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

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS ("NYSER"), MIRIAM ARISTY-FARER, MILAGROS ARCIA G. CHANGLERTH, KIM DA SILVA, MONA DAVIDS, JANELLE HOOKS, NICOLE JOB, MERCEDES JONES, SONJA JONES, JAMAICA MILES, SAMANTHA PIERCE, SAM PIROZZOLO, HEIDI TESKA-PRINCE, BETHAMY THOMAS, ELIZABETH VELASQUEZ and CORY WOOD,

Plaintiffs

vs.

THE STATE OF NEW YORK,

Defendants.

SECOND AMENDED COMPLAINT

INDEX NO. 100274/2013
(formerly 650450/2014)

PRELIMINARY STATEMENT

1. This action is brought brought by parents and students in the City School District of the City of New York City, Syracuse City School District, Schenectady City School District,, Central Islip Union Free School District, and the Gouverneur Central School Districts (the "School Districts") and New Yorkers for Students' Educational Rights ("NYSER"), a statewide advocacy group with members in each of these districts, to compel the State of New York ("State"), to provide the opportunity for a sound basic education guaranteed by Article XI, § 1 of the New York State Constitution ("Education Article") and articulated in the decisions of the Court of Appeals in *Campaign for Fiscal Equity Inc. v. State of New York*, 86 N.Y.2d

307 (1995) ("*CFE I*"), 100 N.Y.2d 893 (2003) ("*CFE II*"), and 8 N.Y.3d 14 (2006) ("*CFE III*") (referred to collectively as "*CFE*" or "*CFE* decisions").

2. In response to the *CFE* decisions holding that New York City's one million students were being denied sufficient funding for the opportunity for a sound basic education, and to comply with the Education Article, the New York Legislature in 2007 enacted a new funding formula in the Budget and Reform Act of 2007 ("Act"), known as the Foundation Aid Formula. The Act, through the Foundation Aid Formula, committed the State to substantially increase funding to the School Districts and districts throughout the state over a four year phase-in period. After the first two years, however, the State froze and then dramatically reduced funding under the Act.

3. While the Legislature has increased funding in recent years, currently the State deprives students statewide of nearly $4 billion to which they are entitled under the Act. The estimated funding shortfalls in the School Districts are as follows: New York City – $1.6 billion; Syracuse – $33.4 million; Schenectady – $41 million; Central Islip – $58 million; and Gouverneur – approximately $1.6 million.

4. The State reduced funding under the Act without any study or analysis of the impact of the reductions on the ability of the School Districts to provide all students the opportunity for a sound basic education. The State has also failed to implement an effective accountability system or otherwise take steps to ensure that the School Districts and other districts have sufficient resources to provide a sound basic education in light of current education mandates, outcome goals, and student needs.

5. As a result of the State's failure to provide funding under the Act, the School Districts cannot provide qualified teachers, principals and other personnel, suitable and up-to-date curricula,

an expanded platform of services for at-risk students, adequate resources for students with extraordinary needs, reasonable class sizes, adequate and accessible school buildings and a safe, orderly environment, all which causes their students to suffer substandard academic performance. As a result of the State's failures, students in the School Districts are being deprived of the knowledge, skills, experiences and values necessary to function productively as civic participants and be prepared for competitive employment, in violation of the right to a sound basic education guaranteed under the Education Article.

PARTIES

6. NYSER is an unincorporated association based in New York City, with members in New York City, Syracuse, Schenectady, Central Islip, and Gouverneur, dedicated to ensuring that all students in the State of New York are afforded the opportunity for a sound basic education as guaranteed under the Education Article. NYSER's membership consists of the individual Plaintiffs listed below, other parents of public school students, and the following organizations:

   a. The Center for Children's Initiatives ("CCI") champions the right of all children to start life with the best possible foundation of care, health, and learning, and specifically advocates for access to publicly-funded, high quality pre-kindergarten programs for all three- and four-year-old children in the State of New York.

   b. Class Size Matters is a not-for-profit organization that advocates for smaller classes in New York City's public schools and the nation as a whole.

   c. The Coalition for Asian American Children and Families is a not-for-profit corporation that works in the areas of child welfare, education, health, and youth

services on behalf of underserved families in the East Asian, South Asian, Southeast Asian, and Pacific Islander communities in New York City.

d. Community Education Councils One ("CEC 1"), Two ("CEC 2"), Three ("CEC 3"), Five ("CEC 5"), and Six ("CEC 6") in Manhattan; Community Education Councils Eight ("CEC 8") and Eleven ("CEC 11") in the Bronx; Community Education Councils Sixteen ("CEC 16") and Twenty-Three ("CEC 23") in Brooklyn; Community Education Councils Twenty-Six ("CEC 26") and Twenty-Eight ("CEC 28") in Queens; and Community Education Council Thirty-One ("CEC 31") in Staten Island are statutory bodies that are responsible for establishing policies for the public schools in their respective community school districts, in accordance with the provisions of N.Y. EDUC. LAW art. 52-A.

e. The Citywide Council on English Language Learners ("CCELL") is a statutory body established by New York State Education Law 2590-B, 5. (a) (i) – (iii) to "advise and comment on any educational or instructional policy involving bilingual or English as a second language programs."

f. The Hudson Valley Parent/Educator Initiative is an advocacy organization of about 1,000 parents and community members spanning a number of school districts in the Hudson Valley that seeks to preserve academic programs, arts, music and other programs and to ensure that students are provided their rights to a sound basic education.

g. Korean Americans for Political Advancement is an unincorporated association that promotes civil rights, immigrant rights, economic justice and education for Korean-Americans in New York City.

h. The New York City Parents Union is a not-for-profit organization of parents, headed by parent volunteers, from all five boroughs of New York City that works to protect and enforce the rights of parents and students guaranteed by city and state laws and regulations. The Parents Union seeks to ensure that all students receive a meaningful opportunity for a sound basic education.

i. The New York State Association of School Business Officials ("NYSASBO") represents over 1,800 school business officials and staff from throughout the State of New York, promotes collaboration and professional development, and provides leadership in the management of resources to ensure quality education for all students.

j. The New York State Council of School Superintendents ("NYSCOSS") is a professional and advocacy organization that represents more than 800 school superintendents and assistant superintendents in New York State. NYSCOSS provides its members professional development opportunities, and other services, while advocating for public education.

k. The New York State PTA ("PTA") is a statewide organization of hundreds of thousands of parents, teachers, administrators, students, and other child advocates in approximately 1,600 local units and councils. The overall purpose of PTA is to make every child's potential a reality by engaging and empowering families and communities to advocate for all children.

l. The New York State School Boards Association is a not-for-profit, statewide organization charged with devising practical ways and means for obtaining greater economy and efficiency in the administration of the affairs and projects of

New York's public school districts. Its membership consists of approximately 670, or 91%, of all public school districts and boards of cooperative educational services ("BOCES") in New York State.

m. Padres Abogando por sus Ninos (Parents Advocating for their Children) is a nonprofit association of parents and community members in Northern Manhattan that advocates for equal educational opportunities for immigrant children and other English Language Learners.

n. Parents for Public Schools of Syracuse, Inc. is a not-for-profit organization dedicated to confronting inequities and other barriers to the fundamental right of all children to a high-quality education.

o. Reform Education Financing Inequities Today ("R.E.F.I.T.") is a consortium of twenty-six low-wealth, high-tax school districts on Long Island whose combined wealth ratio ("CWR") is 1.5 or lower, and the Nassau BOCES and Eastern and Western Suffolk BOCES.

p. The Rural Schools Association ("RSA") is a statewide organization, representing the interests of, initiating research for, and providing service and information to the small and rural school districts of New York State. Approximately 300 school districts and BOCES units are currently enrolled as members of RSA.

q. The Statewide School Finance Consortium ("SSFC") is an organization of more than 420 New York State public school districts whose mission is to bring equity to the distribution of New York State educational aid. SSFC membership is largely comprised of school districts from average and low-wealth communities

that receive a disproportionately low share of state funding. Member districts are from every region of New York State.

r. The Yonkers Council of Parent Teacher Associations ("PTA") and Parent Teacher Student Associations ("PTSA") is the umbrella organization for the individual school PTAs and PTSAs in Yonkers; it is dedicated to improving and expanding educational opportunities for children and public education by working with families, the community and businesses.

7. Miriam Aristy-Farer sues on her own behalf and on behalf of her minor children, L[redacted], who is a student in the eighth grade in M.S. 209 in Manhattan, and L[redacted] who is in a dual language program in the second grade in P.S. 103 in Manhattan.

8. Milagros Arcia G. Changlerth sues on her own behalf and on behalf of her minor daughter, V[redacted] C[redacted], who is a student in the fourth grade at P.S. 1 in Manhattan.

9. Kim Da Silva sues on her own behalf and on behalf of her minor daughters, J[redacted] and D[redacted] S[redacted], who are students in the fourth grade at the Mulvey Elementary School in Central Islip.

10. Mona Davids sues on her own behalf and on behalf of her minor son, E[redacted] D[redacted], who is a student in the fourth grade in P.S. 106 in the Bronx.

11. Janelle Hooks sues on her own behalf, and on behalf of her two children, who are students in 9th and 11th grade in the Schenectady City School district.

12. Nicole Job sues on her own behalf and on behalf of her minor daughter K[redacted] who is a student at P.S. 600 in Brooklyn.

13. Mercedes Jones sues on her own behalf and on behalf of her daughter A[redacted] B[redacted] who is in the eleventh grade at the Nottingham High School in the Syracuse City School District.

14. Sonja Jones sues on her own behalf and on behalf of her minor son, G[redacted], who attends the Cobble Hill School for American Studies in Brooklyn.

15. Jamaica Miles sues on her own behalf, and on behalf of her two children, who are students in 1st and 7th grade in the Schenectady City School District.

16. Samantha Pierce sues on her own behalf and on behalf of her minor children, E[redacted], I[redacted], S[redacted], J[redacted] and C[redacted] who are students in the 11th, ungraded, 8th, 4th, and 2nd grades, respectively, in schools in the Syracuse City School District.

17. Sam Pirozzolo sues on his own behalf and on behalf of his minor son, F[redacted], who is a student in the 9th grade at Franklin McKeet Career Technical School in Staten Island and his minor daughter, S[redacted]. S[redacted] previously attended Susan Wagner High School in Staten Island but is currently being home schooled because she was unable to receive adequate educational services at Wagner or elsewhere in the New York City Public schools.

18. Heidi Teska-Prince sues on her own behalf and on behalf of her minor children, M[redacted], who is in the eighth grade, and N[redacted], who is in the seventh grade at the Expeditionary Learning Middle School in the Syracuse City School District.

19. Bethamy Thomas sues on her own behalf and on behalf of her minor daughter J[redacted] who is a 9th grade student at the Metropolitan Expeditionary Learning School in Queens.

20. Elizabeth Velasquez, sues on her own behalf and on behalf of her six minor children who attend school in the early childhood, elementary and high schools in the Central Islip School District.

21. Cory Wood sues on his on behalf and on behalf of his minor daughter, M[redacted], who is a student in the 10th grade at Gouverneur Junior-Senior High School and his minor son, C[redacted], who is a student in the 8th grade at Gouverneur Junior-Senior High School.

22. Defendant State of New York ("State") is obligated under the Education Article to ensure all New York students the opportunity for a sound basic eduction. In furtherance of that obligation, the State appropriates and allocates funding to the School Districts and other districts pursuant to the provisions of the Education Law and through an annual budget for state aid to localities.

JURISDICTION AND VENUE

23. Because several Plaintiffs reside in New York County, and the Defendants exercise their obligations under the Education Article throughout the state, this Court has jurisdiction over the subject matter herein pursuant to Article 5 of the N.Y. C.P.L.R.

24. The Court has jurisdiction to grant a declaratory judgment and appropriate injunctive relief pursuant to N.Y. C.P.L.R. 3001 and 3017(b).

FACTUAL BACKGROUND

A. THE CFE FRAMEWORK FOR A SOUND BASIC EDUCATION

25. Article XI, § 1 of the Constitution of the State of New York – the Education Article – provides that:

> The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

26. The Court of Appeals in the *CFE* decisions has interpreted this provision to "impose[] a duty on the Legislature to ensure the availability of a sound basic education to all the children of the State." *CFE I*, 86 N.Y.2d at 315; *see also CFE II*, 100 N.Y.2d at 902; *CFE III,* 8 N.Y. 3d at 20. The *CFE* decisions define the right to a "sound basic education" as "the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants" (*CFE II*, 100 N.Y.2d at 908), and "to compete for jobs" (*Id.* at 906). The *CFE* decisions require a sound basic education that "conveys not merely skills, but skills fashioned to meet a practical goal: meaningful civic participation in contemporary society"; that provide the skills needed to "compete for jobs . . . [that] require a higher level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime"; and that impart the skills necessary for productive citizenship, which "means more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably." *Id*. at 905-06.

27. Based on the extensive trial record, in *CFE v. State*, 187 Misc. 2d 1 (2001), the Court of Appeals affirmed the trial court's determination that students in New York City were deprivied of the opportunity for a sound basic education, concluding that the *CFE* plaintiffs had established "a correlation between funding and educational opportunity . . . a causal link between the present funding system and [the] proven failure to provide a sound basic education to New York City school children." *Id*. at 919 (internal citation omitted).

28. The Court further identified the specific resources essential to providing students with a sound basic education, including the following:

- sufficient numbers of qualified teachers, principals, and other personnel;

- suitable and up-to-date curricula;

- an expanded platform of services to help students who are at risk of failing;

- adequate resources for students with disabilities and English language learners;

- appropriate class sizes;

- sufficient and up-to-date books, supplies, libraries, technology, and laboratories;

- a safe, orderly environment; and

- adequate and accessible facilities.

See CFE v. State, 187 Misc. 2d 1, 114-15 (N.Y. Sup. Ct. 2001), *aff'd,* 295 A.D.2d 1, 10 (1st Dep't 2002), *aff'd*, *CFE II*, 100 N.Y.2d at 932 (2003).

i. The Act and the Foundation Aid Formula

29. Following the *CFE* decisions, in 2007, the Legislature enacted the Foundation Aid Formula, combining approximately thirty previously separate funding streams "to ensure that each district receives sufficient State and local resources to meet State learning standards." 2007-2008 Executive Budget, Investing in Education, http://www.budget.ny.gov/pubs/archive/'fy0708archive/fy0708littlebook/Education.html. The actual amount of foundation aid to be allocated to particular school districts would be calculated "based on actual costs in successful schools" and in accordance with a formula

that adjusted for district enrollment, poverty rates, and cost of living factors, in accordance with the State Education Department's recent cost study. *Id.*

30. The Act's Foundation Aid Formula remains in effect as the primary mechanism by which the State provides operating aid to public schools. N.Y. EDUC. LAW § 3602. The primary purpose of the Formula is to provide "adequate funding for a sound basic education in response to the Campaign for Fiscal Equity decision." New York State Board of Regents, Proposal on State Aid to School Districts for School Year 2012-13, p.7.

31. The Foundation Aid Formula has four basic components:

    a. A base amount per pupil reflecting the cost to educate students, as determined by the amount spent by successful school districts;

    b. A regional cost index to ensure a dollar of state aid can buy a comparable level of goods and services around the state;

    c. An expected minimum contribution by the local community; and

    d. A pupil need index recognizing added costs for providing extra time and extra help for students with special circumstances.

32. Under the Foundation Aid Formula, the amount of state operating or "foundation" aid provided to school districts is determined annually by: a) calculating the base amount derived from the successful schools analysis; b) multiplying this amount by the total number of student units; c) multiplying the basic foundation amount by the regional cost index and the pupil need index; and d) subtracting an expected "minimum local contribution" calculated based on the relative proprety values and taxable wealth of each district. The Act required that the increases determined for each district pursuant to this calculation, with an

anticipated cost of living factor, would be phased-in over a four year period from 2007 to 2011. N.Y. EDUC. LAW § 3602.4.

ii. *The State's Failure to Fund the Foundation Aid Formula*

33. Under the Act, total annual foundation aid based on the Foundation Aid Formula was to be increased statewide by $5.5 billion, to be phased in over a four-year period as follows: 2007-08 – 20%; 2008-09 – 22.5%; 2009-10 – 27.5%; 2010-11 – 30%, with appropriate inflation adjustments to be made with each annual increase. L. 2007, ch. 57, § 13. Largely in accordance with this schedule, in 2007-08, the foundation aid level state-wide was increased by $1.1 billion and in 2008-09 by another $1.2 billion. N.Y. State Division of the Budget, 2007-2008 Archive, http://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/schoolaid.html; N.Y. State Division of the Budget, 2008-2009 Archive, http://www.budget.ny.gov/pubs/archive/fy0809archive/enacted0809/localities/schoolaid/schoolaid.html.

34. Since 2008, the State has failed to provide the School Districts the amount of state aid required by the Foundation Aid Formula and that the governor and the legislature had determined to be necessary to provide all students the opportunity for a sound basic education within the 2007 Budget and Reform Act's four-year phase-in period. Instead, the State first froze the phase-in process, then substantially reduced foundation aid by repeatedly delaying the phase-in period and adopting a "gap elimination adjustment" ("GEA") and other mechanisms to reduce actual allocations to each school district far below the amounts calculated under the Foundation Aid Formula.

iii. The GEA

35. Commencing in the State budget for 2010-11, the legislature substantially reduced school funding through the GEA and other mechanisms. In imposing the GEA reductions, the State failed to undertake any new cost study to determine the current "actual costs" of providing a sound basic education, *CFE II*, 100 N.Y. 2d at 930,or an analysis of the impact of the reductions on the opportunity for a sound basic education in the School Districts. To date, the State has not undertaken any such study or analysis of the impact of reducing foundation aid through the GEA mechanism.

36. In 2011-12, the Legislature made the GEA a permanent part of the funding system. N.Y. EDUC. LAW § 3602.17. The GEA purports to close "the gap" between the budgeted state expenditure levels required by the Act and the amount of money the state was willing to appropriate that year to support them. To be clear, despite its name, the GEA did not reduce the education funding shortfalls under the Foundation Aid Formula; it increased them. For 2011-12, the Legislature increased the GEA reduction in foundation aid to approximately $2.6 billion statewide, L. 2011, ch. 58 §§ 26, 37, with the highest per pupil reduction in the School Districts and other high need districts.

iv. The State's Failure to Ensure an Accountability System to Measure Whether Students are Receiving the Opportunity for a Sound Basic Education

37. The *CFE* decisions require that the State's provision of school funding be "calibrated to student need," 100 N.Y. 2d at 929, and include "a system of accountability" to "measure" whether the funding made available to the School Districts "actually provide[s] the opportunity for a sound basic education." *CFE II*, 100 N.Y.2d at 929-30.

38. The State is not only failing to provide the School Districts the funding required under the Foundation Aid Formula, but it has also failed to establish and implement an accountability system which measures whether students in the School Districts are being provided the

opportunity for a sound basic education with the substantially reduced amounts of state aid that they have actually been receiving since 2010.

39. The State has further failed to establish an accountability system that monitors the extent to which, under current reduced levels of aid under the Foundation Aid Formula, together with limits on local funding imposed by the State's property tax cap, the School Districts are receiving funding based on the actual cost of essential resources calibrated to student need and adjusted for current education mandates and outcome standards, as required to ensure the provision of a sound basic education to all students.

B. THE SCHOOL DISTRICTS

i. THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

40. Based on the state's commitment in its adoption of the Foundation Aid Formula to increase funding for the New York City public schools by $3.2 billion over a four year phase-in period, the New York City Department of Education ("DOE") adopted a new "fair student funding" formula ("FSF") for distributing operating funds to all New York City schools ("City Schools"). The FSF was intended, among other things, to substantially increase funding for City Schools serving high-need students consistent with the Court of Appeals' emphasis that school funding should be "calibrated to student need." *CFE II*, 100 N.Y. 2d at 929.

41. For the 2017-18 school year, the State is providing foundation aid to the City Schools at a level that is approximately $1.6 billion less than the amounts required by the Foundation Aid Formula. As a result, the DOE is providing most City Schools only 87% of the amounts required by the FSF. This funding shortfall has substantially impeded the ability of many City Schools, and particularly those in high need neighborhoods, to provide all

students with essential resources, including programs, services and interventions mandated by State law and regulations and essential for the the opportunity for a sound basic education.

a. Inputs

1) Qualified teachers, principals and other personnel

42. Large numbers of teacher positions in numerous City Schools, especially in schools serving high concentrations of "at-risk" students ("high need schools"), are vacant or filled by substitute teachers, teachers who have not earned standard initial licensure, or other individuals without adequate State certification or qualifications. After the start of the 2017-18 school year, there were 1,700 job postings for City Schools, mainly for teachers in the areas of special education, bilingual education, career and technical education, languages other than English, music, and visual arts. As in past years, some of these positions will be filled—often on a temporary basis with severe detrimental consequences to the students—as the year progresses, but numerous other vacancies will open up because of the high teacher turnover rate, especially in high need schools.

43. As of 2015, 19.1% of the bilingual education teachers lacked State certification in their subject area. Further, 14.4% of special education teachers, 8.1% of foreign language teachers, 11.7% of health education teachers, 5.5% of reading teachers, 4% of science teachers, and 2% of social studies teachers lacked State certification in their subject area.

44. As demonstrated by federal and grant funded pilot programs both in New York City and in large scale demonstration projects in other districts, substantial numbers of highly qualified individuals from diverse backgrounds could fill teaching positions on a permanent basis in the City's high need schools through properly planned and resourced

teacher residencies and other programs. Lack of resources has prevented continuation and expansion of numerous pilot teacher residency programs, since funding from federal, state, and local sources has been erratic and has diminished over the past several years.

45. The continuing teacher vacancies, high teacher turnover rates, and presence of substitute or uncertified teachers in many positions has resulted in the staffing of numerous City Schools by insufficient numbers of properly certified, adequately trained teachers to provide appropriate bilingual and special education services, mandated instructional time in core courses, and State-required courses in the science, art, health, career and technical education and other areas.

46. Many City Schools lack sufficient guidance counselors to provide their students state-required services, including basic academic counseling and college readiness counseling and supports. A recent study found that 35 City High Schools have no guidance counselors at all, and in 115 City High Schools, guidance counselors have caseloads in excess of 300 students each, with guidance counselors in twenty-one schools attempting to handle course selection and college guidance activities for over 500 students. Creating College Ready Communities 31 (Center for New York City Affairs, The New School, 2013). In 2012, the New York City Comptroller determined that there was a need for an additional 1,600 guidance counselors in City Schools to meet State requirements for responding to the needs of students with behavioral or adjustment problems, and to provide necessary college counseling. Office of the Comptroller, The Power of Guidance (2012).

2) Suitable and Up-to-Date Curricula

47. A number of City Schools lack sufficient qualified teachers to meet minimum instructional time requirements in English Language Arts, mathematics, science, and social science, and in many schools, art, physical education, health, career and technical courses, and other required subjects, are simply not offered.

48. Many recent graduates of City Schools cannot meet the recommendations and specific requirements for adequate academic coursework for incoming students at the City University of New York ("CUNY") because their schools did not offer courses like chemistry or physics, or the sequences of courses in foreign languages, mathematics and other subjects that CUNY institutions recommend or require for incoming students.

49. The State requires school districts to provide secondary school students "access to programs of career education, commensurate with the interests and capabilities of those desiring and having a need for preparatory training, retraining or upgrading for employment, and [to] develop realistic programs in accord with manpower needs in existing and emerging occupations for present and projected employment opportunities." Educ. Law §4602. The State also requires that "[a]ll public school districts offer students the opportunity to complete a three- or five-unit sequence" in career and technical education, and the chance to begin this sequence in ninth grade. 8 NYCRR Section 100.2 (h). In 2015, as part of an initiative to provide students "multiple pathways" to graduation, the New York State Board of Regents (the "Regents") amended the requirement that students pass five Regents exams in order to allow students who have completed an approved career and technical educational

services ("CTE") program to substitute passing scores on an approved CTE assessment for one of the two required social studies exams. 8 NYCRR § 100.5(a)(5)(i)(f)(1)[1].

50. Although the DOE has expanded the number of CTE classes in recent years and has adopted innovative P-Tech and other programs in order to properly prepare students for competitive employment, students cannot access CTE courses and programs in many areas, particularly in high-need schools and community districts. As of 2014, there were only 47 City Schools and 70 other schools that offered one or more CTE courses, out of a total of 1800 schools.

51. Effective CTE programming in City Schools is also seriously hampered by an insufficiency of internships and apprenticeship programs that provide students meaningful workplace experiences. With 26,000 students attending CTE high schools, and thousands of other students taking at least one CTE course in other high schools, only 1,575 students were able to obtain internships with employers in 2014.

3) Expanded Platform of Services for At-Risk Students.

52. More than 75% of the students in City Schools are from families that meet the federal eligibility criteria for free and reduced price lunch, the definition for students in poverty. Low income students often are at risk academically and need additional programs and services in order to obtain a sound basic education.

53. To address the needs of students in poverty, state regulations require schools to provide extra academic intervention services for students whose academic performance is below grade level or who are at risk of failing to achieve proficient performance in one or more of the four core subject areas. These services may be provided during the regular school

[1] In June 2016, the Regents further amended the regulations to permit a "CDOS [Career Development Occupational Studies] commencement credential," based on a career plan, work experience, and meeting commencement-level CDOS learning standards, to substitute for the CTE assessment.

day or extended day, or through afterschool and/or Saturday, extended year or summer programs. N.Y. COMP. CODES R. & REGS. tit. 8 §§ 100.1(g); 100.2(ee).

54. Lacking sufficient resources, most City Schools provide some of the required services, some of the time, and to some eligible students, but the vast majority of City Schools fail to provide all eligible students the academic intervention services ("AIS") to which they are entitled.

55. Since 2012, the State has also required all school districts to identify students with learning difficulties or behavioral problems and to promptly provide them Response to Intervention ("RTI") services that will meet their needs through graduated levels of appropriate academic interventions. 8 NYCRR § 100.2(ii). RTI procedures enable schools to identify, especially during the K-3 years, students making sub-standard progress and support them by providing evidence-based interventions, monitoring their progress, and making data-based decisions to adjust the intensity and nature of those interventions. Accordingly, RTI has great potential to improve the education for students at risk of poor learning outcomes and to reduce referrals for special education.

56. The DOE has instructed all principals to implement this policy, but a lack of resources has prevented most City Schools from providing sufficient qualified staff and staff time to support small group and individualized instruction and other interventions necessary to implement RTI. As a result, implementation of RTI has not reduced referrals to special education. In 2016, the percentage of students classified with a disability and requiring special education services reached an all-time high of over 18%.

57. A substantial number of City Schools lack sufficient school psychologists or social workers to meet state requirements for mental health services for students with behavioral or adjustment problems.

58. Students who are homeless and students living in temporary housing are particularly "at risk" of not making academic progress and dropping out of school. These students are especially in need of an expanded platform of services. The number of homeless students has increased substantially in recent years, rising from approximately 66,000 in 2009 to approximately 111,500 in 2016, and more than 140,000 children enrolled in City Schools have experienced homelessness within the past six years.

59. The DOE has adopted a number of initiatives to meet this growing need, including expanding transportation opportunities to meet applicable legal requirements for students living in shelters to remain in their current school, however distant its location from the shelter's address. The DOE also adopted an after-school reading tutoring program at city shelters serving about 1,400 of these students. Due to a lack of funding, however, the vast majority of homeless students still do not have access to this basic support program and the DOE has not been able to hire sufficient personnel to provide the educational programs and supports these students require.

60. In recent years, the governor and the legislature have emphasized the importance of "Community Schools" to enable schools in "distressed" communities to provide students a range of extra "wrap-around" health services, family counseling, after school, summer school, and employment assistance to give students in these communities a meaningful educational opportunity.

61. Educ. Law§3602.4 (e) mandates that 225 high-need school districts, including the City Schools, allocate a portion of their total foundation formula aid "to support the transformation of school buildings into community hubs to deliver co-located or school-linked academic, health, mental health, nutrition, counseling, legal and/or other services to students and their families, including but not limited to providing a community school site coordinator, or to support other costs incurred to maximize students' academic achievement." Pursuant to this mandate, the DOE set aside $32 million of its 2017-2018 foundation aid funds to provide community school services in 75 "renewal schools" that have been low performing for a number of years and have been designated by the State as "priority" or "focus" schools pursuant to the federal Every Student Succeeds Act. In addition, the DOE has secured an additional $2.5 million for community schools from a state-funded competitive grant.

62. Consistent with the State's emphasis on community schools, and because the community school model is an effective means to ensure all "at risk" students receive an "expanded platform of services," the DOE has committed to transforming virtually all schools in high-need neighbhorhoods to community schools and to devoting substantially more than the mandatory $32 million to this effort. *See* Office of the Mayor, New York City Community Schools Strategic Plan (2014), *available at* https://www1.nyc.gov/assets/communityschools/downloads/pdf/community-schools-strategic-plan.pdf.

63. In 2015, the DOE began to support the development of community schools at the 75 renewal schools plus 25 additional high need schools. For the current school year, the DOE has increased the number of community schools to over 225.

64. According to State policy recommendations and research, an effective community school should be staffed by a full time community school director; undertake ongoing assessments of student needs; and provide a full platform of expanded services, including, *inter alia*, expanded learning time, early childhood education, physical and mental health services, parent and family engagement, guidance and social services. To promote efficiency and to coordinate services needed by particular children, the schools should also coordinate their activities effectively with nonprofit and government agencies operating in their community.

65. Despite the strong commitment to community schools, funding shortfalls are impeding the DOE's ability to provide the full array of personnel and programs needed to implement an effective community schools model in those schools currently in the program, nor can the DOE further expand the program to ensure that all students in the City's high-need schools have access to the expanded platform of services through the DOE's community schools model.

4) Adequate Resources for Students with Extraordinary Needs

66. Almost 16% of City students are English language learners ("ELL"). Because of a shortage of certified bilingual and English as a Second Language ("ESL") teachers, many of these students are denied the bilingual and ESL services to which they are legally entitled. Class sizes for ELL students are excessively large and, in many cases, are larger than class sizes for monolingual students in the same building. Since many ESL classes contain students speaking a range of languages, small classes and small group instruction are especially important for this population.

67. In many City Schools, staff shortages mean that students do not receive the full number of instructional minutes in ESL instruction mandated by State law. Moreover, many schools provide ESL services on a "pull-out" basis such that ELL students miss basic academic instruction or other state-required programs and activities. Most ELL students who qualify for AIS services are not receiving them. Staff shortages also mean that ELL students do not receive the support services, including counseling, to which they are entitled by State law.

68. Many City Schools lack sufficient classrooms to house pull-out classes for ELL students and schools conduct classes in hallways and other non-classroom spaces like storage rooms and copier rooms.

69. Most immigrant students, who constitute a large proportion of the ELL population, are denied experiential services such as field trips to cultural events, historical sites and governmental functions, all of which are especially important to prepare this population for civic participation.

70. Most City Schools lack appropriate instructional materials for ESL classes. Many Schools also lack the funds to adequately translate notices to parents of ELL students. Many ELL students are not being administered the Language Assessment Battery-Revised test for determining instructional needs in a timely manner, and there is a lack of appropriate testing and diagnostic tools in an appropriate range of languages to provide accurate assessments for placement of ELL students into special education. Many schools also lack appropriate staffing to serve ELL students who are also eligible for special education services.

71. More than 18% of City students have been classified with a disability and require special education services through an Individualized Education Program ("IEP"). Because of a shortage of certified special education teachers and related service providers, many students with disabilities are denied adequate services and/or are placed in inappropriate settings.

72. For special education students, teacher shortages have led to increases in class sizes beyond regulatory norms in numerous integrated co-teaching ("ICT") classes, and self-contained special education classes have broader ranges of ages and abilities than State regulations permit.

73. Special education teachers are regularly removed from ICT classrooms to substitute for general education teachers to reduce expenditures on substitute teachers. As a result, students with disabilities are deprived of their required instructional support.

74. Many students have been placed on waiting lists for speech, occupational and physical therapy and other related services. According to the DOE's Local Law 27 report for school year 2015-2016, as many as 13,887 students are not receiving the special education services required in their IEPs and as many as 58,120 students are receiving only partial services.

5) Class Size

75. The *CFE* decisions establish 20 to 23 students as the benchmark for determining whether class sizes are reasonable. *CFE II*, 100 N.Y.2d at 115; *CFE v. State*, 187 Misc. 2d at 52-54.

76. In 2007, as part of its plan for implementing the *CFE* rulings, the Legislature adopted the Contract for Excellence ("C4E") law, N.Y. EDUC. LAW § 211-d, to regulate the

expenditure of the additional funding provided under the Foundation Aid Formula. The C4E law required, *inter alia*, the DOE develop a plan for reducing class sizes in City Schools. In 2007, the State approved the DOE's plan to reduce class sizes to an average of no more than 20 students per class in grades K-3, 23 in grades 4-8 and 25 in core high school classes over a five-year period.

77. In 2016-17, according to DOE reports, average class sizes were 24.9 students in grades K-5; 27.1 students in middle schools; and 26.5 students in the high schools. These averages mask the fact that in certain boroughs, average class sizes were much larger (*e.g*. average sizes for grade 4 in Queens was about 28 students, and many types of science and social studies classes in Queens high schools averaged 30 and 31 students; in Staten Island, the average chemistry class was 34 students, and throughout the city, hundreds of individual classes exceeded 30, and in some cases 35 students).

6) Instructional Materials

78. Most City Schools lack funds to purchase sufficient up-to-date textbooks in all subjects and sufficient numbers of books to allow students to take textbooks home to complete homework assignments, to review or to study for a test.

79. Many City Schools also lack adequate numbers of library books and basic and current computer hardware. They also lack sufficient resources to maintain and repair existing technology and replace worn-out or obsolete software, hardware, or necessary accessories (such as ink cartridges). Much of the instructional technology is therefore functionally unusable. Many schools also lack sufficient equipment for particular subjects, including calculators, compasses, protractors for math; basic art supplies such as paint, clay, easels, and smocks, and musical instruments; and general classroom supplies.

7) A Safe, Orderly Environment

80. A lack of sufficient numbers of deans, guidance counselors, psychologists, and social workers has precluded the implementation of positive behavioral intervention programs, restorative justice, and anti-bullying and other preventive and pre-emptive programs for dealing with potential discipline problems. Such personnel are crucial to address the substantial discipline problems in many City Schools. Pervasive bullying also cannot be addressed without sufficient resources to provide required school-wide training for teachers on bullying prevention, and to document in detail each bullying incident, as required by state law.

8) Adequate and Accessible School Buildings

81. As of 2015-16, approximately 575,000 City students attend classes in buildings utilized at 100% or more of their capacity. Severe overcrowding exists in schools in northern Manhattan, throughout the borough of Queens, in parts of Brooklyn, and in other locations throughout the city. Overcrowding has been exacerbated by State mandates requiring DOE to find space in school buildings to co-locate charter schools in those buildings, or to pay an additional 30% of each students' per capita funding amount or the total amount of the charter school's rent in a commercial location. Educ. Law §2853. The DOE does not receive additional State funding to address the impact of charter co-locations in already over-crowded City schools.

82. Many City Schools experience a shortage of science laboratories and approximately 16% of City high schools lack a science lab. New York City Independent Budget Office, Availability and Distribution of Selected Program Resources in New York City High Schools 14 (2013) (the "IBO Report"). Nearly 30% of City high school students do not

have access to an art or music room, *Id*. at 12; 9% of the high school buildings lack gymnasiums; 11% lack libraries; and almost half of the schools with libraries and almost 40% with gyms have to share them with other schools in co-located buildings, resulting in diminished access for students. *Id*. at 15.

9) Preparation for "Meaningful Civic Participation"

83. The *CFE* decisions require the State to ensure that students receive a "meaningful" opportunity that prepares them to "function productively as civic participants." *CFE v. State of New York*, 100 N.Y. 2d 893, 908 (2003.) To fufill this requirement, students need sufficient exposure to civic knowledge, skills, experiences and values. This further requires access to a full range of civics, social studies, history, economics and other appropriate courses; the development of critical analytic and media literacy skills; participation in extracurricular, experiential and community service activities that promote appropriate inter-personal and communication skills and familiarity with civic activity; and the cultivation of tolerance, integrity, respect for law, and other values that are critical for the maintenance of a democratic society. Funding constraints substantially impede the ability of most schools in New York City to properly carry out these functions.

84. Even City Schools established for the express purpose of developing civic knowledge, skills and values lack the resources to adequately do so. For example, the Metropolitan Expeditionary Learning School in Queens, which Plaintiff Jemma Thomas attends, has historically initiated its CREW citizenship education program by having all sixth graders participate in a four-day outdoor education experience to develop interpersonal skills and civic values. Because of financial constraints, this critical program, as well as the ninth grade one-day follow up outing, had to be dropped this year. Furthermore, basic

extracurricular activities like drama are no longer available; students must pay for sports equipment and field trips to museums and community events; after-school clubs operate only through fees paid by parents; and the speech and debate club was able to participate in the state and national finals competitions last year only because of major fundraising by the PTA.

85. In many, if not most city schools, parent organizations now run extensive fundraising drives not only to support basic civic activities but also to support salaries for staff personnel to provide basic state-mandated instruction in reading, art, and other subjects, and for professional development and other necessary services. Aside from the impropriety of public school parents having to pay for basic school services, this practice raises serious equity issues, since parents in many low income neighborhoods do not have the ability to raise money in order to avoid teacher lay-offs or to provide civic preparation or other necessary activities.

b. Outputs

86. In 2017, only 40.6 % of City students in third through eighth grade were proficient on state achievement tests in English language arts ("ELA"), and only 47.8% were proficient in math.

87. Among English language learners, in 2017, only 5% of City students were proficient on the third through eighth grade ELA achievement tests, and only 15% were proficient in math; among students with disabilities, only 11% were proficient in ELA, and 11% in math.

88. Only 70% of City students who entered ninth grade in 2011 received high school diplomas as of June 2016; of these 18.6% received Regents diplomas with advanced designation and 4%

received less rigorous local diplomas. An additional 8% dropped out. Only 65% of African-American students and 64% of Latino students graduated in 2016. In 2016, the graduation rate for the City's ELL students was 27%, of which 20% were Regents diplomas, 1% were Regents diplomas with advanced designation and 5% were local diplomas. For City students with disabilities, the graduation rate was 42%, of which 22% were Regents diplomas, 2% were Regents diplomas with advanced designation and 18% were local diplomas.

89. In 2010, the State, through the Regents, established "college and career ready" as the State's current benchmark for a "meaningful" high school eduction for New York students. The Regents initially defined college and career ready as graduating high school with at least a score of 75 on the Regents English language arts examination and 80 on the Regents mathematics examination. The Regents later modified the "college and career ready" scores to be 75 on the Regents ELA exam and 70 on the Regents mathematics examination. In 2017, the Regents further modified the definition of a meaningful high school education as graduating with "college, career, and civic readiness."

90. In 2017, only 46% of City students graduating from City Schools were deemed college and career ready under the Regents' current standard for a meaningful high school education. Even fewer City graduates are ready to function productively as civic participants.

ii. ***SYRACUSE CITY SCHOOL DISTRICT***

a. Inputs

91. Despite recent efforts to ensure efficient and effective spending, the Syracuse City School District ("Syracuse") has been unable to provide its students the opportunity for a sound basic education at current funding levels under the Foundation Aid Formula.

92. Syracuse serves approximately 21,000 students, 84% of whom are from low-income households, as measured by eligibility for the federal free and reduced price lunch program. At the time of the CFE decisions, Syracuse, like New York City, lacked sufficient resources to provide students the opportunity for a sound basic education. To remedy this constitutional deficiency, the Act committed the State to increase aid to Syracuse under the Foundation Aid Formula by approximately 35% over the four-year phase-in period, which should have resulted in an increased annual funding level of approximately $85 million by 2011-12.

93. Anticipating increased funding under the Foundation Aid Formula, together with a commitment to maximize the effective use of the funding, Syracuse secured the agreement of the Say Yes to Education organization ("Say Yes") as a demonstration city for Say Yes's ambitious program to guarantee a free college education to all high school graduates in a mid-sized city. To motivate and prepare Syracuse students for college, Say Yes committed millions of its own funds to provide a range of support and "wrap-around" services in Syracuse, including pre-school, afterschool and summer school programs for an initial transition period, pending the receipt of increases in state funding to enable Syracuse to support these services in its own budget.

94. Under the phase-in of Foundation Aid, Syracuse received a $17 million increase in State funding in 2007-08 and another $12 million in 2008-09. In 2009-10, however, foundation aid was frozen at approximately the 2008-09 funding level. In 2010-11, substantial amounts of state aid due under the Foundation Aid Formula were withheld by the State through the GEA and other mechanisms.

95. The total amount of foundation aid withheld through GEA from Syracuse from 2010-11 through 2015-6 was approximately $55.5 million.

96. For the 2017-18 school year, the shortfall between the amount due to Syracuse under the Foundation Aid Formula and the current level of foundation aid is approximately $33.5 million.

97. In 2010, facing further shortfalls in State funding under the Act, Syracuse, along with Say Yes and expert consultants, made a determined effort to continue efforts to improve outcomes for Syracuse students at a reduced expenditure level by undertaking an intensive program of cost containment, cost efficiency, and cost effectiveness while maintaining the objective of ensuring all students a meaningful opportunity for a sound basic education.

98. Syracuse eliminated a large number of staff positions, revamped the special education referral process, and strengthened many of its programmatic structures. Specifically, between 2008-09 and 2013-14, and despite increases in enrollment, Syracuse reduced its instructional staff by 164 (10%), teaching assistants and other instructional support personnel by 257 (26%), and student support services by 34 (16%), in addition to substantial reductions in administration and clerical staff. At the same time, Syracuse sought to upgrade its curriculum to meet the Common Core standards requirements, to implement the APPR staff evaluation system, and to improve teacher effectiveness. Syracuse also renegotiated teacher and administrator contracts, reducing previously negotiated salary increases and extending work hours.

99. Despite these efforts, and to continue its progress, and address new state mandates, Syracuse has been forced to utilize a statutory mechanism that allows certain city school districts to spend additional sums as an advance against future revenues. Over the past

five years, Syracuse has borrowed $31 million to support current operations. This large operational debt is more than 7% of the total budget. Syracuse may in the near future have to curtail current expenditures drastically unless the State increases foundation aid.

100. Even with exemplary cost efficiency efforts and borrowing against future revenues, Syracuse cannot provide resources essential for a sound basic education. It has not filled a substantial number of vital academic and student support personnel positions, such as academic intervention teachers, coaches, social workers, guidance counselors, and behavior intervention specialists. In addition, many of the cut-backs in teaching assistant positions have not been restored.

101. The majority of Syracuse students qualify for AIS services in one or more subjects. Syracuse can only provide such services in English language arts and mathematics to a portion of eligible students, and it is unable to provide any AIS services on a systematic basis in the areas of science and social studies. To provide AIS services to all eligible students in English language arts and mathematics, Syracuse would require an additional 180 teachers at an estimated cost of $18 million. This estimate does not include the additional teachers needed to provide the requisite services to all eligible children in science and social studies.

102. Syracuse cannot provide specialist teacher coaches in English language arts and mathematics to improve instruction, but instead relies on a single coach to cover both of these fields even when the coach lacks sufficient training and experience in the second specialty area.

103. Because of a shortage of social workers, guidance counselors, behavioral intervention specialists, attendance teachers, and other specialized support staff, Syracuse cannot

provide sufficient mental health services, crisis intervention, middle to high school transition counseling, college guidance and other critical student support services. The paucity of support staff has weakened discipline and led to high suspension rates that undermine instructional efforts.

104. Pursuant to Educ. Law §3602.4 (e) Syracuse has been required to set aside $11.5 million of 2017-18 foundation aid to provide community school services in nine receivership schools designated as "persistently failing schools" by the State pursuant to Educ. Law § 211-f.

105. Because 84% of Syracuse students are from low income families, virtually all of the Syracuse's 34 schools are in need of community school services. Syracuse applied for and obtained a State community school competitive grant for another 8 schools to receive community school services, but this still leaves 17 schools without these necessary services

106. The State has recognized that high quality pre-Kindergarten is an vital element of the "expanded platform" of services for "at-risk" children to enter kindergarten and first grade ready to learn. The governor and the legislature have proclaimed that the state now has a "universal pre-K" program that guarantees access to a high quality, full day pre-K program to every four-year old who seeks to enroll. Despite these commitments, hundreds of four year old Syracuse children who are ready to enroll in publicly-funded pre-K programs are not able to do so because the State has not provided sufficient funding to implement universal pre-K for every child.

107. Over the past seven years, the enrollment of ELL students has increased from 8% to 16%, one of the fastest rates in the state. At the same time, the Regents have substantially

increased the requirements for appropriate educational services to ELLs. Syracuse lacks sufficient resources to provide the State-mandated level of services to the increased numbers of ELLs in its schools.

108. In response to State requirements for school districts to provide CTE services to students, Syracuse has in recent years increased the number of students receiving CTE services from 300 to approximately 1500. The lack of sufficient funds has precluded the district from providing internships, internship counseling and other necessary CTE support services to most of these students.

109. Syracuse also cannot prepare students for capable citizenship. Plaintiff Morgan Taska Prince is an 8th grade student at the Expeditionary Learning Middle School. Expeditionary schools place an emphasis on developing skills, experiences and values for productive citizenship. The Syracuse Expeditionary Learning Middle School is unable to carry out its civic preparation goals adequately because it lacks the resources to provide sufficient extracurricular and co-curricular activities in which students learn critical inter-personal citizenship skills (such as debate and drama clubs, school newspaper, and model UN programs), and students have no opportunities for service learning experiences.

110. Syracuse's staffing and resource shortages have also resulted in excessive class sizes, a lack of up-to-date instructional materials, inability to provide appropriate related services to all students with disabilities, and insufficient RTI and attendance services.

b. Outputs

111. The vast majority of Syracuse students do not achieve proficiency levels in basic academic subjects. In 2017, only 13.1% of students in grades 3-8 achieved proficiency levels in ELA and only 11% of students in grades 3-8 were proficient in math.

112. Among ELLs in 2017, only 5% achieved proficient scores on the third through eighth grade ELA achievement tests, and only 15% obtained a proficient score in math; among students with disabilities only 11% achieved proficient scores in ELA and 11 % in math.

113. In 2016, only 60.9% of Syracuse students graduated from high school on time; of these, 44% earned Regents diplomas, 9% earned less rigorous local diplomas and only 8% earned Regents diplomas with advanced designation. Only 48% of Syracuse's Latino students and only 57% of economically disadvantaged students graduated on time. For 2016, the Syracuse drop-out rate was 16%, compared with a statewide average drop-out rate of 6.5%.

114. In 2016, the graduation rate for ELLs was 29% of which 23% were Regents diplomas; none were Regents diplomas with advanced designation; and 7% were local diplomas. For students with disabilities, the graduation rate was 42%, of which 12% were Regents diplomas; 1% were Regents diplomas with advanced designation; and 30% were local diplomas.

115. Only 21% of the students graduating with basic Regents diplomas, are "college and career ready" under the Regents' standard for a meaningful high school education, and even fewer graduates are truly ready to function productively as civic participants.

iii. ***SCHENECTADY CITY SCHOOL DISTRICT***

a. Inputs

116. In 2015-16, the Schenectady School District's ("Schenectady") K-12 enrollment was 9,327 students. Thirty-three percent were African American, 19% Latino, 17% Asian, Native Hawaiian or other Pacific Islander, 27% White, and 5% multiracial. Four percent

were English Language Learners, 18% were students with disabilities, and 79% were economically disadvantaged.

117. Over the past ten years, Schenectady has received $600 million less in foundation aid than the amount it was entitled to receive under the Foundation Aid Formula

118. As a result of inadequate state school funding, Schenectady has had to cut its school budget by $35 million over the past eight years.

119. The State's failure to provide foundation aid funding has resulted in Schenectady eliminating staff, services and programs. In addition, Schenectady could not hire or add staff, services and programs necessary to provide all of its students the academic, social, health and emotional support necessary to enable them to have the opportunity to learn successfully.

1) Qualified teachers, principals and other personnel

120. Schenectady also has inadequate teaching staff, principals, administrators, social workers, guidance counselors, psychologists, nurses, librarians and other staff.

121. Since 2009, Schenectady has eliminated 360 teacher and staff positions.

122. Schenectady has a student-social worker ratio of 1:207; a student-guidance counselor ratio of 1:358; a student-nurse ratio of 1:388; a student-psychologist ratio of 1:373; a student-behaviorist ratio of 1:2331; a student-librarian ratio of 1:848; and a student-reading specialist radio of 1:150.

123. The insufficient number of adequately certified teachers and lack of adequate training and other professional development has resulted in Schenectady having insufficient numbers of properly certified and adequately trained teachers to provide mandated instructional time in core courses. Many schools cannot offer State-required courses in the arts, health,

career and technical development, nor offer advanced courses, languages and other courses, due to a lack of qualified teaching staff. In addition, at-risk students and other students with extraordinary needs are not receiving adequate academic, social, and emotional support in order to learn successfully.

2) Class Size

124. Class sizes in all grades in Schenectady are excessively large. The average class size in K-3 is 25. Twenty-two percent of students are in excessively large classes.

125. Class sizes in grades 4-8 average 30 and 15% of students are in excessively large classes.

126. Class sizes in core high school courses average 28.

127. As a result of the large class size, Schenectady students at all grade levels are not receiving adequate attention and support, and thus are falling behind or further behind academically. Disruptions in class from excessive class size impede student learning.

3) Suitable Curriculum

128. Schenectady cannot meet minimum State instructional time requirements in English Language Arts, mathematics, science, and social science, and in many schools art, physical education, health, career and technical courses, AP subjects, and other required subjects are simply not offered.

4) Expanded Platform for at-risk students

129. Schenectady cannot offer sufficient AIS to all students in need of them and in all the subjects in which students need additional academic support. In addition, Schenectady cannot provide sufficient extended day, literacy, after-school, before school and/or summer school programs to enable at-risk children to learn successfully

130. Schenectady cannot provide sufficient social, health and emotional support in order to promote and ensure adequate attendance, reduce suspensions and drop-outs and support adequate school performance and graduation.

131. Only 34% of Schenectady elementary school students have attended high-quality prekindergarten. As a result, most children are not prepared for kindergarten. Schenectady can only provide prekindergarten to 270 children.

132. Schenectady has inadequate RTI. As a result, children behind academically cannot catch up.

5) Adequate Resources for Students with Extraordinary Needs

133. Approximately 4% of Schenectady students are ELL. As a result of insufficient funds, Schenectady has inadequate bilingual teachers, translation services, reasonable class size, support staff and programs, services, space and materials to provide adequate academic, health, social and emotional support for ELL students to provide them with the opportunity to learn successfully.

134. Sixteen and one-half percent of Schenectady students are students with disabilities. As a result of insufficient funds, Schenectady has inadequate teachers, paraprofessionals, support staff, unreasonable class size, programs, services, space and materials to provide adequate academic, health, social and emotional support for its population of students with disabilities in order to provide them with the opportunity to obtain a sound basic education.

6) Instrumentalities of learning

135. Schenectady is unable to purchase up-to-date textbooks, library books and other materials aligned with mandated curricula and standards. In addition, many schools lack sufficient

textbooks to allow students to take them home to complete homework assignments, for review, or to study for a test. Schenectady also lacks adequate numbers of library books and basic and current computer hardware and does not have sufficient resources to maintain and repair existing technology and replace worn out or obsolete software, hardware, or necessary accessories. As a result, much instructional technology is functionally unusable. Schenectady also lacks sufficient equipment for particular subject needs like calculators, compasses, protractors for math, lab equipment for sciences, basic art supplies such as paint, clay, easels, and smocks, and musical instruments.

136. Schenectady cannot purchase basic supplies like chalk, paper and pencils, and relies on voluntary teacher and parent contributions for these basic materials. Many teachers spend $1,000 or more a year on school supplies and educational materials, and many parents spend $100 or more provide classroom supplies, including paper towels, hand sanitizers, pencils, markers, and glue.

7) Safe and Orderly Environment

137. Schenectady has inadequate social workers, psychologists, guidance counselors, security officers, administrators and other staff to implement adequate positive behavioral support and anti-bullying programs and services and to ensure proper discipline, attendance and safety. As a result, suspensions are too high, attendance is unacceptably low, and buildings and classrooms experience disruptions that impede learning.

b. Outputs

138. Schenectady's student performance is inadequate.

139. In 2016, only 18% of students in grades 3-8 were proficient in English Language Arts. Eighty-two percent scored at level 1 or 2. The percentages of African American, Latino

and economically disadvantaged students scoring proficient were 12%, 15% and 15%, respectively. Only 1% of ELLs and students with disabilities scored proficient. In 2017, only 19% of students in grades 3-8 were proficient in English Language Arts. Eighty-two percent scored at level 1 or 2. The percentages of African American, Latino and eonomically disadvantaged students scoring proficient were 14%, 14% and 16%, respectively. Zero percent of ELLs and 1% of students with disabilities scored proficient.

140. In 2016, only 14% of students in grades 3-8 were proficient in math. Eighty-six percent scored at level 1 or 2. The percentages of African American, Latino and economically disadvantaged students scoring proficient were 8%, 9% and 11%, respectively. Only 2% of ELLs and 1% of students with disabilities scored proficient. In 2017, only 12% of students in grades 3-8 were proficient in English Language Arts. Eighty-eight percent scored at level 1 or 2. The percentages of African American, Latino and eonomically disadvantaged students scoring proficient were 7%, 7% and 9%, respectively. Only 2% of ELLs and 1% of students with disabilities scored proficient.

141. The graduation rate in Schenectady in 2015 was 56% overall, with the graduation rates of African American, Latino and economically disadvantaged students at 52%, 48% and 55%, respectively. ELLs had a graduation rate of 0% and students with disabilities had a graduation rate of 22%. The graduation rate in Schenectady in 2016 was 62% overall, with the graduation rates of African American, Latino and economically disadvantaged students at 55%, 58% and 67%, respectively. ELLs had a graduation rate of 23% and tudents with disabilities at 24%.

142. The drop-out rate in 2015 was 8% overall and 10% for students with disabilities. The drop-out rate in 2016 was 8% overall and 15% for students with disabilities. The state average for both years was 3% overall and 5% for students with disabilities.

143. Schenectady's suspension rate for 2012-13 was 15%. The rate for 2013-14 was 8%. The state average for both of those years was 4%.

144. Schenectady had an attendance rate of 91% for the 2014-15 and 2013-14 school years. The state average for those years was 93%.

iv. ***CENTRAL ISLIP UNION FREE SCHOOL DISTRICT***

a. Inputs

145. Central Islip is a high poverty school district located in Suffolk County, New York. The district serves approximately 8,000 students; 72% of its students are Latino, 20% are African-American, 2.5% are Asian and 5% are white. Approximately 80% of the students in the district are from low-income households (measured by eligibility for the federal free and reduced price lunch program).

146. For the current 2017-18 school year, the shortfall between the amount due to the Central Islip under the Foundation Aid Formula and the amount of foundation aid it is receiving is $58 million.

147. Over the past decade, district-wide enrollment has skyrocketed, increasing from less than 6400 in 2007 to approximately 8,000 today. In 2006, 1750 students were enrolled in Central Islip High School. This year the enrollment is 2314. Because since 2010 the state has frozen student counts under the Foundation Aid Formula, Central Islip has not received the substantial amounts of additional per student funding that should have been generated by the

Foundation Aid Formula if it were implemented as originally intended to provide additional funding for enrollment growth.

148. Most of the growth in the student population in Central Islip has resulted from a large increase in the number of immigrants moving into the district from Latin America and elsewhere. In recent years, the federal government has also placed a substantial number of undocumented children who have arrived in the United States unaccompanied by their parents. These students, all of whom are entitled to receive the opportunity for a sound basic education pursuant to both federal and state law, have extraordinary needs for social services and many of them are also students with interrupted formal education ("SIFE") who have received minimal or no education in their native countries and cannot read or write in either English or their home language.

149. Currently, 28% of the classes in the district are designated for ELL students. However, the district currently lacks sufficient bilingual education teachers to properly staff all of these classes, and it lacks sufficient social workers, counselors, psychologists and other support staff to properly service these immigrant children as well as all of the other children in the district.

150. The Central Islip schools lack sufficient resources to provide the state-mandated level of services to the increased numbers of multi/English language learner students ("M/ELLs") who now attend their schools. For example, bilingual classes require textbooks and workbooks to be available in both English and Spanish or other languages spoken by M/ELLs, but the district lacks sufficient funds to properly equity all of its M/ELL classes in Grades 3 through 8 with up-to-date instructional materials.

151. Central Islip Senior High School currently has only two social workers to service its 2314 students. Guidance counselors in the middle schools have an average case load of over 400 students, and social workers in the elementary and middle schools have an average case load of 600-1000 students. The caseloads of the district's psychologists consist almost entirely of special education students who require IEP-mandated services, and the psychologists have virtually no time available to meet the substantial needs of the district's immigrant population or of many other students who require psychological services.

152. Class sizes in the district's senior high school and middle school average 29-32. In the Andrew T. Morrow elementary school, class sizes average 35-36. The school is so overcrowded that teachers have to conclude classes 3-4 minutes earlier than the scheduled times to allow students sufficient extra time to navigate the congested halls in order to get to their next class.

153. The district has been unable to provide the level of ongoing professional development that is needed to prepare its staff to deal with large class sizes and to meet the instructional needs of its large immigrant, SIFE and "at risk" population. In addition, the number of supervisory staff has been reduced in recent years. For example, each Department chair position has been totally eliminated.

154. Because state and local funding have not kept pace with the district's rapidly increasing enrollment and its students' intense needs, resource shortages required the district this year to eliminate an effective summer school program that for the previous three years had been providing 2 1/2 hours per day of targeted language instruction to 325 students. In addition, an after-school program for newly arrived students, and an effective alternative high school program that had been servicing the needs of about 30 SIFE students (and had allowed many

of them to stay in school and to graduate) had to be terminated this year because of the lack of funding.

155. The majority of students attending school in the Central Islip School District qualify for AIS services in one or more subjects. The district lacks sufficient resources to provide AIS services to all students who are eligible (*i.e*. those scoring a level "1" or level "2" on the State's standardized achievement tests for students in grades 3-8). The district has, therefore, been compelled to adopt a policy of treating level 1 students as the priority population for receiving AIS services and of providing some AIS services to all students at level "1," but because of the lack of sufficient resources, most level 2 students remain unserved. Most AIS services in the district are provided in the form of extra small group instruction with AIS specialty teachers. Although the district's educators believe that to be effective, these groups should have no more than four students and should meet several times per week, in fact, due to resource shortages, most groups contain 8-10 students and meet only once per week.

156. Each of the district's elementary schools has an RTI committee that reviews the needs of students who are not performing well in the early grades, in accordance with the requirements of state law. Because of a lack of resources, however, in most cases the schools are unable to follow through on the RTI committees' recommendations for additional services for specific children, and for that reason most of these students continue to perform at low proficiency levels when they reach the higher grades.

157. Central Islip currently serves a substantially greater proportion of students with severe disabilities students who need highly intensive one-on-one services than the average district in the state. Meeting the federally and state-mandated needs of these students places a

substantial strain on the districts' finances, as Central Islip's per capita costs for meeting the needs of students with disabilities are almost double the state average ($59,000 per capita versus a state average per capita cost of $31,000 in 2014-2015, the last year for which data is currently available.)

158. In response to increased requirements for school districts to provide CTE services to students, Central Islip had in the past offered a successful CTE program that provided students career-oriented instruction and internships with local companies. Because of resource shortages, however, the School District has been unable to offer this program to its students.

159. The State has recognized that high quality pre-Kindergarten is a vital element of the "expanded platform" of services for "at-risk" children to enter kindergarten and first grade ready to learn. Governor Andrew Cuomo proclaimed three years ago that New York State now has a "universal pre-K" program that guarantees sufficient state aid to allow every four-year old in the state who desires such a program access to a high quality, full day pre-K program. Despite these commitments, Central Islip currently has a waiting list of approximately 70 students for whom parents are seeking pre-K services but whom the district cannot accommodate because of the lack of the promised state funds.

160. In addition to substantially reducing state aid, the legislature has imposed a cap on the annual increases in property taxes that local school districts and municipalities, other than the City of New York, may impose. N.Y. EDUC. LAW § 2023-a. This law prescribes new voting procedures that require a higher percentage of voters to approve a proposed tax levy increase if it exceeds 2% of the prior year's levy or the increase in the national Consumer Price Index, whichever is less. *Id*. at § 2023-a(2)(i). (For 2017-18, the cap is

approximately 1.8% because inflation last year was under 2%.) Increases up to the cap amounts may be approved by a vote of more than 50% of the eligible voters, but levies that exceed the cap require a 60% supermajority approval vote. *Id.* at § 2023-a(6)–(7). If the district is unable to obtain voter approval, it may not increase its tax levy above the prior year's amount. *Id*.

161. Currently, state aid provides approximately 41% of total K-12 education costs in New York State, federal aid 3%, and local school districts contribute 56%. The state-aid system is premised on an expectation that local school districts, in accordance with their relative wealth, will contribute additional funding, on top of state aid, to provide the full amount of foundation funding that is necessary to provide their students the opportunity for a sound basic education. N.Y. EDUC. LAW § 3602.4(a). For the past several years the property tax cap has precluded Central Islip from being able to raise sufficient local funds to meet its expected share. In past years, a majority of the district's taxpayers, who highly value education, had been willing to support annual tax increases as high as 5-6%. Since the tax cap went into effect in 2015, the district has not been able to raise taxes at rates above the 1-2% increases allowable by the cap because, in the board's judgment, although more than half of the voters might support larger increases, a tax increase probably would not garner 60% supermajority approval, and if a tax increase above the maximum permitted by the cap were voted down, under the law, the district would not be able to obtain any local funding increase at all.

162. The property tax levy cap prevents the Central Islip School District from raising the additional funding it is expected to contribute under the state-aid system to ensure the availability of educational funding levels required to comply with constitutional mandates.

In the absence of any system for ensuring additional state aid, the local property tax levy cap exacerbates existing shortfalls in state aid and denies students the level of resources necessary to provide them the opportunity for a sound basic education.

b. Outputs

163. As a result of the continuing shortfalls in state aid to the Central Islip School District, the vast majority of its students are unable to achieve proficiency levels in basic academic subjects. In 2017, only 21% of students in grades 3-8 in Central Islip achieved proficiency levels in English language arts and only 20% of students in grades 3-8 were proficient in math.

164. Among English language learners, in 2017, only 19% achieved proficient scores on the third through eighth grade ELA and math achievement tests. Among students with disabilities, only 2% and 6% achieved proficient scores in ELA and math, respectively.

165. In 2016, although over 70% of the students who graduated from Central Islip Senior High School planned to go to college, less than 40% of the district's graduates were, in fact, college and career ready, according to the college and career ready standards established by the Regents. Among English language learners, the general graduation rate was 34%, and for students with disabilities the general graduation rate was 57%.

166. Most of the students who graduate from the Central Islip School District are not fully prepared to function productively as civic participants.

v. GOUVERNEUR CENTRAL SCHOOL DISTRICT

a. Inputs

167. The Gouverneur District is a high poverty school district located in St. Lawrence County in Northern New York. The district serves approximately 1,500 students. Approximately

60% of the students in the district are from low-income households (measured by eligibility for the federal free and reduced price lunch program). For the current 2017-18 school year, the shortfall between the amount due to the Gouverneur Central School District under the Foundation Aid Formula and the amount of foundation aid it is receiving is approximately $1.6 million.

168. A substantial number of students attending school in Gouverneur qualify for AIS services in one or more subjects. The district lacks sufficient staff to provide adequate services to most of these students. There are no AIS teachers, no literacy coach and no math coach in the district. AIS services are provided on an ad hoc basis to some students after school or before school when teachers may be available and willing to provide some tutoring to individual students.

169. Gouverneur currently has only one social worker to serve its 1500 students, and its guidance counselors have an average case load of over 400 students. The caseloads of the district's psychologists consist almost entirely of special education students who require IEP-mandated services, and the psychologists have virtually no time available to meet the mental health needs of many of the district's other students. Gouverneur cannot provide sufficient social, health and emotional support to promote and ensure adequate attendance, limit suspensions and drop-outs, and support adequate school performance and graduation.

170. Gouverneur is unable to purchase up-to-date textbooks, computer software and other materials aligned with mandated curricula and standards. The district has no certified technology specialist and insufficient numbers of computers, and many of the existing computers are 7-10 years old and are substantially outdated. The District also lacks

sufficient resources to maintain and repair existing technology and replace worn out or obsolete software, hardware, or necessary accessories.

171. The district is unable to provide its students a sufficient, suitable curriculum in many mandated areas. For example, foreign language instruction is available only in one language, Spanish, a successful Science Technology and Math ("STEM") program has been established in the 7th grade, but students cannot continue on to advanced STEM levels because the district lacks funds to hire a high school teacher in this area, and students are unable to pursue CTE programs in popular areas like culinary arts because no progam is available either in the district or in the local BOCES programs.

172. Gouverneur currently has a substantial waiting list of 4-year-old students for whom parents are seeking pre-K services under the state's promised universal pre-K program, but the district cannot accommodate these students because it has not received the pre-K funding that the state committed to provide for all four-year-olds in New York State.

173. For the past several years the property tax cap has precluded Gouverneur from being able to raise sufficient local funds to meet its expected local funding share. In past years, a majority of the district's taxpayers, who highly value education, had been willing to support annual tax increases above the current tax cap limit. Since the tax cap went into effect in 2015, the district has not been able to raise taxes at rates above the 1-2% increases allowable by the cap because, in the board's judgment, although more than half of the voters might support larger increases, a tax increase probably would not garner 60% supermajority approval, and if a tax increase above the maximum permitted by the cap were voted down, under the law, the district would not be able to obtain any local funding

increase at all. For the current school year, operating within the cap, the district was able to increase local funding by only $116,000 in a $34 million budget.

b. Outputs

174. As a result of the continuing shortfalls in state aid to the Gouverneur Central School District, the vast majority of its students are unable to achieve proficiency levels in basic academic subjects. In 2017, only 18% of students in grades 3-8 achieved proficiency levels in English language arts, and only 21% of students in grades 3-8 were proficient in math.

175. In 2016, 78% of the students of the four year cohort of students graduated from Gouverneur High School; 9% were officially listed as drop-outs that year, but many other students had dropped out between the 9th and 12th grades. Only 68% of its economically disadvantaged students and 53% of students with disabilities graduated.

176. Less than half of these graduates were, in fact, college and career ready, according to the college and career ready standards established by the Regents.

177. Most of the students who graduate from the Gouverneur Central School District are not fully prepared to function productively as civic participants.

FIRST CAUSE OF ACTION

178. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 177.

179. Defendants have failed to provide students in the New York, Syracuse, Schenectady, Central Islip and Gouverneur Central School Districts the opportunity for a sound basic education guaranteed by N.Y. Const. art. XI. §1.

SECOND CAUSE OF ACTION

180. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 179.

181. Defendants have, in violation of N.Y. CONST. art. XI, § 1, failed since 2009 and continuing to date, to maintain a system of accountability to measure whether the School Districts have sufficient resources to provide all students the opportunity for a sound basic education, based on the actual cost of those resources, calibrated to student need, to meet current state mandates and educational standards.

THIRD CAUSE OF ACTION

182. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 181.

183. Defendants have, since 2009 and continuing to date, failed to adopt appropriate policies, systems and mechanisms to properly implement the requirements of N.Y. Const. art. XI. § 1 and of the *CFE* decisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment DECLARING that:

a. Defendants are not providing students in the New York City, Syracuse, Schenectady, Central Islip, and Gouverneur School Districts the opportunity for sound basic education;

b. The State's school funding and accountability systems are failing to ensure adequate funding to provide students in the New York City, Syracuse, Schenectady, Central Islip, and Gouverneur School Districts the opportunity for a sound basic education, in violation of the requirements of N.Y. CONST. art. XI, § 1;

c. The "gap elimination adjustment," set forth in N.Y. Educ. Law § 3602.17, violates N.Y. Const. art. XI, § 1.

d. The supermajority requirements regarding increases in local property tax levies, set forth in N.Y. EDUC. LAW §§ 3602(dd) & (18), violates N.Y. Const. art. XI, § to the extent that it impedes Central Islip, Gouverneur and other local school districts from providing sufficient local funding to provide their students the opportunity for a sound basic education.

ENJOINING Defendants to:

a. Promptly ensure that effective at the start of the next school year, each of the School Districts receives the full amount of state aid to which it is entitled under the Foundation Aid Formula in Educ. Law § 3602.

b. Revise the Foundation Aid Formula to ensure that all schools in the New York City, Syracuse, Schenectady, Central Islip, and Gouverneur School Districts have sufficient funds, determined through objective methodologies that determine the actual costs under current educational and economic conditions, calibrated on the basis of individual need, to provide all of their students the opportunity for a sound basic education;

c. Develop and maintain a system of accountability that measures whether every school has sufficient resources to provide, and that all students are in fact receiving, the opportunity for a sound basic education; and

d. Ensure that all students in the New York City, Syracuse, Schenectady, Central Islip, and Gouverneur School Districts are receiving the opportunity for a sound basic education that prepares them adequately to function productively as civic participants.

AWARDING plaintiffs their reasonable attorney's fees, disbursements, and costs in bringing this action; and

PROVIDING such other and further relief as the Court may deem just and proper.

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