

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Plaintiffs, :

- against - :

STATE OF NEW YORK, :

Defendant. :

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Index No. 8997-08
Hon. Kimberly A. O'Connor

PLAINTIFFS' PRE-TRIAL MEMORANDUM

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Pursuant to this Court's October 8, 2014 stipulation and order, counsel for Plaintiffs submits this Pre-Trial Memorandum in support of Plaintiffs' June 2, 2011 Amended (Third) Complaint for Declaratory and Injunctive Relief.

PRELIMINARY STATEMENT

In 2003, the Court of Appeals stated “[w]e 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.’” Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 901, 801 N.E.2d 326 (2003) (quoting Article XI, Section 1 of the New York Constitution). The Court of Appeals further recognized that “the 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.’” Id. at 902. The evidence is overwhelming that the Defendant State of New York (the “State”) has breached that duty and has failed to provide Jamestown, Kingston, Mt. Vernon, Newburgh, Poughkeepsie, Niagara Falls, Utica, and Port Jervis City School Districts (together the “Maisto Districts”), with resources necessary to provide the opportunity for a sound basic education to all their children. Specifically, Plaintiffs will prove:

i) the students’ performance (“outputs”) in the Maisto Districts is significantly below minimum State-established standards;

ii) the resources available (“inputs”) are “palpably inadequate;”¹ and

iii) the State’s current failure to ensure adequate funding is causing the deprivation of a sound basic education in the Maisto Districts, as demonstrated by the dramatic reduction of the funding from levels that the State had determined were constitutionally necessary.

Thus, Plaintiffs are entitled to both declaratory judgment that the State has violated Article XI, Section 1 of the New York Constitution, and injunctive relief to ensure the funding levels are increased to a level that ensures the opportunity for a sound basic education.

PROCEDURAL HISTORY

On October 30, 2008, Plaintiffs filed their original complaint seeking a declaratory judgment that ten small city school districts are so substantially underfunded that they fail to provide a sound basic education to the Plaintiffs’ children. 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 conduct and thus raises an actual case or controversy, the determination of which will immediately impact the parties,” and that “the alleged constitutional violations will likely continue.” Decision and Order at 4 (Sup. Ct., Albany Cnty. July 21, 2009) (J. Devine).

¹ When this case was before the Court of Appeals, Judge Ciparick recognized that where the education provided by the State is “palpably inadequate,” the courts must intervene. Hussein v. State, 19 N.Y.3d 899, 906, 973 N.E.2d 752 (2012) (J. Ciparick, concurring).

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 have now completed expert discovery and fact discovery.

STATEMENT OF FACTS

I. Plaintiffs' Constitutional Rights to a Sound Basic Education

A. 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). A sound basic education under the Education Article requires “a State-wide system assuring minimal acceptable facilities and services.” Id. at 47.

B. The Campaign for Fiscal Equality 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.² 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 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.” Campaign for Fiscal Equity, Inc. v. State, 100 N.Y.2d 893, 905, 801 N.E.2d 326, 330 (2003) (“CFE II”). Meaningful civic participation includes both participation as a citizen in the democratic process and some preparation for employment. CFE II, 100 N.Y.2d at

² The Plaintiffs in CFE brought claims concerning only the violation of students’ rights to a sound basic education in New York City schools.

905. 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.

C. Elements of a Sound Basic Education Claim

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 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; (ii) the resources or “inputs” that are essential to provide the opportunity for 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.

i. Outputs

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, diploma types, 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.

ii. 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:

- Sufficient numbers of qualified teachers, principals and other personnel. In assessing the adequacy of qualified teachers, the trial court examined both qualification and teacher supply. CFE Trial Ct., 187 Misc.2d at 24-37.

- Appropriate class sizes. The trial court found that smaller class size has a positive impact on student performance. Id. at 51-54.
- Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum. The trial court evaluated structural deficiencies in school facilities, antiquated laboratories, wiring, heating and air conditioning systems, and overcrowding, and the relationship of these factors to the implementation of curricula. Id. at 39-51.
- Sufficient and up-to-date books, supplies, libraries, educational technology and laboratories. The trial court reviewed the adequacy of textbooks, library books, classroom supplies and equipment, and instructional technology. Id. at 56-60.
- Suitable curricula. The trial court considered not only the content of curricula but also the ability to properly deliver the curricula to all students based on available facilities and other resources. Id. at 37-38. The trial court also recognized the importance of physical education and arts. Id. at 38.
- Expanded platform of programs to help at-risk students. The trial court recognized that at-risk³ students “need specially tailored programs, and more time spent on all aspects of academic endeavor,” including “pre-kindergarten programs, summer programs, and increased hours at school via after-school and Saturday programs.” CFE Trial Ct., 187 Misc.2d at 76.

³ 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.” Id. 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”).

- Adequate resources for students with extraordinary needs. The trial court considered the additional needs of at-risk students, including those with limited English proficiency (“English Language Learners” or “ELL”) and students with disabilities, and the resources necessary to address those needs. Id. at 21-23, 27, 115.
- A safe, orderly environment. The trial court considered the need for a safe, healthy and orderly learning environment. Id. at 39-45.

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.

iii. 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).

iv. The State's Defenses

The CFE rulings expressly rejected several contentions made by the State, primarily through Drs. Eric Hanushek and David Armor, their expert witnesses. First, the trial court found that, “[c]ontrary to [the State’s] argument, increased educational resources, if properly deployed, can have a significant and lasting effect on student performance.” CFE Trial Ct., 187 Misc.2d at 75. The trial court further found “a causal link between funding and educational opportunity,”(id.), a link which the Court of Appeals determined had been established for the New York City public schools in that case. CFE II, 100 N.Y.2d at 919. Simply put, the CFE rulings established that adequate funding, effectively used, is an essential element of a constitutional, sound basic education.

Second, the Court of Appeals found that class size and teacher qualifications also have an impact on student outcomes. The Court concluded that the CFE plaintiffs’ evidence of “the advantages of smaller class sizes supports the inference sufficiently to show a meaningful correlation between the large classes in City schools and the outputs.” 100 N.Y.2d at 912. The Court further recognized that a sufficient number of qualified teachers is an essential resource for a sound basic education. Id. at 909-11.

Third, the Court of Appeals rejected the State’s contention that academic outcomes are determined mainly by students’ socioeconomic backgrounds, and not the quality of the education provided in school. The trial court dismissed this argument as “not persuasive.” CFE Trial Ct., 187 Misc.2d at 71-72, 75 (rejecting Dr. Armor’s testimony because his method of “adjusting test scores to account for socioeconomic characteristics of at-risk students . . . rests on the premise that was not established at trial: that at-risk students’ educational potential is immutably shaped by their backgrounds”). The Court of Appeals upheld these determinations, finding that the

Court “cannot accept the [State’s] premise that children come to the . . . schools uneducable, unfit to learn.” CFE II, 100 N.Y.2d at 921. The Court found that students who are at-risk of doing poorly in school 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.” CFE II, 100 N.Y.2d at 942.

Fourth, the Court of Appeals rejected the State’s contention that New York’s relatively high levels of funding compared to other states is relevant to the determination of whether its funding is adequate for a sound basic education. Id. This premise ignored “student need, local costs, and the actual quality of inputs and outputs.” Id.

Fifth, the Court rejected the State’s defense that district mismanagement was to blame. Id. at 921-24. In support of this defense, the State cited the availability of certain cost savings and other political and managerial failings by New York City. Id. However, the Court concluded that concerns related to spending necessitated involvement by the State, and thus, the manner in which district officials used their funds was not an adequate defense as “the State has ultimate responsibility for the schools.” Id. at 923-24.

Finally, the State argued that the availability of local funding could remedy the lack of funds for New York City Schools. Id. at 924-25. Rejecting this argument, the Court found that the responsibility to ensure adequate funding rested with the State. Id. at 924. Notably, the Court and the State recognized that New York City had the ability to compensate for shortages in state funding, unlike other districts which had less capacity to generate funding through local revenue. Id.

II. Foundation Aid Formula

A. Enactment

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 928.⁴

In 2007, the State responded to the Court’s invitation by undertaking a major statewide school funding reform by enactment of the Foundation Aid Formula pursuant to Chapter 57 of the Laws of 2007. The funding formula underlying Foundation Aid was developed by the New York Board of Regents, the governing body of the New York State Education Department, in order to provide adequate funding to ensure a sound basic education for all students, including those students in high-poverty districts. See Dr. Deborah H. Cunningham, Report on Development, Enactment and Implementation of the 2007 Foundation Formula at 6, dated Nov. 10, 2014 (“Cunningham Report”); see also Frank Mauro, Report on the Development and Adoption of the 2007 Foundation Aid Formula, dated Nov. 10, 2014 (explaining that in passing Foundation Aid the Governor and legislature intended to provide the opportunity for a sound

⁴ In 2006, the Court of Appeals considered cost studies commissioned by the State and by a panel of referees to determine the amount of funds necessary for the State to remedy the demonstrated constitutional violations in New York City schools in light of CFE II, *i.e.*, the cost of closing the funding gap to reach the goal of providing a sound basic education. Campaign for Fiscal Equity, Inc. v. State, 8 N.Y.3d 14, 861 N.E.2d 50 (2006) (“CFE III”). After considering the various submissions the Court accepted the conclusion that an increase of funding by \$1.93 billion to New York City Schools was sufficient to remedy the violation for those schools. Id. at 31.

basic education statewide). At the time of enactment, the Governor stated: “The bill enacts numerous changes to the State Education Law to ensure sound, basic pre-K through secondary educational preparation for college or employment. It implements the Court of Appeals’ Campaign for Fiscal Equity decision....” Id. at 8 (quoting 2007 Chapter 57 Memorandum in Support).

B. Features of Formula

Foundation Aid was intended to provide: (i) regular annual education aid increases for all public school districts, and (ii) additional gap closing aid over a four-year period to selected districts to make it possible for those districts to fund and provide a sound basic education. See generally, Cunningham Report. Moreover, Foundation Aid was tied to achievement goals, based upon a Department of Education cost study designed to achieve an 80% pass rate on seven state examinations three years in a row. Cunningham Report at 9. The Foundation Aid would provide an additional \$5.5 billion to public school districts over the course of four years, with significant aid targeted to socioeconomically disadvantaged districts, including the Maisto Districts. Dr. Bruce Baker, Analysis of Spending and Funding for a Sound Basic Education in the Maisto Districts at 4 ¶ 9, 14 ¶ 31, dated November 19, 2014 (“Baker Report”).

C. Failure to Implement the Foundation Aid Formula

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. Baker Report at 5 ¶ 11. In 2010-11 the State began cutting funding levels through a new mechanism known as the Gap Elimination Adjustment (“GEA”). Id. at 5 ¶ 12. 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. Id. at 5 ¶ 13. These spending

cuts fell more heavily on districts with higher needs, which are more dependent on state aid. 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. Id. at 5 ¶ 16. 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 requires. Id. at 5-6 ¶¶ 17-19. The State has also yet to restore the \$1 billion in GEA cuts. Id.

III. Impact of Current Funding Levels on Plaintiffs and the Maisto Districts

A. Low Student Outcomes

The proofs at trial will demonstrate that the Maisto Districts are failing as measured by average educational performance or “outputs.” The data pertaining to the performance of at-risk and vulnerable subgroups of students is especially alarming.⁵

1. School Completion

With respect to graduation rates, the Maisto Districts lag far behind the state average and well below the 80% baseline established by the State for successful schools.⁶ For example, in 2013-14, the graduation rate was 57% in Poughkeepsie, 48% in Mt. Vernon, 60% in Niagara Falls, and 58% in Utica, as compared to a statewide average of 76%.

When broken down by subgroup (*i.e.*, economically disadvantaged and minority students and students with disabilities), the graduation rates are even lower. The 2012-13 graduation rate for Hispanic and Latino students was only 35% in Niagara Falls and 41% in Port Jervis. The

⁵ The New York State Education Department's public access data website (<http://data.nysed.gov/state.php>) hereinafter the “NYSED Online Report,” provides specific data regarding inputs and outputs by districts and is further broken down by other relevant criteria. The statistics and data cited herein come from the NYSED Online Report unless otherwise noted.

⁶ Cunningham Report at 9.

2012-13 rate was only 46% for African Americans in Poughkeepsie. In Mt. Vernon it was only 39% for students with disabilities.

The proofs will also show high dropout rates in the Maisto Districts. In Niagara Falls, for example, the dropout rate was 20% in 2013—more than double the state average rate of 8% for that year—and 22% in 2014—more than triple the state average of 7% for the same year. In Poughkeepsie, that number was a staggering 25% for 2013, or a quarter of the student population. These statistics are likely under-representative, since they fail to capture students who drop out before ninth grade. Even among those who graduate in the Maisto Districts, there are high percentages of general equivalency and non-Regents diplomas,⁷ and very low percentages of students with plans to attend two- or four-year colleges.⁸

2. Test Results

Math and English Language Arts (“ELA”) exams are given to 3rd through 8th graders in New York. The percentage of students achieving a level 3 or 4 (passing) in the Maisto Districts in 2013-14 is far lower than other districts in the state and the statewide averages of 31% (ELA) and 36% (Math). The ELA and Math proficiency averages for each district are as follows: Poughkeepsie: 10% ELA, 7% Math; Newburgh: 17% ELA, 18% Math; Utica: 15% ELA, 19% Math; Port Jervis: 18% ELA, 22% Math; Mt. Vernon: 12% ELA, 15% Math; Niagara Falls: 18% ELA, 18% Math; Kingston 22% ELA, 24% Math; Jamestown 20% ELA, 22% Math. The test

⁷ In 2013 a meager 15% of Niagara Falls students were able to earn a Regents diploma with advanced designation – less than half the state average of 31%. In Port Jervis, only 20% of graduating students receive an advanced designation Regents diploma. In Utica, the percentage is only 13%.

⁸ In Niagara Falls, less than one in four students who graduates has plans to attend a four-year college. The same is true for students in Utica.

results for various underserved subgroups in the Maisto Districts are even lower.⁹ In fact, each Maisto District had at least 40% of students score at only the 1 range in both ELA and Math.

The State itself found low outcomes and poor academic performance in the Maisto districts. The State has designated a number of the schools in Maisto Districts as “Focus” schools because their test performance or graduation rates are in the lowest 10% of school districts in the state.¹⁰ Poughkeepsie, Newburgh, Utica, Mt. Vernon, Kingston, and Jamestown all have schools designated as “Focus” schools.¹¹ Additionally, a number of schools in the Maisto Districts, including in Poughkeepsie, Newburgh, Utica, and Mt. Vernon, have received the State’s “Priority” designation, meaning the school is among the 5% lowest performing in the state in combined ELA and Math performance or graduation rates.¹²

B. Severe Deficiencies in Essential Resources

The Maisto Districts lack the necessary funding to provide the essential resources to afford the opportunity for a meaningful high school education.

1. Sufficient Numbers of Qualified Teachers, Principals, and Other Personnel

The Maisto Districts have been forced to eliminate necessary teachers, administrators, and other essential personnel.¹³ There are an insufficient number of teachers in the Maisto

⁹ African-American student performance was below the district average for all students in all of the Districts. Hispanic/Latino performance was lower than the district average in Newburgh, Utica, Port Jervis, Niagara Falls, Kingston, and Jamestown. Students with disabilities had extremely low scores across the board: ranging from 0% proficiency in Math in Jamestown to a high of only 7% in Math in Kingston. ELL students fared little better. With the exception of a 13% proficiency rate in Math in Niagara Falls, no ELL subgroup scored higher than 7% in either ELA or Math. ELL students scored in the 1% or lower margin in Poughkeepsie, Utica, Port Jervis, Kingston, and Jamestown in either ELA or Math or both.

¹⁰ Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 4.

¹¹ NYS EDUC. DEP’T, OFFICE OF ACCOUNTABILITY—SCHOOL AND DISTRICT ACCOUNTABILITY DESIGNATION REPORTS, available at <http://www.p12.nysed.gov/accountability/ESEADesignations.html>.

¹² NYSED; see also Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 4.

¹³ See, e.g., Expert Report of Dr. Stephen Uebbing (Newburgh) at 14, 34 (Newburgh has eliminated almost 300 positions since 2010 and approximately \$60.93 million is needed to hire sufficient personnel); Expert Report of Dr.

Districts to provide the necessary extra help and instruction on a remedial basis or otherwise, during or after the school day.¹⁴ In addition to the lack of necessary teachers, many of the Maisto Districts have been forced to eliminate administrators and personnel responsible for the training and oversight of their educators.¹⁵ The loss of essential teaching and administrative staff has caused the remaining personnel to assume roles and duties for which they are often untrained or uncertified.¹⁶

Peggy Wozniak (Poughkeepsie), at 31 (Poughkeepsie eliminated 115 staff positions from 2010-13 due to budget deficiencies); Dr. Peggy Wozniak Final Report (Jamestown) at ¶ 53 (from 2010-14 Jamestown eliminated approximately 160 positions (14% of total staff), resulting in a reduction of 10% of the teaching staff, 22% of administrative staff, and 15% of support staff); Expert Report of Dr. Peggy Wozniak Final Report (Utica) at ¶ 9 (over the past three years Utica has eliminated roughly 200 teaching positions, 95 staff positions, and 13.5 administrative positions).

¹⁴ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 18, 22, 25 (additional staff are needed to provide special education, ELL, and Academic Intervention Services (“AIS”)); Expert Report of Dr. Stephen Uebbing (Port Jervis) at 23, 28-29 (shortage of qualified school social workers, counselors, administrative structure); Dr. Stephen Uebbing Final Report (Kingston) at 8 (district is understaffed in counseling and there is a shortage of qualified school social workers).

¹⁵ See, e.g., Dr. Peggy Wozniak Final Report (Utica) at ¶¶ 9, 31, 33 (13.5 administrative positions have been cut in the past three years and there are too few or no assistant principals at each school); Expert Report of Dr. Stephen Uebbing (Port Jervis) at 29 (teacher time should be extended by at least 10% to accommodate professional development and district does not have the capacity to provide the professional development necessary to fully implement Response to Intervention (“RtI”) services, the common core standards, or any of the reform initiatives of the Regents Reform Agenda); Expert Report of Dr. Stephen Uebbing (Newburgh) at 33 (additional 12 administrators, clerical support, and an elementary reading subject area supervisor are needed to improve building and district supervision, an additional 15 teacher leaders with expertise in literacy to support general education classroom teachers are needed, and two professional development specialists are required).

¹⁶ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 17-18, 21, 25 (need professional development for personnel who work with students with disabilities and ELLs, additional dually certified special education and ESL teachers, and increased staff and support for ELL students); Expert Report of Dr. Peggy Wozniak (Utica) at 28-29 (given the few administrators in the district and the lack of assistant principals, principals have too many roles and duties); Expert Report of Dr. Stephen Uebbing (Port Jervis) at 27 (shortage of qualified social workers, counselors, and administrative structure); Dr. Stephen Uebbing Final Report (Kingston) at 8 (shortage of qualified school social workers); Expert Report of Dr. Stephen Uebbing (Newburgh) at 8, 25, 32 (lack of teaching assistants and aides, lack of social workers, counselors, and psychologists, and only six certified school social workers in the district); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 30-31 (uncertified staff are used to fill substitute teacher needs; these substitutes are often taken at the expense of special education students; Special Education program teacher lacks proper certificate); Dr. Peggy Wozniak Final Report (Jamestown) at ¶ 15-16 (staff members that provide AIS are not all fully certified for the subject areas in which they are providing remediation).

2. Appropriate Class Sizes

Many of the Maisto Districts have class sizes that are not appropriate to foster learning or improve outcomes, and are often far higher than typical suburban districts in the state.¹⁷ Pupil-teacher ratios are also excessive in many Maisto Districts.¹⁸ Such large class sizes are particularly problematic since the Maisto Districts have high concentrations of students with disabilities, requiring special education in smaller classes.¹⁹ Similarly, AIS²⁰ classes and ELA intervention classes are often overcrowded and understaffed.²¹ In fact, several Maisto Districts are struggling with increasing populations at a time when the funding is shrinking, making it increasingly difficult to achieve appropriate class sizes.²²

¹⁷ For example, in 2012-13 Port Jervis had kindergarten class sizes of 26. Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 22. In Mt. Vernon, kindergarten class sizes are as large as 28 students per class. Dr. Stephen J. Uebbing Final Report (Mt. Vernon) at 8. Davis Middle School in Mt. Vernon had student populations of 30 in core classes in 2012-13. *Id.* at 30; *see also* Expert Report of Dr. Peggy Wozniak (Poughkeepsie), at 19 (class sizes in Poughkeepsie's high school average between 25 and 26 students); Dr. Stephen J. Uebbing Final Report (Kingston) at 7 (kindergarten class sizes in Kingston average 25 students, with elementary classes at 21 students and secondary classes from 21-24 students); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 33 (majority of elementary school class sizes in Niagara Falls exceeds the guidelines established in the CFE decisions); Expert Report of Dr. Stephen J. Uebbing (Newburgh) at 30 (kindergarten classes run as high as 25 students per class, with grades 1 and 2 not far behind, averaging 23 students).

¹⁸ *See, e.g.*, Dr. Stephen J. Uebbing Final Report (Mt. Vernon) at 9 (a 1:41 ratio of certified reading teachers to elementary students in Mt. Vernon).

¹⁹ For instance, in 2012-13, 20% of the students in Mt. Vernon had some kind of disability and in Poughkeepsie it was 15%. In Kingston class sizes for students with disabilities can range from groups of 12 up to 28 students. Dr. Stephen J. Uebbing Final Report (Kingston) at 7-8.

²⁰ AIS is additional instruction intended to assist students who are at risk of not achieving the state learning standards in English language arts, mathematics, and social studies. AIS supplements the instruction provided in the general curriculum, and may include guidance, counseling, attendance, and study skills which are needed to support improved academic performance. *See* NYSED, *Part 100 Regulations: 100.1 Definitions, 100.1 g* <http://www.p12.nysed.gov/part100/pages/1001.html#g>.

²¹ Dr. Peggy Wozniak Final Report (Utica) at 8, 10 (AIS classes are overcrowded in Utica with 17-20 students in each ELA intervention class and 25-29 students in each math intervention class); Dr. Peggy Wozniak Final Report (Jamestown) at 4-5 (AIS class sizes of approximately 15 or more in Jamestown are out of compliance with the commissioner's regulations and that AIS class size should not exceed 10 students).

²² *See, e.g.*, Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 1 (Poughkeepsie is expected to grow 1.44% through 2020); Expert Report of Dr. Peggy Wozniak (Utica) at 1 (describing the refugee and immigration growth in the district).

3. Adequate and Accessible School Buildings

Many of the Maisto Districts' facilities are outdated, in disrepair, and a threat to the health and well-being of students and staff.²³ There are numerous facilities that are no longer useable, or that are overcrowded, inaccessible to students with disabilities, or simply ill-suited for the necessary use.²⁴ In some instances the facilities are unsafe, unhealthy and dangerous for the students and staff.²⁵

4. Sufficient and Up-to-Date Books, Supplies, Libraries, Educational Technology and Laboratories.

Most Maisto Districts lack sufficient and up-to-date materials. For example, many have textbooks that are old and not in alignment with the common core standards.²⁶ Maisto Districts

²³ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 27 (need for a constant state of repairs and renovations to aging facilities and schools in the district; a boiler has recently failed resulting in unplanned expense and loss of instructional time for students); Expert Report of Dr. Stephen Uebbing (Newburgh) at 11-13 (buildings are generally old and worn; many are out of compliance with ADA, have outdated windows, and also have inoperable HVAC controls; the New Windsor School is over 100 years old and lacks an elevator; other issues include faulty electrical capacity, lack of proper fire escape, and cracks in the foundation of South Middle School); Dr. Peggy Wozniak Final Report (Utica) at 6, 7 (some programs, such as the ROTC, operate in the hallways because there is no other large space available; kindergarten bathroom is not age appropriate or accessible for kindergartners, no working PA system in some of the schools; auditorium at Kernan Elementary needs extensive repair and is not in ADA compliance; main office of high school too small and inadequate for such a large school).

²⁴ In Niagara Falls, the district had to close three of its buildings which resulted in overcrowded classrooms, no safe areas for students to have recess, and several elementary schools providing services for their handicapped students in the hallway since there are no handicapped-accessible classrooms available. Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34-35. In Port Jervis there are (i) lack of spaces in the middle school appropriate to meet the needs of students, (ii) no windows and virtually no privacy in the closet-size counselor offices in Port Jervis and (iii) particularly unfriendly environments for physically-challenged students due to uneven floors and other hazards. See Expert Report of Dr. Stephen Uebbing (Port Jervis) at 9, 11.

²⁵ Facilities in Mt. Vernon are deplorable: (i) the air quality is problematic due to inadequate ventilation in many of the schools; (ii) many areas of the high school are condemned or simply unusable; (iii) none of the Mt. Vernon facilities have air-conditioning; (iv) many buildings are not ADA compliant and are inaccessible to students with disabilities; (v) lights have crashed from the ceiling in the auditorium; (vi) bird droppings plague a bathroom at the Middle School; and (vii) a wall has collapsed at the high school resulting in concrete blocks crashing through the roofs of adjoining classrooms. Expert Report of Dr. Stephen J. Uebbing at 10-11; Dr. Stephen J. Uebbing Final Report (Mt. Vernon) at 5-7.

²⁶ Dr. Peggy Wozniak Final Report (Jamestown) at 22 (majority of textbooks are 5 to 7 years old and are not aligned to the Common Core State Standards); Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 22 (outdated textbooks at the Middle School); Expert Report of Dr. Stephen J. Uebbing (Mt. Vernon) at 11 (textbooks at all three surveyed schools were in "deplorable" condition).

also need their libraries and facilities to be updated with appropriate technology, and adequate staff and space to accommodate the needs of all the students.²⁷

5. Suitable Curricula

The proofs will show a lack of appropriate curricula in the Maisto Districts at every grade level. The majority of the Maisto Districts have reduced their pre-kindergarten and kindergarten programs to a half day, or cannot provide one at all.²⁸ As a result, kindergarteners are entering school two years behind and begin their education with an achievement gap. Language classes, art and music programs, and physical education are all lacking in many of the Maisto Districts.²⁹ Budget reductions in the Maisto Districts have also impacted student clubs and

²⁷ Expert Report of Dr. Stephen J. Uebbing (Mt. Vernon) at 11 (75% of all computers in the district were over five years old); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34 (inadequate space in older classrooms in which to introduce technology); Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 21 (limited access across all grade levels in the middle school to technology and resources in the classroom); Expert Report of Dr. Peggy Wozniak (Utica) at 19, 22 (insufficient computer labs and media centers); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34-35 (the science classrooms in one of the schools were undersized and lacked water, gas, and teacher and student work space); see also Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 22, 34 (science labs at Poughkeepsie Middle School were outdated and lacked sufficient equipment); Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 10 (library media center is undersized and poorly equipped with few older computers, and far too few to meet the needs of the number of students); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34 (not enough textbooks available to allow students to have individual copies for personal use at home; at one elementary school no new library books had been purchased in over five years and at another the principal and librarian could not identify what year the district had last purchased new library materials).

²⁸ Expert Report of Dr. Stephen J. Uebbing (Mt. Vernon) at 22-23 (current pre-kindergarten offerings are only half-time and only 63% of Mt. Vernon children receive a structured pre-kindergarten experience); Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 22 (Port Jervis currently depends entirely on outside programs to service pre-kindergarten children, and these programs are not available to all students); NYSED Online Report (40 students in Kingston are enrolled in half day pre-kindergarten out of 95 in total); see also Expert Report of Dr. Stephen J. Uebbing (Newburgh), at 23 (Newburgh is even currently considering reducing its full-day kindergarten to half-day to reduce its budget).

²⁹ See Expert Report of Dr. Peggy Wozniak (Utica) at 23 (50% reduction in the art and physical education programs in Utica, and only a skeletal program before 4th grade); Dr. Stephen J. Uebbing Final Report (Kingston) at 6 (no specialized areas for music education in three of the elementary schools). Mt. Vernon students at every grade level do not receive the number of hours of physical education required by state regulations. Dr. Stephen J. Uebbing Final Report (Mt. Vernon) at 13. Niagara Falls has virtually eliminated its foreign language program, cutting every language except for Spanish. Expert Report of Dr. Bruce Fraser (Niagara Falls) at 31 (Latin, French, and Italian had been available in past years, but have since been eliminated, along with many electives, including Journalism, AP Sociology, and AP Psychology); see also Dr. Stephen J. Uebbing Final Report (Mt. Vernon) at 13 (only one language is offered in Mt. Vernon and many students do not take a foreign language at all).

athletics.³⁰ Critical literacy programs have also been reduced or eliminated.³¹ Moreover, Maisto Districts lack the resources to make state-mandated changes to their curricula or to provide support to the teachers who are expected to bring about these changes.³²

6. Expanded Platform of Programs to Help At-Risk Students

The Maisto Districts are among the poorest “small city” districts with some of the highest concentrations of economically disadvantaged and at-risk students in New York.³³ These students require increased hours at school, specially tailored programs, and specialized personnel to meet State-established outcome standards.³⁴ Instead, Maisto Districts have been forced to cut services and staff targeted to the needs of at-risk students and students with disabilities, such as social workers, psychologists, counselors, AIS staff, alternative learning programs, afterschool programs, social workers, psychologists, counselors, therapists, nurses, and other vital programs and program administrators.³⁵ The Maisto Districts have sharply reduced AIS services, meaning

³⁰ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 21-22 (elimination of after-school and extra-curricular programs at the middle school level, including the football program, due to budget constraints)

³¹ See Stephen J. Uebbing Final Report (Newburgh) at 9 (Newburgh has only 27 certified reading teachers assigned to teach the entire student population of 11,000 students); see also Expert Report of Dr. Stephen J. Uebbing (Mt. Vernon) at 29-30 (Graham Elementary School only has two reading specialists, as does Davis Middle School despite nearly half of all Davis students scoring at “Level 1”--the lowest level--on the 2013 ELA exams); Expert Report of Dr. Stephen J. Uebbing (Kingston) at 27 (need for an additional 28 reading specialists in Kingston to support at-risk students).

³² See, e.g., Dr. Peggy Wozniak Final Report (Jamestown) at ¶¶ 17, 20 (Jamestown’s Central Office Curriculum Department has been significantly downsized due to fiscal constraints with additional staff needed to support implementation of the Common Core); Expert Report of Dr. Peggy Wozniak (Utica) at 33 (decrease in curriculum leaders from seven to four over the last year in Utica).

³³ For example, 77% of Newburgh students are classified as “economically disadvantaged”, 20% of Newburgh students have some kind of disability, and 9% are ELL. In Poughkeepsie, 85% of the student population is economically disadvantaged, 15% are students with disabilities, and 10% are ELL.

³⁴ See generally, Laurence T. Spring, Essential Programs and Services for At-Risk Students in New York’s High Poverty Districts, dated Nov. 12, 2014 (describing the need for high poverty districts to provide a “robust platform of programs and services” for at-risk students including (i) student and family support team (*i.e.*, social workers, nurses, counselors, and parent/community liaisons); and (ii) academic interventions (*e.g.*, intensive math and literacy intervention, extended learning time, and AIS and RtI).

³⁵ See, e.g., Dr. Peggy Wozniak Final Report (Jamestown), ¶ 18 (only two part-time social workers in the entire district of Jamestown and psychologists are shared throughout the district with some schools receiving less than a

that many students eligible for the services are not receiving them.³⁶ The Districts have also eliminated summer school and extended day services for at-risk students.³⁷ Budget cuts have also caused the elimination or reduction of alternative school programs, which are critical to address the needs of students with behavioral problems and to ensure orderly instruction in general education classrooms.³⁸ Moreover, the Maisto Districts are unable to provide the counselors and social workers needed by their at-risk students.³⁹ In addition to failing the needs of the students, this shortfall in social workers and counselors results in insufficient family outreach and communication. The lack of these expanded platform programs and services is

half day of service per week); Dr. Stephen J. Uebbing Final Report (Kingston) at 8 (shortage of qualified social workers with only 5 social workers for 4000 students in grades 5-12 and 7 social workers for 5000 students in grades K-5); Expert Report of Dr. Stephen J. Uebbing (Newburgh) at 14, 25, 32 (lack of social workers, counselors, and psychologists in Newburgh; if the district were to meet the standards of the National Association of School Social Works (“NASSW”), it would have to increase the total number of social workers by more than 4,000%); Dr. Peggy Wozniak Final Report (Utica) at 5 (over the past three years the district has eliminated about 200 teaching positions, including teachers, reading teachers, special education teachers, counselors, psychologists, AIS math providers, guidance counselors, social workers, literacy coaches, speech therapists, occupational therapists, and physical therapists).

³⁶ See, e.g., Dr. Peggy Wozniak Final Report (Jamestown), ¶¶15-16 (not all students who qualify for AIS in Jamestown are receiving this service, and not all the staff that do provide AIS are fully certified for the subject area in which they are providing remediation, which is out of compliance with the Commissioner’s regulations); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 32 (AIS classes in Niagara Falls are overcrowded; there is a general lack of certified instructional personnel for math intervention; no AIS support is provided in the Social Studies and Science curriculum areas; and no AIS support for grades 10-12 in ELA or math); Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 13 (AIS is one of the programs most affected by recent budget cuts).

³⁷ See Dr. Peggy Wozniak Final Report (Jamestown), ¶ 21 (elimination due to budget cuts of extended day programs and summer school at the elementary and middle school levels); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 32 (discontinuation of after school support programs and summer support programs).

³⁸ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 20 (need to add another social worker at the high school in Poughkeepsie in light of an attendance rate of only 88% and the recent mainstreaming of recently-incarcerated and socially-challenged students).

³⁹ See Expert Report of Dr. Bruce Fraser (Niagara Falls) at 30 (guidance counselors struggle to provide routine services given the high student to counselor ratios and the needs of the student population); Dr. Stephen J. Uebbing Final Report (Kingston) at 8 (no elementary counselors and only six counselors for 2000 middle school students); see also Expert Report of Dr. Stephen J. Uebbing (Mt. Vernon) at 35 (Mt Vernon has only 18 social workers for the entire district, resulting in a 1:470 ratio); Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 29 (only four social workers in the Port Jervis district, seven shy of the number needed to meet the NASSW standard).

particularly acute and harmful in the Maisto Districts, which generally have low graduation rates and high dropout rates.⁴⁰

7. Adequate Resources for Students with Extraordinary Needs

The Maisto Districts have high concentrations of ELL students and students with disabilities, and the Maisto Districts are not in compliance with minimum state requirements for these student subgroups.⁴¹ The Maisto Districts lack resources to address the needs of these vulnerable populations.⁴² A severe lack of resources for these subgroups and the overall student population has had a substantial and negative effect on the outputs for the Maisto Districts.⁴³

8. A Safe, Orderly Environment

The Maisto Districts are unable to provide a safe and orderly environment for their students to learn. Budget cuts have reduced security and custodians in many Districts.⁴⁴ Many

⁴⁰ See, e.g., Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 15-17 (Port Jervis has the lowest graduation rate and highest dropout rate of its neighboring school districts, signaling an increased need for effective AIS programs); NYSED for Mt. Vernon (graduation rate of 60% in 2014).

⁴¹ See Expert Report of Dr. Bruce Fraser (Niagara Falls), at 30 (para-professional schedule adjustments required due to substitute teacher shortages often result in the Individual Education Plans (“IEPs”) of students with disabilities not being in full compliance); Dr. Peggy Wozniak Final Report (Jamestown), ¶¶ 23, 25 (Jamestown is often out of compliance with the legal requirement to fully meet the provisions of all IEPs for students with disabilities, and 25% of students with disabilities are ELLs, meaning schools must provide services to meet both their IEPs and their language needs, although they do not have sufficient personnel); Dr. Stephen J. Uebbing Final Report (Kingston) at 6-7 (George Washington Elementary School and Kingston High School both have ADA compliance issues).

⁴² See, e.g., Dr. Peggy Wozniak Final Report (Jamestown), ¶¶ 21, 29 (general lack of services for ELLs and their families in Jamestown, especially after the elimination of the Spanish-speaking outreach counselor position due to budget cuts); Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 21 (limited availability of instructional materials to support learning for students with disabilities and ELL students in Poughkeepsie); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 32 (Niagara Falls spent nearly \$10,000 less per handicapped pupil than similar districts across the state, and the classrooms for these students are exceeding the appropriate enrollment, requiring the district to apply for waivers); Dr. Stephen J. Uebbing Final Report (Kingston) at 12 (a general lack of sufficient programs for students with disabilities); Expert Report of Dr. Stephen J. Uebbing (Newburgh) at 8 (need for additional support for ELLs in general education classrooms).

⁴³ See, e.g., Expert Report of Dr. Stephen J. Uebbing (Port Jervis) at 18 (only 17% of students with disabilities in Port Jervis show proficiency in ELA and only 2% are proficient in Math).

⁴⁴ See, e.g., Expert Report of Dr. Peggy Wozniak (Poughkeepsie) at 18 (officers were no longer on-site at Poughkeepsie schools, and the high school cut three security personnel); Expert Report of Dr. Bruce Fraser (Niagara Falls) at 30 (planned reduction from three to one Resource Officers assigned to the high school).

of the students in Maisto Districts struggle with gang involvement, drugs, and security issues in and out of school. The growing deficit of counselors, social workers, and other social and emotional learning support services has resulted in increased fighting in many districts.⁴⁵ The Maisto Districts also have high rates of school suspension.⁴⁶

C. Funding Levels in the Maisto Districts

The Maisto Districts are currently experiencing substantial shortfalls in the funding levels necessary to support a sound basic education. The Maisto Districts have low property wealth and are more heavily reliant on state aid for their budgets. Baker Report at 14-15 ¶¶ 31-33. Thus, any state budget cuts fall disproportionately on the low wealth, high need Maisto Districts. Id. at 6 ¶ 19. The failure of the State to implement and fully fund the Foundation Aid Formula has exacerbated the funding shortages of the Maisto Districts, undermining their ability to provide the essential resources to students necessary for a sound basic education. Moreover, these funding gaps have occurred against a backdrop of pressing student need in Maisto Districts, characterized by large and growing populations of socioeconomically disadvantaged, minority and ELL students and students with disabilities. Id. at 15 ¶ 35.

The State's failure to implement the 2007 Foundation Aid Formula has resulted in substantial shortfalls in the Maisto Districts, ranging from \$18 million to \$54 million in 2013-14, or from 20% to 38% of the Maisto Districts' spending targets. Id. at 17 ¶ 5. The state aid gaps

⁴⁵ Expert Report of Dr. Peggy Wozniak (Utica) at 27 (need for an assistant principal to ensure a safe and secure school environment and to deal with behavioral situations).

⁴⁶ For example, in Mt. Vernon, 15% of school children were suspended during the 2011-12 school year. See also Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34 (suspension rates for the district are high). Some districts, such as Niagara Falls, are forced to place emotionally disturbed children in out of district programs because of a lack of security personnel. Expert Report of Dr. Bruce Fraser (Niagara Falls) at 34.

range from \$1,502 per pupil in Kingston to \$4,438 per pupil in Utica, and average \$2,845 per pupil among all Maisto Districts, for the 2014-15 school year alone. Id. at 17 ¶ 6.

ARGUMENT

I. The State’s Failure to Provide Adequate Funding to Maisto Districts Has Caused Low Outcomes and Severe Deficiencies in Essential Resources in Violation of Plaintiffs’ Right to a Sound Basic Education

There are severe deficiencies in essential resources in the Maisto Districts and unacceptably low outcomes as measured against State-established standards of student proficiency and achievement, particularly for at-risk student subgroups. The glaring deficits in essential resources and unsatisfactory outcomes in the Maisto Districts are directly attributable to the State’s continuing failure to ensure funding at the levels adequate to provide the opportunity for a sound basic education, as demonstrated by the failure of the State to implement the 2007 Foundation Aid Formula. Thus, the record at trial will convincingly demonstrate the State’s violation of Plaintiff students’ right to a sound basic education under Article XI, Section 1 of the New York Constitution.

First, utilizing state assessment results, school completion rates, and other measures, Plaintiffs will present overwhelming proof that students in the Maisto Districts are performing well below levels of proficiency and success established and recognized by the State itself. See CFE II, 100 N.Y.2d 893 at 915 (identifying low performance on state assessments and completion rates as a key indicator of the State’s failure to provide a sound basic education). Further, Plaintiffs will present substantial evidence of even lower outcome performance among subgroups of at-risk student populations in the Maisto Districts, those students vulnerable to academic failure and in need of additional interventions and resources, including socioeconomically disadvantaged, minority and ELL students, and children with disabilities.

Plaintiffs will present evidence of unacceptable and substandard outcomes for Maisto District students, especially among vulnerable student subgroups, that are remarkably similar to the trial record for New York City students approved in CFE II. Id. at 914-19.

Second, Plaintiffs will present overwhelming evidence, as summarized above, of the severe and glaring deficiencies in the Maisto Districts with respect to resources deemed essential for a sound basic education by the Court of Appeals in the CFE rulings. Plaintiffs' proofs will consist of State and Maisto District data; reports on each Maisto District by New York education experts; and testimony from Maisto District superintendents, administrators and educators. These proofs will demonstrate serious deficits in qualified teachers; appropriately-sized classrooms; adequate and accessible school buildings; suitable supplies and materials; suitable curricula; programs, staff and services for at-risk student populations; services and programs for students with extraordinary needs; and a safe and orderly school environment. Further, Plaintiffs will demonstrate that the deficiencies "represent a systemic failure" within each Maisto District, and have a more significant and substantial impact on the Maisto Districts' at-risk student populations and students with extraordinary needs. Id. at 914.

Third, Plaintiffs will present substantial evidence correlating the deprivation of essential resources and low outcomes to the State's continuing failure to ensure adequate funding to the Maisto Districts. Based on this compelling evidence, Plaintiffs will "establish a causal link between the present funding system" and the "proven failure" of severe resource deficiencies and low outcomes in the Maisto Districts. Id. at 923 (quoting CFE I, 86 N.Y.2d at 318). Plaintiffs will further demonstrate that the State has failed to provide funding at the levels the State itself determined to be required for a sound basic education, resulting in significant shortfalls in overall spending in each of the Maisto Districts. Thus, the gap between current funding levels

and the 2007 Foundation Formula will provide even further evidence of the State's failure to ensure that the Maisto Districts have the funding necessary to afford all students the opportunity for a sound basic education, in accordance with the CFE rulings.

In sum, the Plaintiffs at trial will meet their burden of demonstrating that the lack of essential resources and low outcomes are directly caused by the State's failure to ensure adequate funding. Id. at 914, 919. As a result, this Court can and must enter a declaratory judgment that the State is not affording Maisto District students the opportunity to receive a sound basic education, in violation of their rights under Article XI, Section 1 of the New York Constitution.

II. The Violation of Plaintiffs' Right to a Sound Basic Education Requires Remediation by the Court

A proven violation of New York students' constitutional right to a sound basic education, in one or more districts, requires immediate judicial relief. As discussed above, Plaintiffs at trial will demonstrate that the constitutional violation of their rights is directly attributable to the State's failure to ensure adequate funding to the Maisto Districts. Thus, the constitutional violation can be remediated by injunctive relief directing the State to reform "the current system of financing school funding and managing schools [to] address the shortcomings of the current system by ensuring, [the Maisto Districts] would have the resources necessary for providing the opportunity for a sound basic education." CFE II, 100 N.Y.2d at 930.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court enter findings that the Maisto Districts lack essential resources and have low and substandard outcomes, and that these failures are caused at least in part by inadequate funding. Further, Plaintiffs request the Court conclude that Plaintiff students in the Maisto Districts, including socioeconomically

disadvantaged, minority and ELL students and students with disabilities, are being denied an opportunity for a sound basic education, in violation of their rights under Article XI, Section 1 of the New York Constitution. Further, Plaintiffs respectfully request that this Court find Plaintiffs are entitled to appropriate and timely remedial relief and that the Court retain jurisdiction over this action to ensure compliance with any injunctive relief granted.

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