

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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:  
LARRY J. AND MARY FRANCES MAISTO, et al., :  
Plaintiffs, : Index No. 8997-08  
- against - : Hon. Kimberly A. O'Connor  
STATE OF NEW YORK, :  
Defendant. :  
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**PLAINTIFFS' CONCLUSIONS OF LAW**

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Pursuant to this Court’s March 12, 2015 stipulation and order, counsel for Plaintiffs submits this Post-Trial Memorandum in support of Plaintiffs’ June 2, 2011 Amended (Third) Complaint for Declaratory and Injunctive Relief.

### **PRELIMINARY STATEMENT**

We begin with a unanimous recognition of the importance of education in our democracy. The fundamental value of education is embedded in the Education Article of the New York State Constitution by this simple sentence: “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.... [T]he State has obligated itself constitutionally to ensure the availability of a “sound basic education” to all its children [and] this Court is responsible for adjudicating the nature of that duty.

Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 901-02 (2003) (“CFE II”) (quoting Article XI, Section 1 of the New York Constitution).

The evidence presented at trial in this case overwhelmingly demonstrates that the Defendant State of New York (the “State”) has breached its duty to provide the opportunity to obtain a sound basic education to all students in Jamestown, Kingston, Mt. Vernon, Newburgh, Poughkeepsie, Niagara Falls, Utica, and Port Jervis City School Districts (together the “Maisto Districts” or “Districts”). At trial, the State explicitly conceded that the academic results – including test scores, graduation rates, and dropout rates – in all eight districts are inadequate and must improve. Indeed, an executive of the State Education Department referred to the graduation rate in Mount Vernon as “tragic.” (T. 5002). The state itself has explicitly said that “[i]f a district is providing the opportunity for an adequate education . . . the vast preponderance of students should be scoring at the equivalent of level 3 or level 4” on state exams. (FOF ¶ 833). Each of the eight districts in this case falls wildly short of this standard.

The parties stipulated that the eight districts, combined, received over ***\$1.1 billion*** less in state aid over the last five years than the State promised in the Foundation Aid legislation

enacted in 2007 in response to the Court of Appeals ruling in the 2003 CFE case. (FOF ¶ 7). For Utica alone, the gap between state aid promised and aid actually received was a staggering \$290,211,261 over the last five years. (FOF ¶ 426). For Newburgh, the shortfall was an astounding \$238,906,846 over the same period. (FOF ¶ 357).

The massive shortfalls in state aid triggered huge cuts in programs and personnel in the eight districts. By the state's own calculations, Jamestown had to reduce its staff by a staggering 24% over three years. (FOF ¶ 18). Utica was forced to cut an appalling 11% of its staff in a single year and a shocking 364 total positions over five years (FOF ¶ 244), cuts the State's own expert conceded were "dramatic" and "detrimental." (FOF ¶ 21).

The State's district experts all conceded the self-evident causal link, already found by the Court of Appeals in CFE II, between funding and student achievement. Over and over at trial, the State's witnesses acknowledged that more funding, if applied well, would improve outputs for students in these eight districts. As one of these experts so eloquently put it: "*only a fool* would suggest that additional resources aren't helpful, aren't beneficial. *Of course* they are." (T. 3603 (emphasis added)).

Based on this solid, overwhelming evidentiary record, this Court should find and conclude that the State has violated Article XI, Section 1 of the New York Constitution, and enter an order providing relief that ensures Maisto District students the opportunity to obtain a sound basic education.

### **PROCEDURAL HISTORY**

On October 31, 2008, Plaintiffs filed their original complaint seeking a declaratory judgment that ten small city school districts are so substantially underfunded that there are district wide failures in providing a sound basic education to students in the Districts. Plaintiffs

also sought injunctive relief requiring the State to provide additional funding to remedy the violation. Subsequent amendments to the complaint added Plaintiffs from three additional districts.

The State moved to dismiss the action on the ground that it was premature and not ripe for adjudication. The State did not argue that Plaintiffs had failed to state a cause of action. The trial court denied the State's motion to dismiss, concluding that the complaint was based upon allegations of "current conditions and thus raises an actual case or controversy, the determination of which will immediately impact the parties," and "it is likely that the alleged constitutional violations will continue." Decision and Order at 4 (Sup. Ct., Albany Cnty. July 21, 2009) (J. Devine).

The State appealed. On January 13, 2011, the Appellate Division affirmed the Supreme Court's decision, recognizing that "particular levels of education funding are a proper matter for consideration by courts." Hussein v. State, 81 A.D.3d 132, 135, 914 N.Y.S.2d 464, 467 (3d Dep't 2011). Moreover, the Court recognized that a full record must be developed to determine if the funding levels are inadequate to meet the constitutional standards established by the Court of Appeals. Id. at 468. Finally, the Appellate Division rejected the State's argument that the claims were not ripe or were moot. Id.

On June 2, 2011, Plaintiffs amended the complaint, to the now operative Amended (Third) Complaint for Declaratory and Injunctive Relief (the "Complaint"). On February 4, 2012, the State provided its Answer to the Complaint.

The State appealed the decision of the Appellate Division to the Court of Appeals. On June 26, 2012, the Court of Appeals affirmed, holding that Plaintiffs' claims were neither moot nor unripe. Hussein v. State, 19 N.Y.3d 899, 973 N.E.2d 752 (2012).

Following the decision of the Court of Appeals, stipulations of discontinuance were filed for Plaintiffs in five of the thirteen districts leaving Plaintiffs in this action from the current eight Maisto Districts.

The parties submitted pre-trial brief on January 14, 2015. Trial was held from January 21 to March 12, 2015. The parties submitted joint and separate proposed findings on fact on October 28, 2015.



## **THE CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION**

### **I. State Education Article**

The Education Article of the New York Constitution, Article XI, Section 1, states that “[t]he 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.” In 1982, the Court of Appeals held that the Education Article obligates the State to ensure the availability of a “sound basic education” to all New York public school children. Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 57 N.Y.2d 27, 47, 439 N.E.2d 359 (1982); see also Campaign for Fiscal Equity, Inc. v. State, 86 N.Y.2d 307, 315, 655 N.E.2d 661 (1995) (“CFE I”) (reiterating that “in order to satisfy the Education Article’s mandate, the system in place must at least make available an ‘education’, a term we interpreted to connote ‘a sound basic education’”). The Court further determined that the courts have jurisdiction to adjudicate the scope and nature of the State’s duty and to provide a template of what is encompassed within a sound basic education. Levittown, 57 N.Y.2d at 39; see also Hussein, 19 N.Y.3d at 906 (recognizing the need for courts to adjudicate Plaintiffs’ claims).

### **II. The Campaign for Fiscal Equity Rulings**

The 1995 and 2003 landmark CFE rulings delineated the substantive definition and specific elements of a sound basic education required under the Education Article.<sup>1</sup> In CFE I, the Court equated a sound basic education with “the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of

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<sup>1</sup> The Plaintiffs in CFE brought claims concerning only the violation of students’ rights to a sound basic education in New York City schools.

voting and serving on a jury.” 86 N.Y.2d at 316. In 2003, the Court elaborated on this standard, noting that these are skills “fashioned to meet a practical goal: meaningful civic participation in contemporary society.” CFE II, 100 N.Y.2d at 905. Meaningful civic participation includes both participation as a citizen in the democratic process and some preparation for employment. Id. With respect to citizenship, the Court explicitly rejected the Appellate Division’s lower, grade-specific measure of skills and emphasized that the measure of productive citizenship was the ability to vote or serve on a jury “capably and knowledgeably” with “skills appropriate to the task.” Id. at 906, 908 (quoting Campaign for Fiscal Equity, Inc. v. State, 187 Misc.2d 1, 14 (Sup. Ct. N.Y. Cnty. 2001) (“CFE Trial Ct.”). The Court made clear that jobs in today’s economy “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 a high school education is “all but indispensable.” Id. at 906.

Thus, the Court of Appeals firmly established that a sound basic education requires “the opportunity for a meaningful high school education, one which prepares [students] to function productively as civic participants.” Id. at 908. This opportunity “must still ‘be placed within reach of all students,’ including those who ‘present with socioeconomic deficits.’” Id. at 915 (quoting CFE Trial Ct., 187 Misc.2d at 63). Notably, the Court emphasized that the definition of a sound basic education is not a fixed national norm, but rather will change with time so as to “serve the future as well as the case now before us.” Id. at 931.

### **III. CFE Elements of a Sound Basic Education**

The Court of Appeals further established three elements that a court must assess in determining whether the State is affording students the opportunity for a constitutional sound basic education: (i) the resources or “inputs” that are essential to provide the opportunity for a

meaningful high school education; (ii) the outcomes for students as reflected in state assessment scores, high school graduation rates, drop-out rates, and other measures of a meaningful high school education; and, (iii) where there is an allegation that the State is failing to provide a sound basic education in a specific district, the demonstration of a causal link between the deprivation of essential inputs and sub-standard outputs and inadequate school funding. CFE II, 100 N.Y.2d at 908.

#### **A. Inputs or Essential Resources**

In CFE I, the Court of Appeals set forth a template of resources essential for a sound basic education, to be fleshed out by fact-finding at the trial court level. 86 N.Y.2d at 317. The essential resources in the CFE I template were: (i) “minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn;” (ii) “minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks;” and (iii) “minimally adequate teaching of reasonably up to date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.” Id.

Following this template, the trial court enumerated specific categories of resources essential to a sound basic education, including sufficient numbers of qualified teachers, principals and other personnel; appropriate class sizes; suitable curricula; expanded platform of programs to help at-risk<sup>2</sup> students; and adequate resources for students with extraordinary needs,

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<sup>2</sup> The New York State Board of Regents has defined “at-risk” students as “those students whose social, economic or personal circumstances are not supportive of successful schooling.... They are at-risk of not completing high school, and, as a result, will be denied future opportunities for future participation in and contribution to the economic, social, cultural and civic life of their communities.” CFE Trial Ct., 187 Misc.2d at 22; see also CFE II, 100 N.Y.2d at 942 (defining “at-risk” students “to be at risk of doing poorly in school because of socioeconomic disadvantages, including poverty, race and limited English proficiency”).

among other categories. CFE Trial Ct., 187 Misc.2d at 21-60, 76, 115. On review in CFE II the Court of Appeals ruled that the trial court properly “fleshed out” the template from CFE I, and reinstated the trial court’s finding of facts, which had been reversed by the Appellate Division. CFE II, 100 N.Y.2d at 902, 913.

### **B. Outputs or Student Outcomes**

The trial court examined student outcomes in determining whether New York City students were receiving a sound basic education. Specifically, the trial court considered measurements of: (i) school completion (*i.e.*, on-time graduation and drop-out rates), and (ii) test results. CFE Trial Ct., 187 Misc.2d at 60-68. The Court of Appeals adopted these findings. CFE II, 100 N.Y.2d at 914-19.

### **C. Causation**

The trial court examined district funding, the Court of Appeals’ third element of a sound basic education. The trial court found “increased funding can provide ... better teachers, better school buildings, and better instrumentalities of learning,” concluding that “a causal link has been established between the current funding system and the poor performance...” of the New York City schools. CFE Trial Ct., 187 Misc. 2d at 68. The Court of Appeals upheld the trial court’s determinations, holding “that this showing, together with evidence that such improved inputs yield better student performance, constituted plaintiffs’ prima facie case.” CFE II, 100 N.Y.2d at 919. The Court made clear plaintiffs need only show that an inadequate funding system is *a cause* of the district failures, not the sole cause. Specifically, the Court found that plaintiffs’ burden was only to “establish a causal link between the present funding system and

any proven failure, not to eliminate any possibility that other causes contribute to that failure.”  
Id. at 923 (internal citations omitted).

## **SUMMARY OF FACTS**

### **I. Demographics and Student Needs in the Maisto Districts**

All eight of the Maisto Districts are high need and serve high concentrations of high needs students, including students from poverty backgrounds who are classified as economically disadvantaged. (Plaintiffs’ Proposed Findings of Fact (“FOF”) ¶¶ 49, 50); see also Joint Stipulated Proposed Findings of Fact (“Stip. FOF”), Appendix B). Economically disadvantaged students make up the majority of the students in each Maisto Districts. (FOF ¶ 50; Stip. FOF, Appendix B). In Poughkeepsie, 86% of the district’s students were economically disadvantaged in 2013-14. (FOF ¶ 50; Stip. FOF, Appendix B). In Utica, the percentage of economically disadvantaged students in 2013-14 was 83%. (FOF ¶ 50; Stip. FOF, Appendix B). In Newburgh, 71% of students in the district were classified as economically disadvantaged in 2013-14. (FOF ¶ 50; Stip. FOF, Appendix B). In 2013-14, 73% of Mt. Vernon students were classified as economically disadvantaged. (FOF ¶ 50; Stip. FOF, Appendix B).

Children who experience family and community poverty are at risk for poor academic performance, academic failure, school dropout, and/or failure to meet basic graduation requirements. (FOF ¶¶ 55, 58). Some academic effects of poverty include reduced vocabulary, delayed reading skills, long-term limited reading ability, reduced academic ability, reduced IQ, suppressed SAT performance, reduced graduation rates, reduced college going rates, and high rates of discipline and suspension. (FOF ¶ 59).

Notwithstanding these challenges, students from high poverty backgrounds can be successful in school if the schools are able to work appropriately with the students to overcome

the significant barriers to academic success. (FOF ¶ 65). High-need students require an expanded platform of programs and services, in addition to the curriculum and instructional programs available to all students, in order to receive the opportunity for a sound basic education. (FOF ¶¶ 66, 255). To be effective, the expanded platform of services for students living in poverty must include both educational and educationally-related programs and services to address both the academic needs and the physical, social, and mental health needs of poor students. (FOF ¶ 68).

Specifically, districts serving high-poverty students have an increased need for services and staff to overcome the academic difficulties posed by the students' socio-economic status. (FOF ¶¶ 11, 57). Academic Intervention Services ("AIS") are a New York State-mandated program requiring that students receive specialized additional services in their areas of difficulty, especially as related to their performance on state assessments. (FOF ¶ 85). Specialized reading instruction is one of the most effective academic interventions for students who fall behind in reading and mathematics in early grades. (FOF ¶ 83). Early intervention and progress monitoring are critical to minimize skill gap. (Id.) Moreover, opportunities for extended learning time, including extra academic instruction after the regular school day and during extended school year programs, are necessary to help students living in concentrated poverty. (FOF ¶ 84). Smaller class size and more individualized instruction are critical to overcome the effect of poverty. (FOF ¶ 88).

Districts serving high-poverty students must have sufficient numbers of qualified personnel and sufficient resources to tailor the school environment to the needs of their students. (FOF ¶ 71). High-poverty districts require trained social workers to address the social, behavioral, and mental health needs of at-risk students. (FOF ¶ 72). Such districts also require a

low ratio of students to social workers. (Id.) The National Association of Social Workers Standards for Social Work Services recommends a student ratio of 1:250 for general education students and 1:50 for students with more intense needs. (Id.) In addition, school nurses, guidance counselors, and parent and community liaisons or family engagement coordinators are necessary to address the needs of high-poverty students. (FOF ¶¶ 78-81).

In short, and as noted by Plaintiffs' expert Dr. Stephen Uebbing, economically disadvantaged students are more expensive to educate than their 'school-ready' peers from affluent suburbs. (FOF ¶ 93). In many instances, the opportunity for a sound basic education requires high-poverty districts to spend substantial funds to hire qualified and necessary additional staff. (FOF ¶ 92). The State has recognized the added costs associated with providing an adequate education for at-risk or high-need students, such as students living in poverty. (FOF ¶¶ 11, 255). Such additional costs were accounted for in the funding system developed by the State and enacted by the Legislature in 2007. (FOF ¶¶ 254, 255). Under the Foundation Aid Formula, the vast majority (over 80%) of the overall increase in state aid was intended for high-need districts, including the Maisto Districts. (FOF ¶¶ 13, 255). As described below, when the State cut that funding, the Districts could not provide or were forced to eliminate and reduce the very staff, programs, and services needed to ensure all students the opportunity for a sound basic education.

## **II. 2007 Foundation Aid Formula**

### **A. Enactment of Foundation Aid Formula**

In CFE II, the Court of Appeals directed the State to reform "the current system of financing school funding and managing schools [to] address the shortcomings of the current system by ensuring, as a part of that process, that every school in New York City would have the

resources necessary for providing the opportunity for a sound basic education.” 100 N.Y.2d at 930. Additionally, the Court required the State to “ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.” Id. Noting that it had no jurisdiction to order relief for any district outside of New York City, the Court of Appeals nonetheless invited the State to fashion a statewide remedy. Id. at 928.

In response to the 2003 CFE II decision, the New York State Education Department conducted a cost study and developed a state aid proposal. (See FOF ¶ 245). This proposal was eventually adopted by the Regents as the 2004-05 state aid proposal (the “2004-05 Regents State Aid Proposal”). (Id.)

The 2004-05 Regents State Aid Proposal was for a foundation aid formula, whose basic four components were: a foundation cost, a pupil need index (“PNI”), a regional cost adjustment and an expected local contribution. (FOF ¶ 247). The foundation cost was based on the cost of providing an “adequate education” in low-spending successful school districts. (FOF ¶¶ 249-51, 258). These districts were chosen by first determining which districts achieved 80% of its test-takers scoring a 3 or above (i.e., proficiency) on selected New York State tests over three years, then selecting from among that group of districts those districts in the lower half of spending. (FOF ¶¶ 249-51).

Under the 2004-05 Regents State Aid Proposal, foundation aid would replace 29 different state aids and grants. (FOF ¶ 252). The 2004-05 Regents State Aid Proposal called for an overall statewide increase in what would now be called foundation aid, in the amount of \$5.98 billion to be phased in over seven years. (FOF ¶ 253).

In devising their proposal, the Regents acknowledged that at-risk children and children living in high needs districts require additional services to succeed. (FOF ¶ 254-55). The CFE



court held that students who “are said to be at-risk of doing poorly in school because of socio-economic 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.” CFE II, 100 N.Y.2d at 942. In their 2004-05 Regents State Aid Proposal, the Regents noted that students living in high poverty districts “are more likely to need extra instructional time, tutoring, and assistance from social service agencies, yet are less likely to receive those services.” (FOF ¶ 254). Thus, the Regents included the PNI in their foundation aid formula proposal, to account for the added costs of providing extra time and help necessary for high-need students to succeed. (FOF ¶ 255). The Regents also recognized that school districts with higher concentrations of poverty have a higher need for additional services but are less able to pay for those services, as they have a limited capacity to raise local revenue. (FOF ¶¶ 254-55). The Regents noted that concentrations of poverty have a negative effect on the achievement of all students in a district, regardless of their individual status. (P.X. 107, p. 19). Accordingly, the Regents proposal called for over 80% of the increase in overall state aid to be driven to high need districts, including the Maisto Districts. (FOF ¶ 255).

This proposal, which was refined over the next few years, served as the basis for Governor Elliot Spitzer’s foundation aid formula, presented to the Legislature in January 2007. (FOF ¶¶ 259-60, 264-65). Governor Spitzer’s proposed foundation aid formula contained the same four basic components in the Regents’ proposal. (FOF ¶¶ 267). The foundation cost was, like the Regents proposals, based on the cost of providing an adequate education in low spending successful school districts. (FOF ¶ 267-68). The PNI reflected the cost of providing additional time and help for students to succeed. (FOF ¶ 247, 267). The Governor’s proposal also called for over 80% of the overall increase in state aid to be driven to high needs districts. (FOF ¶ 267).

The proposal called for a statewide increase of \$4.8 billion in foundation aid, to be phased in over four years. (FOF ¶ 269). The proposed increase represented the minimum necessary to provide a sound basic education to New York students at that time. (FOF ¶ 266).

In 2007, the Legislature enacted a foundation aid formula (the “2007 Foundation Aid Formula”), containing the above components of the Regents’ and Governor’s foundation aid proposals. (FOF ¶¶ 270-71; Chapter 57 of N.Y. Laws of 2007). The only significant difference between the enacted 2007 Foundation Aid Formula and Governor Spitzer’s proposal was that the enacted legislation called for an increase of \$5.5 billion, rather than \$4.8 billion, in what would be foundation aid, also to be phased in over four years. (FOF ¶ 270). The \$700 million additional dollars were to go to average and low-need districts (districts that do not include the Maisto Districts). (Id.)

The 2007 Foundation Aid Formula also calculates the amount each district, including the Maisto Districts, must spend to provide an adequate education: *i.e.* the sound basic education spending target (“SBE spending target”). (FOF ¶ 273). The State arrives at this target by multiplying the foundation costs by the PNI, the regional cost index and the number of “total aidable formula pupil units” (“TAFPU”). (FOF ¶ 275). After calculating the SBE spending target for each district, the State then determines the share of that target that will be supported by the State and the share to be funded through local revenue raised by the district. (FOF ¶ 276).

## **B. Failure to Implement the Foundation Aid Formula**

When enacted in 2007, the 2007 Foundation Aid Formula required an increase of \$5.5 billion in foundation aid (“Foundation Aid”) statewide, to be phased in over four years, with full funding of the state aid component of district’s SBE spending targets by the 2010-11 school year. (FOF ¶¶ 277-78).

The State began funding the increases in Foundation Aid in 2007-08 and 2008-09, but in 2009-10, the State froze aid at the 2008-09 levels. (FOF ¶¶ 279-80). In 2010-11 the State began cutting funding levels through a new mechanism known as the Gap Elimination Adjustment (“GEA”). (FOF ¶ 281). The GEA aimed to balance the State budget by recouping state aid from districts’ budgets. (*Id.*) The cut in state aid totaled \$2.14 billion in 2010-11 and \$2.6 billion in 2011-12, with some offsets from federal stimulus. (FOF ¶ 282). These spending cuts fell more heavily on districts with higher needs, such as the Maisto Districts, which are more dependent on state aid. (FOF ¶ 284). In addition, in 2011-12, the State imposed a Personal Income Growth Index Cap (PIGI) on State aid. (FOF ¶ 285). The PIGI cap restricts the increase in state aid to the percentage commensurate with the state’s PIGI, thus making it difficult if not entirely infeasible for the State to achieve its own adequate funding goals. (*Id.*) The State also imposed a cap on local property tax revenue for districts’ budgets, preventing districts from recouping the loss in state aid through local funding sources. (FOF ¶ 286). In the 2012-13 through 2014-15 budget years, the State increased state school aid, but even with those increases, Foundation Aid is still \$4.7 billion below what the formula prescribes. (FOF ¶¶ 289-292). The State has also yet to restore the \$1 billion in GEA cuts. (FOF ¶ 292).

Further, in the Foundation Aid Formula, the State recognized the added costs associated with providing an adequate education for at-risk or high-need students, such as students living in

poverty. (FOF ¶¶ 11, 255). Such additional costs were accounted for in the in the SBE spending targets for each district under the Formula, (FOF ¶¶ 254-55, 272-73, 275), resulting in significant increases in Foundation Aid directed towards high-need districts, including the Maisto Districts. (FOF ¶¶ 13, 255, 272-73, 275). When the State froze, then cut, funding beginning 2009-10, the Districts were unable to spend at the SBE target levels set by the Formula, and, most importantly, they lost the ability to provide the staff, programs and services necessary for the delivery of a sound basic education to all students, especially those at-risk and with other additional education needs due to economic disadvantage, disability or limited English proficiency.

### **C. Maisto District Foundation Aid Shortfalls**

The State's failure to implement the Foundation Aid Formula resulted in a \$1.1 billion dollar state aid shortfall for the Maisto Districts, between 2010-11 and 2014-15. (FOF ¶ 7).

By stipulation, the State agreed at trial on the gaps between what the Districts actually received from 2010-11 and 2014-15 and what they would have received if the State had not frozen and then cut Foundation Aid. These gaps are as follows:

- Jamestown: \$109,392,220 (FOF ¶ 312);
- Kingston: \$80,233,685 (FOF ¶ 327);
- Mt. Vernon: \$116,562,168 (FOF ¶ 342);
- Newburgh: \$238,906,846 (FOF ¶ 357);
- Niagara Falls: \$128,976,854 (FOF ¶ 374);
- Port Jervis: \$67,380,908 (FOF ¶ 393);
- Poughkeepsie: \$79,910,738 (FOF ¶ 410);
- Utica: \$290,211,261 (FOF ¶ 426).
- **TOTAL: \$1,111,574,680**

For each year from 2010-11 through 2014-15, the State failed to fund a significant percentage of the total state aid each District was supposed to receive under the Foundation Aid Formula. For 2013-14 and 2014-15, those percentages were:

- Jamestown: 37% in 2013-14 (FOF ¶ 308); 32% in 2014-15 (FOF ¶ 311);
- Kingston: 30% in 2013-14 (FOF ¶ 323); 25% in 2014-15 (FOF ¶ 326);
- Mt. Vernon: 42% in 2013-14 (FOF ¶ 338); 30% 20114-15 (FOF ¶ 341);
- Newburgh: 40% in 2013-14 (FOF ¶ 353); 30% in 2014-15 (FOF ¶ 356);
- Niagara Falls: 27% in 2013-14 (FOF ¶ 370); 23% in 2014-15 (FOF ¶ 373);
- Port Jervis: 41% in 2013-14, (FOF ¶ 389); 33% in 2014 (FOF ¶ 392);
- Poughkeepsie: 30% in 2013-14 (FOF ¶ 406); 20% in 2014-15 (FOF ¶ 409);
- Utica: 48% in 2013-14 (FOF ¶ 422); 41% in 2014-15 (FOF ¶ 425).

**D. Maisto District Sound Basic Education Spending Shortfalls**

As a result of the state aid shortfalls, each Maisto District experienced significant shortfalls in spending, as measured by the difference between each district's SBE yearly spending target and their actual spending for that year. (FOF ¶ 429).

For the period between 2010-11 through 2013-14, the Maisto Districts median spending gaps form their SBE spending targets are as follows:

- Jamestown: 34.5% (FOF ¶¶ 430, 432, 434, 436);
- Kingston: 22% (FOF ¶¶ 438, 440 442, 444);
- Mount Vernon: 28% (FOF ¶¶ 446, 448, 450, 452);
- Newburgh: 21% (FOF ¶¶ 454, 456, 458, 460);
- Niagara Falls: 34.5% (FOF ¶¶ 462, 464, 466, 468);
- Port Jervis: 34% (FOF ¶¶ 470, 472, 474, 476);
- Poughkeepsie: 39% (FOF ¶¶ 478, 480, 482);
- Utica: 35.5% (FOF ¶¶ 485, 487, 489, 491).

Just to maintain the same staffing and programming from year-to-year requires an increase in school district budgets. (See, e.g., FOF ¶¶ 183, 200-01, 212, 214). School districts

must also balance their local budgets every year. (FOF ¶¶ 236). Thus, the State’s failure to provide Foundation Aid under the Formula, and the resulting state aid shortfalls in budgets, forced the Maisto Districts to make significant cuts in essential school staff, resources and programs in order to meet this requirement. (See, e.g., FOF ¶¶ 184-85, 195, 208, 214, 237).

### **III. Impact of State’s Failure to Implement the Foundation Aid Formula in the Maisto Districts**

#### **A. Severe Deficiencies in CFE Essential Resources**

The proofs at trial demonstrated that each Maisto District is experiencing a severe lack in the resources identified by CFE, as essential to afford the opportunity for a sound basic education. CFE II, 100 N.Y.2d at 902, 913. Plaintiffs’ Proposed Findings of Fact sets forth the extensive evidence in the trial record on the deficits in those essential resources available to Maisto District students, most of whom are at-risk. These extensive deficiencies are summarized as follows.

The Maisto Districts lack the necessary teachers, administrators, and other essential personnel to meet the student needs. Many teachers, administrators, and other personnel have been cut in recent years due to budgetary constraints. Plaintiffs’ witnesses and experts repeatedly testified that the staff levels were insufficient to meet the documented higher needs in the Districts. (See, e.g., FOF ¶¶ 502, 504-05, 512-13, 515, 527-29, 679). Moreover, the proofs showed that the majority of staff shortages are due to budgetary constraints. (See, e.g. FOF ¶¶ 503, 510-11, 524, 529). For example, Utica eliminated hundreds of staff positions over the past several years. (FOF ¶ 781). In a single year, the Utica teaching staff experienced an 11% reduction, which the State’s expert acknowledged was “dramatic” and “detrimental.” (Id.) Similarly in Poughkeepsie the State’s expert acknowledged that staff cuts in the district had

increased the ratio of students to teachers. (FOF ¶¶ 717). The State's own reports show the drastic cuts in personnel the districts were forced to make over the relevant period:

- Jamestown: Lost 196 staff (23.9%) from 2008-09 to 2012-13<sup>3</sup>
- Kingston: Lost 158 staff (16.3%) from 2007-08 to 2012-13<sup>4</sup>
- Mt. Vernon: Lost 350 staff (30.0%) from 2008-09 to 2012-13<sup>5</sup>
- Newburgh: Lost 234 staff (16.3%) from 2008-09 to 2012-13<sup>6</sup>
- Niagara Falls: Lost 155 staff (16.6%) from 2007-08 to 2012-13<sup>7</sup>
- Port Jervis: Lost 36 staff (10.7%) from 2010-11 to 2012-13<sup>8</sup>
- Poughkeepsie: Lost 92 staff (16.9%) from 2008-09 to 2012-13<sup>9</sup>
- Utica: Lost 292 staff (23.7%) from 2007-08 to 2012-13<sup>10</sup>

All Maisto Districts cut teachers. (FOF ¶¶ 499-500, 503, 524, 556, 600, 642, 695-96, 716-17, 781-84). In addition to classroom teachers, many served as reading specialist, Academic Intervention Services (“AIS”) teachers and in other teaching positions designed to provide additional supports to at-risk students. (See, e.g., *id.*). The proofs demonstrated that this reduction in the teacher workforce affected student performance (FOF ¶¶ 599-600). Teachers who provide support to struggling students in reading and math were let go (see, e.g., FOF ¶¶ 500, 613), and teachers were often assigned to other grade levels where they were not as prepared to deliver the required curriculum (see, e.g., FOF ¶¶ 601). The cuts in other staff, such as social workers, special education teachers, and paraprofessionals, had a negative impact on

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<sup>3</sup> C.X. 64, p. 22, C.X. 65, p. 8.

<sup>4</sup> C.X. 34, p. 30, C.X. 37, p. 15.

<sup>5</sup> C.X. 56, p. 21, C.X. 58, p. 8.

<sup>6</sup> C.X. 28, p. 27, C.X. 31, p. 10.

<sup>7</sup> P.X. 56 (2007-08 report card at p. 4; 2012-13 report card, teacher qualifications and staff counts).

<sup>8</sup> C.X. 53, p. 28, C.X. 54, p. 13.

<sup>9</sup> C.X. 44, p. 22, C.X. 46, p. 5.

<sup>10</sup> C.X. 40, p. 21, C.X. 42, p. 6.

teachers' ability to be effective. (See, e.g., FOF ¶¶ 503, 512, 523, 560, 602, 660, 666, 694, 733). Teachers were called upon to provide support to students formerly provided by those staff members, with the result that teachers have lost time to prepare for their classes. (See, e.g., FOF ¶¶ 584, 674).

The State Education Department recognizes that to build and maintain a strong teaching force, seven key elements must be present: preparation, recruitment, induction, evaluation, professional development/growth, performance management and a career ladder. (P.X. 151 at 11). However, the Maisto Districts lack the resources and staff to maintain these necessary elements. The number of central office administrators and staff and building administrators are insufficient, limiting the time and availability of administrators to monitor teachers and provide critical instructional support and professional development. (See, e.g., FOF ¶¶ 504-05, 526-27, 551, 559, 582, 587, 609, 622, 675, 823). Additionally, administrators tasked with implementing and monitoring curriculum have been cut or could not be hired. (See, e.g., FOF ¶¶ 504-06, 510, 559, 644). As a result, the Districts are unable to provide professional development to properly implement State Education Department mandates such as AIS, Response to Intervention (“RtI”) and the Common Core State Standards. (See, e.g., FOF ¶¶ 551, 583, 600). The Districts are also unable to provide professional development to train teachers to address the needs of children living in poverty; keep up to date with the most current research on learning, differentiate in instruction; and manage behavioral issues in the classroom. (FOF ¶ 675). Staff reductions also prevented administrators from monitoring instructional practices, developing relationships with teachers, and providing the job-embedded professional development that is critical to improving teaching and learning. (See, e.g., FOF ¶¶ 504-05, 558, 673, 786, 792).



The Maisto Districts lack a sufficient number of social workers, counselors and psychologists to meet the needs of at-risk students. (See, e.g., FOF ¶¶ 513, 528-29, 591, 596, 604, 625, 662-65, 668-69, 701-03, 719, 721-22, 782, 790, 825, 829). Other eliminated positions include nurses, teaching assistants, attendance officers, security officers, parent and community liaisons and ELL staff. (See, e.g., FOF ¶¶ 515-16, 518, 549, 557, 605, 607-08, 626, 632, 636, 639, 642, 645-47, 654, 661, 667, 720, 723-24, 727-29, 782, 791, 823-24, 826-27). These deficiencies directly contribute to absenteeism, suspension, drop outs, and inability to succeed in school. (See, e.g., FOF ¶¶ 549, 591, 639, 640, 651, 668, 670). The reduction or elimination of social workers, parent liaisons, psychologists, school monitors, and school nurses has inhibited the ability to refer and connect students with appropriate community services to assist in providing basic necessities such as food, shelter, health care and clothing. (See, e.g., FOF ¶¶ 592, 645). The districts cannot undertake sufficient outreach to families to encourage school attendance and support their children's education. (See, e.g., FOF ¶¶ 591-93, 636, 645, 647, 720, 826). Communication with parents has also been impaired, especially parents of ELL students, because of the absence of qualified school personnel. (See, e.g., FOF ¶¶ 645, 646, 698, 826). The Maisto Districts also have an urgent need for additional guidance counselors to serve the needs of at-risk children who need intervention to address a multitude of academic issues, including college counseling. (See, e.g., FOF ¶¶ 662, 703, 825).

The Maisto Districts lack the resources to maintain reasonable class sizes for students. In high needs districts, large classes sizes can lead to worse outcomes, including high dropout rates, lower achievement and inability of teachers to provide appropriate academic supports to at risk students. (See, e.g., FOF ¶¶ 561, 611-14, 733, 796-97). Increased class sizes result in children not getting the attention they need to succeed academically. (See, e.g., FOF ¶¶ 610, 649, 686,

733). Large class sizes also prevent districts from implementing inclusion for special education students and have prevented special education students from getting the attention they require. (FOF ¶¶ 560, 682, 733). Additionally, small class size is critical in the early grades. (FOF ¶ 650).

The proofs at trial showed that in many of the Maisto Districts, including Kingston, Mt. Vernon, and Poughkeepsie, class sizes have increased due to staff cuts. (See, e.g., FOF ¶¶ 531, 561, 601, 610, 730, 796-97). For many of the Maisto Districts, kindergarten class sizes are often in the mid to high twenties or higher, including in Kingston, Mt. Vernon, Newburgh, Niagara Falls and Utica. (See, e.g., FOF, ¶¶ 530, 561, 610, 649, 796). This is well above the number of students experts recommended for a kindergarten class. (FOF ¶¶ 530, 532, 610). An expert for the State conceded that kindergarten class sizes at this level are a cause for concern. (FOF ¶ 802). Particularly in the high needs Maisto Districts, kindergarten class sizes are not suitable to meet students' needs. (FOF ¶¶ 649, 800-01). A State expert acknowledged that class sizes in early grades are critically important, and that Niagara Falls, for example, would need to add 110 teachers to have an appropriate student teacher ratio. (FOF ¶ 650). In Poughkeepsie third and fourth grade classes exceed 30 students and are above the contractual limits with the teachers' union. (FOF ¶ 731). The State's expert testified that smaller class sizes were beneficial, but due to budget cuts, the teacher student ratio had increased in Poughkeepsie. (FOF ¶ 736).

Further, the Maisto Districts have inadequate resource for materials to support at-risk students, such as culturally relevant and Spanish language material, library books to encourage reading for students with no other access to books, and textbooks. (See, e.g., ¶¶ 638, 678). Niagara Falls does not have enough textbooks for the students, preventing students from taking copies home, and the high school library lacks adequate books. (FOF ¶ 678). In Poughkeepsie

science laboratories and library facilities lack up-to-date materials and equipment. (FOF ¶¶ 750-53).

The Maisto Districts have made cuts in the curriculum. Reduction in central staff has impacted the ability of the districts to effectively develop and implement curriculum. (See, e.g., FOF ¶¶ 582, 622). Several Districts were forced to cut alternative education programs for students not successful in traditional school environments leading to an increase in disruptive behavior in school. (See, e.g., FOF ¶¶ 637, 768, 822).

In addition, the Maisto Districts have been forced to reduce or eliminate courses and programs, such as full-day kindergarten, physical education, foreign language, art and music, library, band, orchestra, extracurricular activities, teams, drama, business and vocational programs. (See, e.g., FOF ¶¶ 584, 623-24, 773, 811). Jamestown cut the art and music curriculum, offerings that contribute to raising student achievement. (FOF ¶ 511). Mt. Vernon has cut numerous classes and activities including library, art, music, band and orchestra. (FOF ¶ 584). Newburgh cut high school courses including foreign language and business classes. (FOF ¶¶ 623-24). Poughkeepsie has reduced extracurricular activities. (FOF ¶ 760). Utica has very limited capacity to provide art and physical education to students due to staff limitations. (FOF ¶¶ 811-13).

The Maisto Districts are unable to provide a safe and orderly environment for their students to learn, including security personnel and services. Notably, the Maisto Districts serve communities with significant crime rates. (See, e.g., FOF ¶¶ 554, 830). Moreover, classroom teachers often are required to deal with violence and significant disruptions in the classroom. (See, e.g., FOF ¶¶ 523, 640, 831). In Newburgh, the District eliminated the violence prevention coordinator position and the alternative to suspension program, resulting in an increase in the

number of students suspended. (FOF ¶ 639). Newburgh eliminated its “safe room” program which provided an academic environment for students who were disruptive in the classroom, instead of suspension. (FOF ¶ 640). These cuts have resulted in lost learning time for children who act out, as suspensions and referrals to the office have increased. (FOF ¶¶ 639-640). Other Maisto Districts have cut or have been unable to hire security officers, school monitors and safety equipment. (See, e.g., FOF ¶¶ 676-77, 714, 777).

Finally, Maisto Districts are unable to provide students who are academically at-risk or have extraordinary needs with the extra time and resources crucial for them to obtain the opportunity for a sound basic education. The Districts reduced and eliminated programs that provided extra time for at-risk students to receive academic support they needed to succeed in school, including after school and other extended day programs and summer programs. (See, e.g., FOF ¶¶ 519, 520, 635, 656, 658). These programs enabled these students to transition to the next level in school, receive extra attention beyond normal school hours, make-up course work, and build a solid foundation for successful learning. (See, e.g., FOF ¶¶ 635, 656, 658, 819). Students in extended day programs have fewer discipline problems than similar students without access to those programs. (FOF ¶ 520). The loss of these programs directly contributed to a decline in student performance. (FOF ¶ 656).

It is critical for Maisto Districts to maintain full-day kindergarten is critical to provide all students, especially at-risk students and students with disabilities, with the extra half day of instruction needed for a successful start in school. (FOF ¶ 773). Poughkeepsie cut its Kindergarten program from full day to half day, due to budgetary constraints. (FOF ¶¶ 771-72). Many of the children in the Maisto Districts enter kindergarten academically and developmentally behind where they should be. (FOF ¶¶ 145, 801). Pre-kindergarten provides

children with extra time to catch up academically. (FOF ¶ 553, 634, 651). Lack of pre-kindergarten means those children are not prepared for kindergarten. (FOF ¶¶ 634, 651). Lack of pre-kindergarten directly contributes to a higher incidence of children identified in special education. (FOF ¶ 651). Many of the Maisto Districts are unable to provide appropriate pre-kindergarten programs or have been forced to cut programs. (See, e.g., FOF ¶¶ 146, 551, 597, 634, 651, 680).

The Maisto Districts do not have adequate resources to address students' social, psychological and emotional needs to enable them to succeed in school. (See, e.g., FOF ¶¶ 513, 528, 547, 591-96, 604, 625, 662-66, 698-703, 721, 829). These deficiencies directly contribute to absenteeism, suspension, drop outs, and inability to succeed in school. (See, e.g., FOF ¶¶ 549, 591, 639, 640, 647, 668, 670). The reduction or absence of social workers, parent liaisons, parent advocates, psychologists, school monitors, and nurses impeded the districts' ability to provide adequate outreach to families to ensure attendance and support their children's education. (See, e.g., FOF ¶¶ 591-93, 636, 645-47, 720, 826). These support staff, if available, can help families access services, including mental health services and provided or could provide therapeutic counseling to students to reduce suspension, absenteeism, drop outs and enable students to better focus on academics. (See, e.g., FOF ¶¶ 594, 528, 625, 670, 664). In Maisto districts, psychologists cannot provide therapeutic intervention because they do not have additional time after fulfilling the requirements of Individual Education Plans ("IEP") of students with disabilities. (See, e.g., FOF ¶¶ 662, 668, 702). Further, the Districts' ability to regularly communicate effectively with parents, especially parents of English Language Learner ("ELL") students, has been reduced because of the absence of personnel. (See, e.g., FOF ¶¶ 645, 646, 698, 826).

The Maisto Districts reduced or eliminated programs that targeted certain at risk students to keep them in school, such as parenting teen programs, alternative programs for students unsuccessful in traditional high schools, a violence prevention program, whose loss resulted in increased suspensions; as well as a program to lower suspensions whose loss increased disproportionate suspensions. (See, e.g., FOF ¶¶ 637, 639, 670, 672, 821-22). Newburgh eliminated both its violence prevention coordinator and its “safe room.” (FOF ¶¶ 639-640). These cuts diminished learning time for children who act out, increasing suspensions. (Id.) Several Maisto Districts were forced to eliminate or reduce credit recovery programs that provide students with extra time and help to make up for lost learning. (See, e.g., FOF ¶¶ 548, 821).

The Maisto Districts have insufficient resources to provide ELL students with an opportunity for a sound basic education. The Districts cannot provide adequate extra time for ELL students to overcome the language barriers preventing them from success in school. (See, e.g., FOF ¶¶ 515, 661). There are inadequate translation services for families and students. (See, e.g., FOF ¶¶ 515, 723, 826). Children with disabilities often do not receive ELL services. (See, e.g., FOF ¶¶ 632, 661). ELL students also do not have support for transitioning to monolingual classes. (See, e.g., FOF ¶¶ 631, 638, 824). In several Districts, cuts to ELL services caused them to be non-compliant with State Education Department ELL requirements. (See, e.g., FOF ¶¶ 515, 632).

Maisto Districts cannot provide students with the extra academic help necessary for them to meet State Education Department standards, including providing students with adequate Academic Intervention Services (“AIS”) or RtI. RtI prevents students from being unnecessarily placed in special education. (FOF ¶ 545). As a result of insufficient RtI or services

recommended by RTI, such as tutoring or AIS, more students in these Districts are placed in special education than should be. (See, e.g., FOF ¶¶ 545, 630, 684).

Further, the AIS groups are too large to provide the requisite individual attention to students. (See, e.g., FOF ¶¶ 544, 546, 586, 690). Insufficient staff has meant students who need AIS are not receiving adequate time in AIS to improve their performance. (See, e.g., FOF ¶¶ 627-28, 649, 653). The Districts cannot provide AIS in entire subjects, such as math, social studies or science, despite the demonstrated need of the students, as exemplified by their low test scores in elementary, secondary and high school level tests. (See, e.g., FOF ¶¶ 517, 654). The Districts cannot provide sufficient support in reading because of the lack of certified reading teachers, literacy coaches, speech therapists, early intervention and other literacy programs and/or materials. (See, e.g., FOF ¶¶ 519, 546, 585, 588, 628, 635, 654). As a result of these inadequacies, several Districts are out of compliance with state AIS regulations. (See, e.g., FOF ¶¶ 517, 769-70, 814). The lack of adequate AIS services directly contributes to low test scores and low graduation rates. (FOF ¶¶ 586, 815). Providing more AIS resources would raise achievement. (FOF ¶¶ 546, 627, 654, 827). Inadequate AIS services also makes it difficult for teachers in the classroom to differentiate, so that even students not in need of AIS do not get the support and attention they need. (FOF ¶ 653). Several Districts were forced to cut or reduce credit recovery programs which provided students with extra time and help to make up for lost learning. (See, e.g., FOF ¶¶ 548, 821).

## **B. Poor Student Outcomes**

The proofs at trial demonstrated that each Maisto Districts is failing as measured by State educational performance measures or “outputs.” The data pertaining to the performance of at-risk and vulnerable subgroups of students is especially alarming. Moreover, the majority of this

data is compiled and used by the State Education Department to assess Districts' performance. In fact, the State's own experts repeatedly admitted the Districts' student outcomes are unacceptable.

1. School Completion

With respect to graduation rates, each Maisto District lags far behind the 80% baseline established by the State to provide a sound basic education and also below the state average of 76% for the 2013-14 school year. (FOF ¶¶ 836-37). For the 2013-14 school year, the graduation rates were:

- 72% in Jamestown
- 76% in Kingston
- 48% in Mt. Vernon
- 67% in Newburgh
- 60% in Niagara Falls
- 75% in Port Jervis
- 57% in Poughkeepsie
- 58% in Utica

(Stip. FOF, Appendix F; see also FOF ¶¶ 844-66).

Moreover, in many Maisto Districts, the percentage of students graduating has fallen in recent years. In Mt. Vernon the graduation rate has fallen from 62% in 2010-11 to 48% in 2013-14. (Stip. FOF, Appendix F, ¶3; see also FOF ¶ 849). Similarly, in Niagara Falls the rate has dropped from 69% in 2010-11 to 60% in 2013-14, and in Utica from 63% in 2010-11 to 58% in 2013-14. (Stip. FOF, Appendix F, ¶¶ 5, 8; see also FOF ¶¶ 854, 865). In other Maisto Districts the low graduation rates have remained mostly flat. (Stip. FOF, Appendix F; see also FOF ¶¶ 844-66). Thus, the overall graduation rates have remained consistently below the established



State standard. In fact the State's own experts repeatedly conceded the graduation rates were unacceptable. (FOF ¶¶ 845, 847, 850, 853, 856, 860, 862, 863).

When disaggregated into student subgroups – economically disadvantaged, minority students and students with disabilities and limited English proficiency – the graduation rates in Maisto Districts for these subgroups are also unacceptably low. (Stip. FOF, Appendix F; see also FOF ¶¶ 844-66).

The graduation rates for economically disadvantaged students in the 2013-14 school year were:

- Jamestown: 76%
- Kingston: 67%
- Mount Vernon: 54%
- Niagara Falls: 60% (fewer than half of these graduates received a Regents diploma)
- Port Jervis: 67%
- Poughkeepsie: 55%
- Utica 56%

(Stip. FOF, Appendix F; see also FOF ¶¶ 844-66).

In almost every year from 2010-11 through 2013-14, the majority of students with disabilities did not graduate. (Stip. FOF, Appendix F; see also FOF ¶¶ 844-66). For most of Maisto Districts the percentage of students with disabilities graduating is in the twenties, thirties or low forties for the 2013-14 school year:

- 33% in Jamestown
- 47% in Kingston
- 23% in Mt. Vernon
- 33% in Newburgh
- 39% in Niagara Falls
- 43% in Port Jervis

- 44% in Poughkeepsie
- 43% in Utica

(Stip. FOF, Appendix F; see also FOF ¶¶ 844-66).

For students with limited English proficiency, the graduation rates are even lower in those Maisto Districts where the data is available, with percentage graduating often in the teens:

- Jamestown: 12% in 2012-13; 22% in 2013-14
- Kingston: 13% in 2012-13; 50% in 2013-14
- Mt. Vernon: 18% in 2012-13; 11% in 2013-14
- Newburg: 6% in 2012-13; 24% in 2013-14
- Poughkeepsie: 10% in 2012-13; 0% in 2013-14
- Utica: 38% in 2012-13; 27% in 2013-14

(Stip. FOF, Appendix F; see also FOF ¶¶ 844-66).

In many Maisto Districts the percentage of minority students graduating from high school was often much lower than the overall rate. In Kingston in recent years, the percentage of students graduating has remained in the low seventies with only 76% graduating in 2013-14, but the percentage of African-American and Latino students graduating has remained much lower every year with only 63% of African American Students and 60% of Latino students graduating in 2013-14. (Stip. FOF, Appendix F, ¶ 2; see also FOF ¶846). In Newburg, Niagara Falls and Poughkeepsie the percentage of African-American and Latino students remains lower than the overall student graduation rate. (Stip. FOF, Appendix F, ¶¶ 4, 5, 7; see also FOF ¶¶ 851, 854, 859). In Niagara Falls, only 35% of Latino students graduated in 2012-13 and only 26% in 2013-14. (Stip. FOF, Appendix F, 5; see also FOF ¶ 854). Over the past two years in Utica, the graduation rate for African-American, Latino and Asian students has remained below 50% for each student subgroup, compared to the overall rate of 59% and 58% in 2012-13 and 2013-14. (Stip. FOF, Appendix F, ¶ 8; see also FOF ¶ 865).

The Maisto Districts have high dropout rates, with every District far exceeding, and in many cases more than double, the state average for 2013-14:

- Jamestown: 16%
- Kingston: 13%
- Mt. Vernon: 10%
- Newburgh: 11%
- Niagara Falls: 22%
- Port Jervis: 15%
- Poughkeepsie: 24%
- Utica: 15%
- State: 7%

(Stip. FOF, Appendix G; see also FOF ¶ 867).

In many Maisto Districts, the dropout rates for students with disabilities and ELL students were much higher than the overall dropout rate averages, and in many instances exceeded 25%. (See, e.g., FOF ¶¶ 869, 872, 875-77, 880, 883, 885). The state experts repeatedly acknowledged these dropout rates were unacceptable. (FOF ¶¶ 871, 879, 881-82, 884). The experts further acknowledge that these results mean that a large percentage of students would not be prepared for productive citizenship or successful careers. (FOF ¶¶ 879, 881).

The Maisto Districts also have high suspension rates, with every District far exceeding and in many cases more than doubling the state average for 2011-12:<sup>11</sup>

- Jamestown: 7%
- Kingston: 5%
- Mt. Vernon: 15%
- Newburgh: 7%
- Niagara Falls: 17%

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<sup>11</sup> This was the most recent year for which the data was available at the time of trial.

- Port Jervis: 9%
- Poughkeepsie: 16%
- Utica: 10%
- State: 4%

(Stip. FOF, Appendix G; see also FOF ¶ 868).

## 2. Test Results

The State Department of Education evaluates students' proficiency in math and English Language Arts ("ELA") through exams given to students in grade levels three through eight. (FOF ¶ 887). The test scores range from one to four with scores of three or four being deemed proficient by the State. (FOF ¶ 888). A score of one is considered by the State to be "well below proficient in the learning standards for [the] grade level" and that student is not considered on track to meet high school graduation requirements. (FOF ¶¶ 891-92). Further students unable to demonstrate proficiency by third or fourth grade often "become disaffected, disengaged, [and] they begin to present behavioral issues." (FOF ¶ 890).

In all Maisto Districts, students fail to achieve proficiency on these exams at high rates. In many Districts, the majority of students are not proficient in math and ELA under State standards. The State's experts also repeatedly acknowledged that the results in each Maisto District were inadequate and unacceptable. (FOF ¶¶ 911, 927-29, 948-49, 969, 986, 1005-07, 1024-27, 1047).

Under the State's accountability system, schools are designated "focus schools," when the performance on State exams places it in the lowest 10% of schools in the State, or "priority schools," when the performance places it in the lowest 5% of schools in the State. (FOF ¶¶ 1052-53). A "focus district" contains one or more focus or priority schools. (FOF ¶ 1054). Other schools with similarly poor performance and lack of progress in improving results receive

a “local assistance plan.” (FOF ¶ 1055). Six of the eight Maisto Districts are focus districts, all with multiple focus and/or priority schools: Jamestown, Kingston, Mt. Vernon, Newburgh, Poughkeepsie, and Utica. (FOF ¶¶ 1056, 1058, 1060, 1063, 1067, 1071). Niagara Falls and Port Jervis are not currently designated as focus districts, but both have multiple schools with local assistance plans. (FOF ¶¶ 1066, 1070).

In the 2012-13 school year, the last year for which full data for ELA and math test scores was available at the time of trial, not a single grade in either test in any Maisto District reached 30% proficient scores of three and four. (Stip. FOF, Appendix H). In Jamestown, Kingston and Port Jervis the percentage of students scoring proficient ranged from percentages in the teens to twenties. (Id.) In Mt. Vernon, Newburgh and Niagara Falls, the percentage of students scoring proficient was mostly below 20%. (Id.) In Utica, in all grades for all tests, the percentage of proficient students never exceeded 20%. (Id.) In Poughkeepsie, in all grades for all tests the percentage of proficient students never exceeded 13%. (Id.) The aggregate percentages for grades three through eight in the 2013-14 school year demonstrate a similar lack of student proficiency in the Maisto Districts:

- Jamestown: ELA – 20%, Math – 22%
- Kingston: ELA – 22%, Math – 24%
- Mt. Vernon: ELA – 12%, Math – 15%
- Newburgh: ELA – 17%, Math – 18%
- Niagara Falls: ELA – 18%, Math – 18%
- Port Jervis: ELA – 18%, Math – 22%
- Poughkeepsie: ELA – 10%, Math – 7%
- Utica: ELA – 15%, Math – 19%

(Id.)

For some Maisto Districts, the aggregate percentages for grades three through eight reveal that a majority of students scored a 1 (the lowest possible score) in Math and/or ELA in 2012-13 and 2013-14 including in Mt. Vernon, Poughkeepsie and Utica. (See, e.g., FOF ¶¶ 946-47, 1022-23, 1044-45). In the other Maisto Districts, the aggregate percentage of students scoring a 1 generally exceeds 40%. (See, e.g., FOF ¶¶ 907-08, 925-26, 966-67, 984-85, 1003-04). Thus, in every Maisto District, the percentage of students scoring a 1 far exceeds the percentage scoring three and four combined. (Stip. FOF, Appendix H).

Though the overall test scores in Maisto Districts are concededly unacceptable, when broken down by subgroup, *i.e.* economically disadvantaged, minority students and students with disabilities, the percentage of students scoring proficient drops even further.

Students with disabilities had extremely low proficiency rates on the State ELA and math exams in every Maisto District. In 2012-13, the percentage of students with disabilities scoring a three or four did not reach 10% in any grade (3-8) for either ELA or math, and was usually below 5%. (FOF ¶¶ 897, 936, 956, 974, 993, 1012, 1032; P.X. 45).<sup>12</sup> In every Maisto District except Kingston, there were grades in which 0% of students with disabilities scored proficient in ELA or math in 2012-13. (FOF ¶¶ 897, 936, 956, 974, 993, 1012, 1032; P.X. 45). The 2013-14 aggregate proficiency rates for students with disabilities in grades 3-8 were similarly low:

- Jamestown: ELA – 1%, Math – 0%
- Kingston: ELA – 4%, Math – 7%
- Mt. Vernon: ELA – 1%, Math – 3%

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<sup>12</sup> Plaintiffs' Proposed Findings of Fact included, for each Maisto District except Kingston, charts of 2012-13 test results by grade for students with disabilities. Thus, in support of this sentence and the following, Plaintiffs' Findings of Fact are cited with regard to seven of the districts, and the trial exhibit containing that data for Kingston is cited instead of the Findings of Fact.

- Newburgh: ELA – 1%, Math – 3%
- Niagara Falls: ELA – 2%, Math – 4%
- Port Jervis: ELA – 1%, Math – 2%
- Poughkeepsie: ELA – 1%, Math – 1%
- Utica: ELA – 1%, Math – 3%

(FOF ¶¶ 898, 916, 937, 957, 975, 994, 1013, 1033).

In the 2012-13 and 2013-14 school years, the aggregate percentages of students with disabilities in grades 3-8 scoring a one exceeded 70% in both ELA and math in every Maisto District, with percentages reaching into the eighties or nineties in several districts. (FOF ¶¶ 907-08, 925-26, 946-47, 966-67, 984-85, 1003-04, 1022-23, 1044-45).

The test results for limited English proficient students are also very low.<sup>13</sup> In 2012-13, the percentage of LEP students in each Maisto District scoring three or four did not exceed 20% in any grade (3-8) for either ELA or math, and was often below 10%. (FOF ¶¶ 901, 919, 940, 960, 978, 997, 1016, 1036). In each of the Maisto Districts in 2012-13, there were grades in which 0% of LEP students scored proficient in ELA or in math, and not a single LEP student in grades 3-8 in Jamestown scored proficient in ELA or math. (FOF ¶ 901, 919, 940, 960, 978, 997, 1016, 1036). The 2013-14 aggregate proficiency rates for LEP students in grades 3-8 showed results similar to the previous year, with only Niagara Falls achieving greater than 10% proficiency for LEP students in math, and no district achieving over 10% proficiency for LEP students in ELA:

- Jamestown: ELA – 0%, Math – 1%
- Kingston: ELA – 1%, Math – 4%

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<sup>13</sup> For certain grade levels in some Maisto districts in 2012-13, as well as the aggregate grade 3-8 ELA data for Port Jervis in 2013-14, results for LEP students were not reported. This paragraph discusses the LEP test result data that was available in the trial exhibits.

- Mt. Vernon: ELA – 5%, Math – 7%
- Newburgh: ELA – 2%, Math – 6%
- Niagara Falls: ELA – 3%, Math – 13%
- Port Jervis: ELA – not reported, Math – 0%
- Poughkeepsie: ELA – 1%, Math – 1%
- Utica: ELA – 1%, Math – 3%

(FOF ¶¶ 902, 920, 941, 961, 979, 998, 1017, 1037; P.X. 50).<sup>14</sup>

In the 2012-13 and 2013-14 years, the aggregate percentages of LEP students in grades 3-8 scoring at level one in ELA or math ranged from the forties to the nineties in the Maisto Districts. (FOF ¶¶ 907-08, 925-26, 946-47, 966-67, 984-85, 1003-04, 1022-23, 1044-45). That aggregate data showed that the percentage of LEP students scoring at level 1 was in the eighties or nineties for both ELA and math in Jamestown, Poughkeepsie, and Utica. (FOF ¶¶ 907-08, 1022-23, 1044-45).

Test results for economically disadvantaged students in the Maisto Districts were also generally lower than the results for students as a whole in these districts, and often substantially lower. In 2012-13, the percentage of economically disadvantaged students scoring three or four was below 20% for every grade (3-8) in every Maisto district in both ELA and math. (FOF ¶¶ 899, 917, 938, 958, 976, 995, 1014, 1034). The 2013-14 aggregate proficiency rates for economically disadvantaged students in grades 3-8 were similarly low:

- Jamestown: ELA – 13%, Math – 15%
- Kingston: ELA – 13%, Math – 14%
- Mt. Vernon: ELA – 10%, Math – 13%
- Newburgh: ELA – 11%, Math – 12%

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<sup>14</sup> Plaintiffs' Findings of Fact ¶ 998 mistakenly refers to economically disadvantaged students, rather than LEP students, in Port Jervis. However, ¶ 998 contains data pertaining to LEP students in Port Jervis.



- Niagara Falls: ELA – 12%, Math – 12%
- Port Jervis: ELA – 12%, Math – 16%
- Poughkeepsie: ELA – 8%, Math – 6%
- Utica: ELA – 12%, Math – 16%

(FOF ¶¶ 900, 918, 939, 959, 977, 996, 1015, 1035).

In 2012-13 and 2013-14, the aggregate data for economically disadvantaged students in grades 3-8 showed at least half scoring at level one for ELA in each Maisto District, with the exception of Mount Vernon at 44% level one in 2012-13. (FOF ¶¶ 907, 925, 946, 966, 984, 1003, 1022, 1044). The same aggregate data also shows at least half of economically disadvantaged students scoring at level one in math in each Maisto District. (FOF ¶¶ 908, 926, 947, 967, 985, 1004, 1023, 1045).

The proficiency rates on State ELA and math exams in the Maisto Districts were often significantly lower for minority students than the general student population. The aggregate percentages for students in grades 3-8 who score a three or four on the State exams illustrate this. For example, in Jamestown in 2013-14 the aggregate percentage proficiency for all students in grades 3-8 was 20% in ELA and 22% in math, but only 8% in ELA and 10% in math for Latino students. (FOF ¶¶ 894, 896, 904). In Kingston the aggregate percentage proficiency for all students in grades 3-8 was 22% in ELA and 24% in math, but only 11% in ELA and 12% in math for Latino students, and 7% in both ELA and math for African-American students. (FOF ¶¶ 913, 915, 922, 924). In Niagara Falls the aggregate percentage proficiency for all students in grades 3-8 was 18% in both ELA and math, but was 11% in ELA and 9% in math for African-American students. (FOF ¶¶ 971, 973, 983). In Utica the aggregate percentage proficiency for all students in grades 3-8 was 15% in ELA and 19% in math, but only 7% in ELA and 8% in math for African-American students. (FOF ¶¶ 1029, 1031, 1041).

**C. Lack of Funding is a Cause of the Input Deficiencies and the Poor Student Outcomes in the Maisto Districts**

The overwhelming and cumulative evidentiary record developed at trial demonstrated that as a direct consequence of the State's failure to provide the funding required by the 2007 Foundation Aid Formula beginning in 2009-10, the Maisto Districts were unable to provide students with essential resources necessary to afford them the opportunity for a sound basic education. Furthermore, the experts, including the State's experts, agreed that student performance in each Maisto District was unacceptably low, and had the Districts received the funding at the levels prescribed under the Foundation Aid Formula, funding not received, student outcomes in the Districts would have been better. All experts, with the exception of Dr. Amor, acknowledged the State's failure to provide adequate funding is a cause of unacceptable outputs in the Districts, and that additional funding, spent wisely, would improve District performance. (FOF ¶¶ 38-45).

**IV. The State's Defenses**

Among the State's claims at trial were attempts to show that the availability of grants and federal funding; the need for teachers and administrators to be more effective; and New York's higher overall school spending levels relative to other states, somehow were causes for the lack of resources and low outcomes in the Maisto Districts. The State's scant evidence on these points was unconvincing and fails to refute Plaintiffs' proof, conceded by State witnesses, that the lack of State funding is a cause of the lack of resources and the poor student outcomes. Moreover, many of the State's defenses have already been rejected. See CFE II, 100 N.Y.2d at 920-25.

The State attempted to demonstrate that the admittedly unacceptable outputs in the Maisto Districts are "not the result of inadequate resources/inputs" but rather the fault of district

administrators and teachers who pay too little attention” to improving teaching and learning, and other alleged failures of management and leadership. (Defendants’ Proposed Findings of Fact (“Def. FOF”) ¶ 188).<sup>15</sup> The evidence of these alleged practices was conclusory and unconvincing. Moreover, the State failed to link these alleged practices to low outcomes in any Maisto District.

The State also attempted to show that federal aid and other grants were available to the Maisto Districts, ostensibly to compensate for the State’s failure to provide state aid required under the Foundation Aid Formula. It is the State’s constitutional responsibility to provide school districts with adequate funding to guarantee all students the opportunity for a sound basic education. CFE II, 100 N.Y.2d at 924. The State determined it would provide such funding through the Foundation Aid Formula. Grants by their very nature are inadequate and inappropriate substitutes for Foundation Aid that cannot satisfy the State’s constitutional obligation.

At trial, as in CFE, the State relied upon the testimony of expert witnesses Drs. Eric Hanushek and David Armor. These witnesses simply rehashed the same testimony, rejected by the courts in CFE, that additional resources would have no effect on student achievement. See CFE Trial Ct., 187 Misc.2d at 75; see also CFE II, 100 N.Y.2d at 921.<sup>16</sup>

As in CFE, the State proffered another line of testimony rejected by the Court of Appeals in CFE: that New York’s relatively high levels of funding compared to other states is somehow

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<sup>15</sup> Moreover, the record demonstrates that the very resources and time necessary to allow teachers and administrators to adequately oversee professional development, adequate implementation of the curriculum and proper oversight, were cut due to budgetary constraints. (See, e.g., FOF ¶¶ 184-85, 195, 208, 214, 237, 502, 503, 504-05, 510-11, 512-13, 515, 524, 527-29, 679).

<sup>16</sup> In fact, at the end of his testimony, Dr. Hanushek himself conceded that additional resources would indeed help student achievement. (FOF ¶¶ 47, 94).

relevant to the determination of whether the funding in Maisto districts is adequate for a sound basic education. (Def. FOF. ¶¶ 1-2). However, the State again ignored the crucial factors of “student need, local costs, and the actual quality of inputs and outputs” in the Maisto Districts, which led the Court to reject this argument previously. CFE II, 100 N.Y.2d at 921.

Not one claim raised by the State negates the facts that the state’s inadequate funding of the Maisto Districts precipitated the cuts in educational resources essential to a sound basic education, and that those cuts in essential resources were a cause of unacceptable student performance in all the districts; facts that the State witnesses themselves conceded.

### **CONCLUSIONS OF LAW**

**I. The State’s Failure to Provide Funding through the Foundation Aid Formula Has Caused Severe Deficiencies in Essential Resources and Low Student Outcomes in the Maisto Districts in Violation of Plaintiffs’ Right to a Sound Basic Education**

In the CFE litigation, the Court of Appeals held that the State would violate the right to a sound basic education under the Education Article of the New York State Constitution if plaintiffs – students in New York City public schools- established three elements. First, the plaintiffs had to show that the “inputs,” *i.e.* essential educational resources, were deficient. CFE II, 100 N.Y. 2d at 902-03. Second, they had to demonstrate that the student outcomes, *i.e.* test scores and graduation rates, were inadequate. Together, these deficiencies represented a “systemic failure.” Id. at 903. Third, the plaintiffs had to establish that a causal link existed between the funding system and that systemic educational failure. Id.

In the instant case, Plaintiffs have clearly established all three elements and have therefore proven a violation of the Education Article with respect to each of the Maisto Districts. As set forth in Plaintiffs’ Findings of Fact, and in the Summary of Facts above, the Plaintiffs presented compelling and undisputed evidence of the severe deficiencies in essential resources

and the unacceptable levels of student performance in each of the Maisto Districts. Further, Plaintiffs presented substantial and unrefuted evidence of the State's failure to implement the 2007 Foundation Aid Formula, resulting in significant shortfalls in state aid and spending on resources far below the levels deemed necessary under the Formula to provide a sound basic education to students in the Maisto Districts. As explained below, this overwhelming evidentiary record "establish[es] a causal link between the present funding system" and the "proven failure" in the Districts. CFE II, 100 N.Y.2d at 923. Consequently, this court should conclude that the State has violated Plaintiffs' right to a sound basic education under Art. XI, section 1 of the New York Constitution and enter appropriate relief to ensure the State promptly remediates that violation.

First, Plaintiffs proffered substantial, undisputed evidence of severe deficiencies in each of the Maisto Districts of those resources identified in CFE as essential to providing all students a meaningful opportunity for sound basic education, including economically disadvantaged students, students with disabilities, students with limited English proficiency and other students at-risk and in need of additional resources. See CFE II, 100 N.Y.2d at 909-14; see also CFE Trial Ct., 187 Misc.2d at 21-60, 76, 115. The evidence documented the significant cuts to these essential resources made by the Maisto Districts in response to the State's decision to freeze and then cut the funding required by the Foundation Aid Formula beginning 2009-10. (FOF ¶¶ 17-21, 498-831). These cuts affected essential resources in each District, reducing, and in some cases eliminating, classroom teachers, administrators, social workers, guidance counselors, nurses, security personnel, and other personnel critical to providing curriculum, instruction and support to students. (FOF ¶¶ 17-21, 498-831). These cuts forced the Districts to increase class size, end programs that provided extra learning time, scale back curriculum, and eliminate or

reduce a wide variety of programs, services, and targeted interventions to address the educational and educationally related needs of at-risk and disadvantaged student populations. (FOF ¶¶ 17-21, 498-831). The State’s own expert witnesses conceded much of the evidence of the deprivation of essential resources. (FOF ¶ 21). The record of these input deficiencies is overwhelming, clearly demonstrating that the resources in each Maisto district are “palpably inadequate.” Hussein, 19 N.Y.3d at 906 (J. Ciparick, concurring).

Second, it is undisputed that the student outcomes in the Maisto Districts are unacceptable. Plaintiffs’ evidence of State assessment results, school completion rates, and other performance measures is again overwhelming and uncontested, demonstrating each of the Maisto Districts are performing well below levels of proficiency established by the State itself and on other outcome measures. (FOF ¶¶ 832-1073; see also CFE II, 100 N.Y.2d at 915 (identifying low performance on state assessments and completion rates as pivotal indicator of the State’s failure to provide a sound basic education)). Further, the evidence documented in detail the even lower proficiency levels and outcomes among at-risk student subgroups, including economically disadvantaged, minority and ELL students, and students with disabilities. (FOF ¶¶ 832-1073; see also CFE II, 100 N.Y.2d at 914-19 (recognizing evidence of substandard outcomes among vulnerable student subgroups in New York City)). The evidence further demonstrated that these low levels of performance has resulted in the identification of many schools in the Districts as in need of improvement under the State’s current accountability system. Indeed, the State’s own witnesses repeatedly conceded that student outcomes were unacceptable, requiring immediate and urgent efforts to boost student achievement. These outcomes, together with the severe input deficiencies, “represent as systemic failure” in the Maisto Districts. CFE II, 100 N.Y.2d at 914.

Third, the trial record contains compelling evidence of the State's decision to halt implementation of the 2007 Foundation Aid Formula, resulting in a cumulative shortfall in State aid to the Maisto Districts of over \$1.1 billion from 2010-11 through 2014-15. In fact, the State stipulated that the Maisto Districts would have received this \$1 billion had the State implemented the Foundation Aid Formula as enacted and had the State not imposed the Gap Elimination Adjustment. This shortfall represents a significant proportion of the total yearly funding each district should have received under the Formula. In 2013-14 and 2014-15 alone, the Maisto district funding gaps ranged from 20% to 48%.

The evidence also shows the State's failure to adequately fund the Foundation Aid Formula has left the Districts with substantial shortfalls in spending on education resources. These, shortfalls are not *de minimus* or inconsequential, but far below the levels determined for each district by the State under the Formula as necessary for the delivery of a sound basic education to all students. For the period between 2010-11 and 2013-14, the median spending gaps in the Maisto Districts ranged from 21% to 39% of their Sound Basic Education spending targets.

Plaintiffs further demonstrated the detailed components of the Foundation Aid Formula, as adopted by the Legislature in 2007 following the Campaign for Fiscal Equity, Inc. v. State ruling in 2006 and after a painstaking and lengthy process, were designed by the Regents and intended to provide all districts throughout the state with the funding necessary to provide a sound basic education. 8 N.Y.3d 14, 861 N.E.2d 50 (2006). Further, the evidence shows that, in response to a combination of State failure to properly fund the Formula over the initial 4 year phase-in period, and significant cuts to state aid beginning in 2010-11, the Maisto Districts were faced with no alternative but to eliminate and reduce teachers, support staff, programs and

services, the very same resources deemed essential for a sound basic education in CFE II. The evidence established that the lack of these resources impeded the Maisto Districts' ability to provide students with the opportunity for a sound basic education, resulting in the low student outcomes. (See supra pp. 18-38).

Of critical importance to the Maisto Districts, the evidence documented the impact of the State's failure to implement the Foundation Aid Formula on those resources targeted to students at risk of failure. The Formula was explicitly designed by the Regents, and enacted by the Legislature, to ensure adequate funding to provide the additional time and academic and social help that students in high needs districts required, but that the State recognized high needs districts were unable to fund from local sources of revenue. (FOF ¶ 254). As the evidence amply demonstrates, when the state froze Foundation Aid in 2009-10, then cut that Aid beginning 2010-11 – and otherwise failed to provide the funding at the levels prescribed by the Formula – it was precisely those resources contemplated by the Regents for students in high needs districts, those resources that provided the additional time and social and academic help, that the Maisto Districts were compelled to reduce or eliminate.

In CFE, the Court of Appeals concluded that the plaintiffs proved causation by showing that increased funding could provide more resources that would yield better student outcomes. CFE II, 100 N.Y. 2d at 919. In the case at bar, the state witnesses conceded this very point. All of the State's District experts admitted that if the Maisto Districts received the funding they would have received, but did not receive, had the Formula operated as enacted, student outcomes would have improved. (FOF ¶ 299). Thus, the State itself conceded the causal link between the stipulated underfunding of the Foundation Aid Formula and the systemic failure in each of the Maisto Districts.



In sum, the evidence at trial establishes that the State has violated the constitutional rights of students in each of the Maisto district to a sound basic education by failing to provide each Maisto District with adequate funding for its schools.

**II. The Violation of Plaintiffs’ Right to a Sound Basic Education Requires A Prompt Judicial Remedy by the Court**

It is well established that a proven violation of students’ constitutional right to a sound basic education demands judicial relief. CFE II, 100 N.Y. 2d at 931-32. Plaintiffs demonstrated at trial that the constitutional violation of their rights is directly attributable to the State’s failure to provide necessary funding to each of Maisto Districts through implementation of the Foundation Aid Formula. While in CFE, the Court of Appeals directed the constitutional violation be remediated by injunctive relief directing the State to reform “the current system of financing school funding” (CFE II, 100 N.Y. 2d at 930), the record before this court related to the Maisto Districts is in a different posture.

At trial, Plaintiffs demonstrated that the “current system” of school funding – the Foundation Aid Formula – was expressly designed and enacted to deliver funding at levels necessary to afford District students the opportunity for a sound basic education. The record further shows that the funding and spending shortfalls in the Maisto districts are the direct consequence of the State’s continuing failure to provide the funding prescribed by that formula. Thus, the court need not direct relief to “reform” the Foundation Aid Formula – the “current system” of school funding – but instead provide remedial relief that ensures the State promptly implements the Formula in the Maisto Districts in accord with the Formula’s cost and funding parameters.

## CONCLUSION

Plaintiffs respectfully request the Court enter an order as follows:

(1) Declaring that the current levels of state funding in the Maisto Districts are inadequate and violate the right of Plaintiffs and all other students in those Districts, including socioeconomically disadvantaged, minority and ELL students and students with disabilities, to a sound basic education under Article XI, Section 1 of the New York State Constitution;


(2) Directing the State to fully fund state aid under the Foundation Aid Formula in the Maisto Districts, calculated without any of the adjustments, cuts, or modifications to the Formula made by the State beginning in the 2009-10 school year such as the Gap Elimination Adjustment;

(3) Directing the State to begin providing state aid under the Foundation Aid Formula to the Maisto Districts, pursuant to paragraph two (2) above, in equal annual installments commencing in the 2016-17 school year and achieving full state Foundation Aid by the 2019-20 school year; and

(4) Such other relief as may be appropriate and necessary to ensure Plaintiffs a constitutional sound basic education.

Plaintiffs further request this Court retain jurisdiction of this matter to ensure compliance with this Court's remedial directives and orders.

DATED: November 25, 2015  
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