
New York Supreme Court
Appellate Division-Third Department

LARRY J. AND MARY FRANCES MAISTO, et al.,

Plaintiffs-Appellants,

-against-

STATE OF NEW YORK,

Defendant-Respondent.

***AMICUS CURIAE* BRIEF OF ALLIANCE FOR QUALITY
EDUCATION IN SUPPORT OF PLAINTIFFS-APPELLANTS**

STROOCK & STROOCK & LAVAN LLP
Charles G. Moerdler
David J. Kahne
180 Maiden Lane
New York, New York 10038
(212) 806-5400
cmoerdler@stroock.com
dkahne@stroock.com

On Behalf of *Amicus Curiae*
Alliance for Quality Education

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Amicus Curiae, Alliance for Quality Education (“AQE”) respectfully submits this brief in support of Plaintiffs-Appellants, urging this Court to reverse the trial court’s decision and, should this Court decline to review the evidence *de novo*, to remand the case with specific instructions to the trial court directing it to make findings of fact consistent with the ruling in *Campaign for Fiscal Equity v. State of New York*, (“CFE II”) 100 N.Y.2d 893 (2003).

PRELIMINARY STATEMENT

In *Campaign for Fiscal Equity v. State of New York*, (“CFE I”) 86 N.Y.2d 307 (1995), the Court of Appeals outlined the core elements of a constitutionally-required “sound basic education” for New York public school children. The Court found that the proper method for judicial evaluation of whether the state’s educational funding system met the minimally sufficient constitutional floor under the Education Article was through an analysis of the adequacy of (i) inputs (*i.e.*, educational resources), (ii) outputs (*i.e.*, academic performance) and (iii) whether there is a causal link between the state action and student failure. Courts since *CFE I* and *CFE II*, including the Court in this very litigation, have repeatedly reaffirmed the continuing viability of these criteria and have emphasized their importance.

The trial in this case lasted 28 days; Plaintiffs presented a total of 21 witness, and the defendants presented 14. The trial court admitted 315 exhibits into

evidence and there are approximately 5,000 pages of testimony and 5,000 pages of exhibits. The entirety of the extensive record principally concerned whether the *CFE* elements of a sound basic education – inputs, outputs and causation – had been met in the small city or “Maisto districts” before the trial court. Yet, the court below never reviewed the evidence under the governing *CFE* framework.

The trial court’s refusal to analyze the extensive record of inputs, outputs and causation presented to determine whether a constitutional violation occurred in this case contravenes firmly well-settled New York Court of Appeals precedent and constitutes plain error. Indeed, the court’s findings erode the role of the judiciary in ensuring the protection of students’ rights under the Education Article. Allowing the trial court’s creation of an erroneous “post-*CFE*” standard would heretofore preclude any legal challenge to the constitutionality of school funding, in direct violation of New York precedent and the law of this case providing that the constitutionality of funding levels is a proper matter for the courts. Accordingly, this Court should reverse the trial court’s ruling. If the Court then declines to review the evidence *de novo*, the Court must also, on remand, provide the trial court with specific instructions regarding the prescribed *CFE* elements for the proper adjudication of the school funding claim in this case.

INTERESTS OF AMICUS CURIAE

Founded in 2000, AQE is a leading state-wide, community-based organization that advocates to ensure New York public school children the opportunity for a quality, equitable education. Specifically, AQE advocates for quality teaching for all students, sufficient and equitable resources for all schools, parent and family engagement, positive school climates and access to, *inter alia*, high quality early childhood education, a rigorous curriculum and community schools with wraparound services for children and families. AQE is active in communities across New York State and consequently is familiar with conditions in schools statewide. As a result of its involvement in local communities, AQE understands that there many interconnected factors within and outside the school walls affect the quality of education; and that it is essential that children, especially those in high-poverty areas, have robust support in and out of school in order to promote effective learning. Adequate funding is a key component to ensuring that students have all the support they need to learn successfully, and teachers have the tools they need to help their students succeed.

SUMMARY OF FACTS

As set forth in their brief, Plaintiffs-Appellants presented overwhelming evidence at trial establishing all three elements of their school funding claim: inputs, outputs and causation. First, The evidence demonstrated that all eight

Maisto districts had deficiencies in educational resources essential to provide the opportunity for students to receive a sound basic education. (R. 12) In addition to cuts to overall staff and services, the districts also had to cut or were unable to provide numerous resources that are necessary for high-need and at-risk students, such as Academic Intervention Services and other academic support; social work, guidance counselors and other staff and programs designed to improve students' ability to focus on academics; English language learner programs; extended learning time; and family engagement services.

Moreover, Plaintiffs-Appellants presented evidence, conceded by the defense and credited by the trial court, that outputs, or student outcomes, were “undeniably inadequate” in all Maisto districts. (R. 12).

Finally, the evidence at trial established causation. The State conceded that the Maisto districts received \$1.1 billion dollars less in state education funding than they would have received had the Foundation Aid formula been fully funded. The evidence demonstrated that the lack of funding caused cuts in staff, programs and services, and an overall inability to provide necessary educational inputs to ensure a sound basic education for students. This lack of essential educational resources had a negative impact on student outcomes, including test scores, graduation rates, attendance, suspensions and drop-outs. Conversely, the evidence proved that the availability of these services and interventions did – and would –

improve outcomes. Moreover, the State’s district expert witnesses conceded that had the Maisto districts received more funding, they would have been able to provide more inputs, and student outcomes would have improved.

ARGUMENT

I. THE TRIAL COURT ERRED IN REFUSING TO EVALUATE THE EVIDENTIARY RECORD UNDER THE REQUISITE *CFE* FRAMEWORK

In dismissing Plaintiffs’ Complaint, the trial court inexplicably and summarily concluded that “an examination similar to the analysis outlined in *CFE* regarding inputs, outputs, and causal linkage is not required.”(R. 17) (emphasis added). This extraordinary holding constitutes reversible error because it ignores binding *CFE* precedent; contravenes the express commands of this Court and the Court of Appeals in this litigation; and jettisons the parties’ and the court’s clear understanding throughout the trial that the prescribed *CFE* rubric would govern the adjudication of Plaintiffs’ Education Article claims.

First, the Court of Appeals in *CFE*, as well as subsequent case law, have made it abundantly clear that a *prima facie* claim of a violation of the Education Article must be based upon district-wide proof as to the core elements of inputs, outcomes and causation.¹ *CFE II*, 100 N.Y.2d at 903, 908, 919. *See also New*

¹ Specifically, the Court of Appeals in *CFE* affirmed the trial court’s examination of the evidence in New York City of the “inputs,” educational resources, and student “outputs,” such as test results and graduation and dropout rates.” *CFE II*, 100 N.Y.2d at 903. The Court also affirmed the trial court’s reasoning that a “causal link” between the present funding system and

York Civ. Liberties Union v State of New York, 4 N.Y.3d 175, 179-81 (2005) (proof of district-wide deprivation of inputs and outputs and causes attributable to the State necessary); *Paynter v State of New York*, 100 N.Y.2d 434, 440 (2003) (elements of an Education Article claim are deficient inputs which lead to deficient outputs and that the failure is causally connected to the funding system); *Brown v. State of New York*, 144 A.D.3d 88, 95 (4th Dept. 2016) (well-established Education Article framework requires proof of district-wide deficient inputs, deficient outputs and a causal connection between the deficient inputs and outputs). By refusing to apply the framework required by *CFE* and its progeny (R. 17), the Trial Court contravened well-established New York precedent .

Moreover, the trial court's contention that a different analysis is required post-*CFE* is plainly erroneous. The Court of Appeals articulated the framework for analyzing an Education Article claim in contemplation of subsequent challenges to state school funding. *See CFE II*, 100 N.Y.2d at 931-2, 942. Indeed, plaintiffs from other districts have brought Education Article claims, and in each case, the courts have held that the *CFE* framework applies. *See, e.g., New York Civ. Liberties Union*, 4 N.Y.3d at 179-81; *Paynter*, 100 N.Y.2d at 440; *Brown*, 144 A.D.3d at 95.

the poor performance of City schools could be established by a showing that increased funding can provide better teachers, facilities and instrumentalities of learning," and that "this showing, together with evidence that such improved inputs yield better student performance, constituted plaintiffs' prima facie case, which plaintiffs established." *CFE II*, 100 N.Y.2d at 908, 919.

Moreover, the trial court's disregard for the *CFE* framework contradicts law of this case. This Court, in affirming the denial of the State's motion to dismiss held that the Court of Appeals ruling in *CFE* "compelled" a finding "that students and parents may sue defendant over school funding, we conclude that Supreme Court properly denied defendant's motion to dismiss the complaint and the case should proceed to a review of the merits." *Hussein v. State of New York*, 81 A.D.3d 132, 137 (3d Dept. 2011) (internal citations omitted).

This Court also noted with approval that the plaintiffs' complaint follows the required *CFE* analysis . The Court observed that the Complaint "is replete with detailed data allegedly demonstrating . . . glaring deficiencies in the current quality of the schools in plaintiffs' districts and a substantial need for increased aid." *Hussein*, 81 A.D.3d at 136. The Court held that the case must proceed through discovery and trial following this *CFE* analysis. *Id*; see also *Hussein v. State of New York*, 19 N.Y.3d 899, 900 (2012) (affirming Appellate Division ruling). The trial court simply ignored the explicit instructions from this Court and the Court of Appeals to analyze the evidence in this case pursuant to the framework established in *CFE*.

Further, the trial court conducted the trial as if it were following the *CFE* analysis. Throughout the trial, Plaintiffs clearly indicated that they would present evidence regarding inputs, outputs and causation. See e.g., (R. 273-274) The State

followed the same framework. *See e.g.*, (R. 315-316, 3609) The trial court itself, in denying the State’s motion for a directed verdict, held that the Plaintiffs presented evidence “ad nauseam” of “inputs, outputs and the causal link,” and therefore established a *prima facie* case. (R. 3614); *see also* (R. 12-13, 15) (detailing the elements and Plaintiffs *CFE*-based claims). The *CFE* elements guided the entire trial.

The trial court even acknowledged that it had the obligation to examine whether specific levels of funding in the Maisto districts were adequate. The trial court framed the question at the heart of the case to be whether the State can “alter or adjust” funding levels provided to the Districts through the Foundation Aid formula “and still deliver on its obligation to ensure that schoolchildren are provided the opportunity for a sound basic education.” (R. 18) (emphasis added). Yet inexplicably, the trial court declined to conduct the required factual analysis to answer this question. This refusal was clear error.

II. THE TRIAL COURT ERRED IN CREATING A “POST-CFE” STANDARD THAT RENDERS THE STATE’S FUNDING DECISIONS JUDICIALLY UNREVIEWABLE REGARDLESS OF THE ACTUAL LEVEL OF FUNDING PROVIDED TO MAISTO DISTRICTS

Instead of performing the required evaluation of the evidentiary record based on the *CFE* framework, the trial court created a new, unprecedented standard for Education Article claims in a “post-*CFE* world.” Under this standard, because “the

State has already taken steps to address the concerns raised in the CFE case” through the enactment of the Foundation Aid formula in 2007, (R. 17), the actual levels of funding and the impact of those levels on the provision of a sound basic education are immune from judicial review. This standard plainly conflicts with the *CFE* precedent and precludes any adjudication of claims of inadequate funding under the Education Clause, not only in Maisto Districts but in *any* district. The trial court, by creating this new and improper standard to dismiss Plaintiffs’ claims, committed reversible error.

A. The Court Improperly Relied on Arguments Previously Rejected in this Litigation by this Court and the Court of Appeals

The trial court concluded that the mere enactment of Foundation Aid in 2007 ends the inquiry into Plaintiffs’ claims of inadequate funding under the Education Article. This conclusion, however, has already been explicitly rejected by this Court and the Court of Appeals in this litigation.

First, this Court, in denying the State’s motion to dismiss, expressly held that enactment of Foundation Aid does not, in and of itself, shield the State from a constitutional challenge under the Education Article. *Hussein*, 81 A.D.3d at 137 (“We likewise reject defendant’s related contention that plaintiffs’ claims are moot because the Legislature has now addressed the alleged deficiencies through the enactment of Foundation Aid.”). Despite Foundation Aid’s enactment, this Court also made clear that Plaintiffs’ allegations on the actual condition of inputs, outputs

and causation in each Maisto District must be analyzed based on record evidence and, if proven, would establish an Education Article violation. *Id.* at 135-37; *aff'd* 19 N.Y.3d 899 (2012). Moreover, this Court noted that even if Foundation Aid were fully funded, Plaintiffs may still prevail in their claim if they demonstrated, again based on record evidence, that “the planned increases in aid are not sufficient to enable the school districts to provide a constitutionally-guaranteed sound basic education.” *Id.* at 137.

Second, the trial court directly contradicted the prior rulings in this case in asserting that, because Foundation Aid “has barely gotten off the ground,” (R. 21), the court was unable to evaluate Plaintiffs’ claims of inadequate funding.² In the Supreme Court’s 2009 ruling denying the State’s motion to dismiss, the court rejected the argument that Plaintiffs claims were not ripe for adjudication because “a future event” – the implementation of Foundation Aid in future years – “might somehow cure the current and past conditions” raised in Plaintiffs’ complaint.

Hussein v. State of New York, Index No. 8997/08, p. 3 (Sup. Ct., Albany County, July 21, 2009) (Devine, J); *see also id.* (stating that “[a]ccepting such a position would preclude judicial review whenever a defendant takes any step, no matter

² In addition to Foundation Aid, the Court cites certain “non-fiscal reforms” such as changes to academic standards and teacher evaluation methods as creating “an environment that cannot truly be assessed yet.” (R. 21). Such reforms are collateral to Plaintiffs’ funding claims and, in any event, in no way preclude an evaluation of whether Maisto District students are being afforded a sound basic education under the *CFE* framework.

how meager, to ameliorate the conditions giving rise to the litigation”). On review, this Court emphatically concurred in the lower courts’ determination, holding that:

According to defendant, because Foundation Aid has not yet been fully implemented, the factual record is incomplete and the effects of the legislation cannot be measured. As noted, the Court of Appeals has already determined in the CFE cases that the constitutionality of particular levels of education funding are a proper matter for consideration by the courts.

Hussein, 81 A.D.3d at 135-37; *aff’d*, 19 N.Y.3d 899 (2012). Accordingly, this Court held that Plaintiffs’ complaint is “justiciable,” remanding to the trial court for the development of a factual record for adjudication of those claims. *Id.*; *see also Hussein*, 19 N.Y.3d 899 (affirming this Court’s ruling).

The trial court’s declaration that “in the infancy of the post-CFE world... it cannot be said that the State has failed to meet its constitutional obligation,” (R. 21), ignores the prior rulings in this litigation that flatly reject the notion that Foundation Aid’s enactment prevents adjudication of Plaintiffs’ Education Article claim.

B. The Trial Court’s Creation of a New Post-CFE Standard Constitutes Reversible Error

In deciding “to look outside of the CFE framework and at the actions undertaken by the State post-CFE,” (R. 17), the trial court devised a wholly improper standard for evaluating Education Article claims. The trial court imposed upon Plaintiffs the burden of proving that Foundation Aid represents the

“minimum amount” of funding “that could not be reduced” without violating the Education Article. However, under the established *CFE* framework, Plaintiffs have no burden to prove Foundation Aid represents the minimum level of funding required by the constitution. The core evidentiary issue under that framework is the actual levels of funding in the Maisto Districts and whether those funding levels are a cause of deficient inputs and low outcomes, thus depriving students of the opportunity for a sound basic education. The court’s refusal to recognize and adjudicate that core *CFE* question constitutes reversible error.

First, the trial court erred in dismissing Plaintiffs’ Complaint by concluding that Plaintiffs were unable to prove that Foundation Aid represents the minimum amount of funding “that could not be reduced” without violating the constitution. (R. 18-19). At trial, Plaintiffs presented ample evidence that the State specifically designed Foundation Aid to calculate the minimum funding necessary to provide a sound basic education in the Maisto Districts and districts statewide.³ However,

³ The trial court ignored the record demonstrating that the State expressly designed the Foundation Aid Formula to calculate the amount of funding necessary to provide the opportunity for a “sound basic education.” For example, before the Court of Appeals in 2011, the State made clear that Foundation Aid was “enacted in response to the Court’s decisions in the *CFE* litigation. . . . [Foundation Aid consists of] long-term formulaic changes . . . that were enacted to reflect the estimated cost of providing a constitutionally adequate education in this State.” Plaintiffs’ Reply Memorandum of Law, Addendum (State’s Letter Brief) at 8; *see also* (R. 4414) (Board of Regents 2012 statement that “[t]he Foundation Aid formula has several goals including adequate funding for a sound basic education in response to the Campaign for Fiscal Equity decision.”); (R. 3507) (State Education Department 2014 statement that the “Foundation Aid formula . . . distributes funds to school districts based on the cost of providing an adequate education, adjusted to reflect regional costs and concentrations of pupils who need extra time and help in each district”).

whether Foundation Aid represents a minimum that cannot be reduced is clearly not the dispositive *CFE* issue the trial court was instructed by this Court to determine at trial. The trial court also cites no precedent to support its conclusion that Plaintiffs' claims rise or fall solely on proving that Foundation Aid does indeed represent a constitutionally-prescribed "minimum."

Rather, the established *CFE* precedent and the law of this case required the trial court to evaluate and determine whether the actual funding levels provided by the State to the Maisto Districts under the Foundation Aid formula in effect since 2007 are a cause of the deficient inputs and low outcomes in the Districts.

Hussein, 81 A.D.2d at 135. As this Court held, the enactment of Foundation Aid does not shield the State from a constitutional challenge based on the Education Article. *Hussein*, 19 N.Y.3d at 907. Indeed, as this Court explained, Plaintiffs may prevail on such a claim even if Foundation Aid were fully funded and the proofs at trial demonstrated that those funds are inadequate to provide a sound basic education. *Hussein*, 81 A.D.2d at 137. Yet despite the voluminous record before it, the trial court simply concluded that Foundation Aid's enactment in 2007 foreclosed an assessment of the actual funding levels in the Maisto Districts and whether those levels are a cause of the Districts' deficits in essential inputs and low student outcomes.

Second, the trial court erroneously concluded that Plaintiffs did not prove their claim of inadequate funding because the enactment of the Foundation Aid formula in 2007 “did not, and could not, require future Legislatures” to fund school districts under that formula in the annual State budget. (R. 18). This conclusion is wholly irrelevant to Plaintiffs’ Education Article claim. Whether future legislatures can be bound by previous legislative action does not affect the court’s obligation under the *CFE* framework to analyze the level of funding actually provided by the State and determine if that funding level is a cause of deficient inputs and outputs in each district. If inability to bind future legislatures ended the inquiry, it would foreclose any challenge to inadequate funding under the Education Article. This would also fly in the face of *CFE* and its progeny, including the prior decisions in this case, which firmly hold that “the constitutionality of particular levels of education funding is a proper matter for consideration by the courts.” *Hussein*, 81 A.D.2d at 135.

Third, by constructing a “post-*CFE*” standard, the trial court never undertook the seminal task assigned by this Court in remanding for trial: adjudication of the evidence proffered by Plaintiffs of the actual funding levels provided to the Maisto Districts, and the impact of those funding levels on inputs and outcomes in the Districts. Within the *CFE* framework, evidence of actual funding levels is pivotal to evaluating the causation element. Thus, the evidence

presented by Plaintiffs regarding the purpose and design of the Foundation Aid formula, and the levels of funding actually received by Maisto Districts compared to the amount they should be receiving under the formula, is both relevant to and highly probative of Plaintiffs' claim.

At trial, Plaintiffs demonstrated that the amount calculated for each district under the Foundation Aid formula represents the State's own determination of the funding level required to provide a sound basic education. (R. 9, 4293). The State acknowledged Foundation Aid was designed to calculate the amount of funding needed to provide students in the Maisto districts with a sound basic education. *See, e.g.*, (R. 4414, R. 3507). Following the methodology approved in the *CFE* rulings, Foundation Aid determined the funding level required, based on need, for students to meet State academic benchmarks. *Campaign for Fiscal Equity v. State of New York*, ("CFE III"), 8 N.Y.3d 14, 30 (2006); (R. 3242) ⁴

The parties further stipulated at trial that the eight Maisto Districts collectively received over \$1.1 billion less over the previous five years than they would have if Foundation Aid was properly funded. Such large gaps are relevant

⁴ The Trial Court indicated that it "agrees" with the State that Foundation Aid does not represent the "constitutionally-permissible minimum," relying upon the Court of Appeals finding in the *CFE* litigation that lower amounts calculated under a proposal by Governor Pataki were reasonable. (R. 19). As previously explained by the Supreme Court in this litigation, that determination of reasonableness by the Court of Appeals is "dicta" that "did not specifically refer to the [Maisto] districts" which were not parties to the *CFE* litigation. *Hussein*, Index No. 8997-08, at p. 3 (Albany County, July 21, 2009) (Devine, J.). In any event, as Plaintiffs demonstrated at trial, Foundation Aid was enacted in the wake of *CFE* to provide adequate funding for all districts and remains in effect as the State's funding mechanism statewide.

evidence under the causation analysis in the *CFE* framework. The trial court should have – but did not – examine the probative value of this evidence to Plaintiffs’ claim that actual funding levels were so inadequate that they are causally linked to the glaring input deficits and low outcomes in the Maisto Districts.

In sum, the trial court’s reliance on arguments previously rejected in *CFE* and in this litigation, along with its creation of an artificial “post-*CFE*” standard to preclude judicial review of actual Maisto District funding levels under the *CFE* framework, constitutes reversible error.

III. IN THE EVENT THIS COURT DOES NOT CONDUCT A *DE NOVO* REVIEW OF THE EVIDENCE, THIS COURT MUST REVERSE AND REMAND WITH SPECIFIC INSTRUCTIONS TO MAKE FINDINGS AND CONCLUSIONS UNDER THE *CFE* FRAMEWORK

Plaintiffs-Appellants request this Court conduct a *de novo* review of the evidence and make findings of fact from the well-developed record. The extensive evidentiary record under the requisite *CFE* framework for all eight Maisto Districts is complete. Thus, there is no need to conduct a new trial. *Weckstein v. Breitbart*, 111 A.D.2d 6, 8 (1st Dept. 1985) (when record is complete, appellate court can either remit to trial court for findings of fact or make its own findings of fact).

If, however, this Court declines to make findings of fact and conclusion of law *de novo*, it should remand to the trial court to make those findings and conclusions promptly and without delay. A remand from this Court should be

accompanied by specific and detailed instructions to the trial court to adjudicate Plaintiffs' claims under the *CFE* framework in each of the eight Maisto Districts. *See People Theatres of N.Y. Inc. v. City of New York*, 84 A.D.3d 48, 60-66 (1st Dept. 2011) (Appellate Division remanded to trial court with instructions regarding relevance of evidence, burden of proof, quantum of evidence necessary and the legal standard); *K Enterprises, Inc. v. 184 Sackman Realty Corp.*, 38 A.D.2d 842, 842-43 (2d Dept. 1972) (Appellate Division remanded with specific questions for the trial court to address in findings of fact).

This Court's remand instructions must make clear that fact finding is required for all three elements of the *CFE* framework. This includes the template of resources essential for a sound basic education, first articulated by the Court of Appeals as comprising "minimally adequate physical facilities and classrooms," "instrumentalities of learning" and "teaching of reasonably up to date basic curricula . . . by sufficient personnel adequately trained to teach those subject areas." *Campaign for Fiscal Equity v. State of New York*, ("*CFE I*") 86 N.Y.2d 307, 317 (1995). This template was further developed at the *CFE* trial to encompass seven input categories which may form the basis of a "sound basic education," including sufficient numbers of qualified teachers, principals and other personnel; appropriate class sizes; suitable curricula; an expanded platform of programs to help at-risk students; and adequate resources for students with

extraordinary needs, among other categories. *Campaign for Fiscal Equity v. State of New York*, (“*CFE Trial Ct.*”) 187 Misc.2d 1, 21-60, 76, 115 (Sup. Ct. New York County 2001); *see also CFE II*, 100 N.Y.2d at 902 (approving the trial court’s elaboration of the Court of Appeals’ initial template).

The Court of Appeals affirmed the need to provide at-risk students with additional support services, observing the opportunity for a sound basic education “ must still ‘be placed within reach of all students,’ including those who ‘present with socioeconomic deficits.’” *CFE II*, 100 N.Y.2d at 915 (citation omitted; *see also CFE II*, 100 N.Y.2d at 942 (Smith, J., concurring) (students at-risk of failure because of “socioeconomic disadvantages, including poverty, race and limited English proficiency... need more help than others in order to meet educational goals, such as extended school programs, remedial instruction, and support services.”). Thus, the Court of Appeals accepted that these additional educational and support services were, for at-risk students, elements of a “sound basic education.” It noted with approval that the *CFE* trial court “modified the ‘template’ to reflect a ‘dynamic’ understanding of the constitutional imperative that must ‘evolve’ with the changing demands of a modern world.” *CFE II*, 100 N.Y.2d at 950-51. In its remand instructions, this Court should expressly direct the

trial court to make findings and conclusions regarding the essential *CFE* inputs as outlined above.⁵

The trial court should also be instructed that, in determining the causation element of the *CFE* framework in a school funding case, Plaintiffs are not required to prove that inadequate state funding is the sole cause of deficient inputs and low outcomes. *CFE II*, 100 N.Y.2d at 123. Plaintiffs can prove causation by simply establishing that adequate funding would improve input resources and student outcomes. *Id.* at 919.⁶

⁵ While refusing to make findings of fact, the trial court suggests that services for at-risk students “depart from the educational purpose and attempted to solve the socio-economic, cultural and other aspects of the students’ circumstances.” (R. 20). This suggestion directly conflicts with the *CFE* rulings.

⁶ This Court should also instruct the trial court that if, after conducting the proper *CFE* analysis, it finds a constitutional violation, the trial court should order an appropriate remedy for that violation.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court reverse the Decision of the trial court and make findings of fact and conclusions of law under the *CFE* framework based on the record below. In the alternative, this Court should remand to the trial court with specific instructions to promptly make those findings and conclusions on all the requisite elements of the *CFE* framework.

Dated: New York, New York
March 10, 2017

STROOCK & STROOCK & LAVAN LLP

By: 

Charles G. Moerdler

David J. Kahne

180 Maiden Lane

New York, New York 10038

(212) 806-5400

cmoerdler@stroock.com

dkahne@stroock.com

On Behalf of *Amicus Curiae*
Alliance for Quality Education