Considering these drastic differences in the amount of resources afforded students in the City's schools as compared to students in other districts, the Council used a series of commonly-accepted weights to adjust the foundation level to account for the special needs of the City's students, including, but not limited to, the student's poverty level. *Id.* at 45.<sup>1</sup> While the actual enrollment for the City's schools was 1,057,608 students at the time of the Council's New York Study, the "weighted enrollment" once the weights were applied was over 32% higher at 1,401,024. Multiplying the foundation per pupil expenditure of \$12,537 by the weighted student enrollment and then dividing the product by the actual enrollment resulted in the amount needed to adequately educate the City's students: \$16,608 per pupil. *Id.* at 46. Similarly, the AIR/MAP projections found that \$14,282 per

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<sup>1</sup> Poverty was just one of the special needs serving as a weight. The study used the following weights: regular student (1.0), poor student (1.2), student with physical or mental disability (2.3), and limited English proficient (1.1). *Id.* at 45 (citing Kern Alexander, Testimony Concerning Federal Funding of Elementary and Secondary Schools, Subcommittee on Elementary, Secondary and Vocational Education of the Committee on Education and Labor, U.S. House of Representatives; U.S. General Accounting Office, *School Finance: State and Federal Efforts to Target Poor Students*, Washington, D.C. (GAO/HEHS-98-36)).

student in 2001-2002 dollars was required to provide an adequate education.

AIR/MAP Study at 76.

At the time of the study, the \$16,608 per pupil expenditure was \$8,437 more than the actual per pupil expenditure for the City's schools in 1996-97, indicating that the district needed an annual increase in funding of \$8.9 billion<sup>2</sup> in order for students to achieve at the same levels as the highest-achieving school districts in New York. This funding analysis suggests that the range of additional funding contemplated by the defendants' and plaintiffs' studies is very realistic and necessary to ensure that "every school in New York City would have the resources necessary for providing the opportunity for a sound basic education." *CFE II*, 100 N.Y.2d at 930. The Council's study further supports the conclusion that the plaintiffs' numbers on the high end of the range of proposed annual increases from \$4.3 to \$5.6 billion represent the more realistic approach to what it really will take to achieve a sound basic education in New York City.

## **II. The City Can Draw Upon the Lessons Learned from High Performing School Districts as It Develops a Plan to Use the Additional Funding.**

The Council recognizes that the additional funds provided to the City's schools must be governed by "a system of accountability to measure whether the

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<sup>2</sup> This recommended annual increase was developed using 1996-97 data. The Council has not updated the New York Study to adjust for inflation.

reforms actually provide the opportunity for a sound basic education.” *CFE II*, 100 N.Y.2d at 930. The Council can assure the Panel that additional funds can be used in ways that will improve teaching and learning. There are available to the City, and others guiding the process, lessons about reform strategies and instructional initiatives learned from urban school districts across the country that have improved student outcomes. By adopting the practices of successful school systems, the invested parties can “ensure” that the reform process will be effective.

In 2002, the Council published an important study of urban school districts that had made significant gains in student achievement and substantial reductions in racially-identifiable achievement gaps. This report, entitled *Foundations for Success: Case Studies of How Urban School Systems Improve Student Achievement*,<sup>3</sup> analyzed how three urban school districts – Sacramento, Charlotte-Mecklenburg, and Houston – produced meaningful results in recent years. Importantly, the study also included a profile of high-needs schools in New York City targeted for additional resources (the “City’s targeted schools”). All four of these case studies were selected because they demonstrated a trend of improved overall student achievement and narrowed the differences between white and

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<sup>3</sup> *Foundations for Success* was authored by the Manpower Demonstration Research Corporation and funded with the assistance of the Office of Educational Research and Improvement of the U.S. Department of Education and the Ford Foundation. The full report is available at [www.cgcs.org/reports/Foundations.html](http://www.cgcs.org/reports/Foundations.html).

minority students despite the fact they faced substantial challenges such as low expectations and inexperienced teaching staffs. In addition, the study examined the instructional practices of two other major city school systems that were not making significant academic gains to see if their strategies differed from the initial four case study districts.

**A. Successful School Districts Use Common Reform Strategies.**

The Council's research on Houston, Charlotte-Mecklenburg, Sacramento, and the City's targeted schools showed that these districts used many of the same reform strategies to improve student achievement. These strategies included goal-setting, accountability for meeting the goals, a focus on low-performing schools, uniform and sometimes-prescriptive citywide curriculum, cohesive professional development, frequent monitoring of the reforms in the classroom, regular use of detailed data to assist students before they fall behind, and a clear sequencing of reforms starting at the earliest grades. *Foundations for Success* at 42-60.

In all of the successful urban districts studied, an important element of reform was setting goals and developing a system of accountability for achieving those goals. Whether initiated by the Superintendent or triggered by the state's accountability system, goal-setting facilitated important conversations about beliefs regarding what students could achieve. Like the City's schools, all districts

in the study consisted of high percentages of disadvantaged and minority students. To overcome the belief that certain students would not be able to perform at the proposed levels, the districts sought “existence proofs,” or examples of how students citywide could achieve at a high level. For example, in the City’s targeted schools, leaders cited other schools within the City’s system that served a similar student population and were performing well. *Id.* at 42-44.

The successful districts in the Council’s study also established accountability systems that were sometimes more rigorous than those required by their states. District leaders set ambitious goals and held employees in the district, including themselves, responsible for achieving those goals. For example, the superintendent of Charlotte-Mecklenburg set high expectations by stating that every high school student would take at least one Advanced Placement or International Baccalaureate course. *Id.* at 44-47.

The successful districts focused their reform efforts first and foremost on low-performing schools. In the City, for example, certain low-performing schools were integrated into the City’s targeted schools, where teachers deciding to stay were offered more professional development, smaller class sizes, salary incentives, prescriptive instructional approaches, and more funding per student. *Id.* at 47-49.

Another common trait of the successful school districts was the creation of a uniform, centralized approach to curriculum and instruction. The purpose of this prescriptive approach was to eliminate discrepancies between what was taught and tested, and to increase the district's ability to improve instruction through focused professional development. As examples, Sacramento and Charlotte-Mecklenburg adopted existing published curriculum called *Open Court* as their elementary school reading curriculum, and the City's targeted schools used a modified and enhanced version of *Success for All*, another published curriculum. *Id.* at 49-51.

To help implement this curriculum, the districts studied in *Foundations for Success* used focused and intensive professional development. Both Charlotte-Mecklenburg and Sacramento, for example, initiated common planning periods for teachers. Moreover, Sacramento, with a grant from the Packard Foundation, hired twenty-eight reading coaches who modeled lessons and critiqued instructional practice for teachers. At the central office of the City's targeted schools, curriculum leaders trained six curriculum specialists in regional offices, and these curriculum specialists worked with others at the school level. *Id.* at 51-53.

In the case study districts, the successful districts made sure that their reforms were implemented at the school level. As an example, the superintendent of Charlotte-Mecklenburg, finding that the SAT scores for African-American

students had not risen despite district initiatives, decided mid-year that all students in middle-school language arts and math would be rescheduled in accordance with their test scores. Thus he was committed to making sure that the district's reforms actually occurred at the schools. *Id.* at 53-54.

Another common feature of the four districts was that they assessed student progress regularly and used the results to understand the barriers to teaching and learning, improve instruction, and target additional resources where needed. By consistently focusing on the quantitative data, they had a better understanding of the challenges that they faced and could identify teachers and students in need of help earlier in the school year. The districts also provided teachers with the scores from the previous year's classes, as well as the scores of their incoming students, to help them plan classes. In the City's targeted schools, principals displayed charts of achievement, which were disaggregated by class and topic, to help identify areas of need and highlight those who were making progress. *Id.* at 54-58.

These districts also focused their initial reform efforts at the elementary school level to stem the tide of students arriving at secondary school lacking basic skills. District leaders believed that reforming the elementary level was more straightforward because the instructional mission is focused on reading and math

and because instruction tends to be organized by grade level rather than department.

*Id.* at 58-59.

Finally, the study showed that the instructional practices of these four case study districts differed markedly from those of two other major cities that had not seen significant gains in student reading and math performance. These contrasting districts, in fact, were more likely to have instructional practices that were opposite of those of the faster-improving cities. The districts not showing substantial improvements lacked meaningful goals or accountability systems for meeting them, had fractured and incoherent curriculum and professional development, lacked any way to monitor program implementation, failed to use data to drive instructional decisions, and had no strategy for boosting achievement in their lowest-performing schools.

**B. The Common Instructional Initiatives Used by Successful School Districts Require Additional Resources.**

Successful reform efforts such as those identified in the Council's study require substantial funding. The significant investments that these reforms require could include:

- Purchasing research-based curriculum, supplemental materials, and intervention programs for each grade that are aligned with state standards and assessments;

- Hiring additional teachers to reduce class size well below statewide averages to help teachers handle the effects of poverty;<sup>4</sup>
- Raising average teacher salaries to allow the city to compete more successfully for new teachers to reduce class size – in exchange for stiffer accountability for performance;
- Expanding mandatory summer school or extended day programs for students who do not meet academic standards in the requisite time;<sup>5</sup>
- Providing full-service, universal pre-school programs throughout the city to mitigate the effects of poverty on brain development and early learning;
- Providing extensive professional development to teachers and staff on implementing high-standards curriculum, assessments, classroom management, technology, and other areas;
- Purchasing instructional technology and computers for every classroom in the city's schools and providing teachers with professional development in their use;<sup>6</sup>
- Establishing additional small schools or house schools to provide more individualized student attention;<sup>7</sup>

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<sup>4</sup> See Council of the Great City Schools, *Reducing Class Size: A Smart Way to Improve America's Urban Schools* (2000); Phil Smith et al., Education Policy Research Unit, *Class Reduction in Wisconsin: A Fresh Look at the Data* (2003); Alan B. Krueger & Diane M. Whitmore, *Would Smaller Classes Help Close the Black-White Achievement Gap?* (2001); Jeremy Finn et al., *The Enduring Effects of Small Classes*, 73 Rev. of Educ. Res. 321-368 (2001).

<sup>5</sup> See Patricia A. Lauer et al., Mid-Continent Research for Education and Learning, *The Effectiveness of Out-of-School Strategies in Assisting Low-Achieving Students in Reading and Mathematics: A Research Synthesis* (2004).

<sup>6</sup> See Cathy Ringstaff & Loretta Kelley, WestEd, *The Learning Return on Our Educational Technology Investment: A Review of Findings from Research* (2002).

<sup>7</sup> See Joe Nathan & Karen Febey, National Clearinghouse for Educational Facilities, Center for School Change, *Smaller, Safer, Saner Successful Schools* (2001); Leanna Stiefel et al., Institute for Education and Social Policy, *The Effects*

- Developing or purchasing interim or periodic assessments to gauge student progress throughout the school year;
- Providing incentives for the best teachers to teach in the city's poorest and lowest-performing schools.<sup>8</sup>

Council's New York Study at 47. Not surprisingly, the City's targeted schools adopted many of these proven instructional strategies, such as smaller class sizes, extended time for student learning, and targeted staff development. *Foundations for Success* at 172. During the extended time for students, for example, teachers worked with small groups of students on specific strategies from the district's prescriptive curricula. *Id.* These reform efforts proved particularly successful at improving the reading performance of the students in the City's targeted schools. See Deinya Phenix et al., *Virtual District, Real Improvement: A Retrospective Evaluation of the Chancellor's District, 1996-2003* (June 2004). In light of the success of these reforms, New York City is currently working to expand the number of schools that provide additional resources to students. In this way, the City will provide a greater number of students at more schools with the educational opportunities afforded to the initial small group of schools. Of course, additional funding will be needed to expand these reforms.

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*of Size of Student Body on School Costs and Performance in New York City High Schools* (1998).

<sup>8</sup> See Council of the Great City Schools, *The Urban Teacher Challenge: Teacher Demand and Supply in Great City Schools* (2000).

It is also noteworthy that many of the instructional strategies used by the successful school districts are included in the assumptions and estimates underlying the funding analyses before the Panel. For example, the AIR/MAP costing-out study took into account the costs required to create early childhood programs, reduce class size, provide teacher incentives, and extend the school day and year. *See* AIR/MAP Study at 31-36, 42-64.

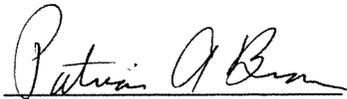
The Council strongly urges that the specific reform strategies, and discussions about the precise investments needed to implement them, be developed by the City school district in consultation with others. It will be vital for success for the district to fully plan, accept, and take responsibility for implementation. The Council has worked with many of its member districts on school reform issues, and consistently observes that reform comes more quickly and lasts longer when it is generated and fostered inside the district. The Council stands ready to assist if its help would be useful in the process of planning and implementing reform and accountability strategies.

## **CONCLUSION**

The Council respectfully urges this Panel to recommend a funding plan that increases annual expenditures for City schools by at least the amount requested by the Plaintiffs and that the City school district specify a reform process using those

resources that considers the lessons learned from the research on successful urban schools and school districts.

Respectfully submitted,



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I hereby certify that on this 17th day of September, 2004, a copy of the foregoing *amicus curiae* brief was served on the following by U.S. Mail:

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