

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-

Index No. 8997-08

STATE OF NEW YORK,

Defendant.

-----X

DEFENDANT'S POST-TRIAL MEMORANDUM

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PRELIMINARY STATEMENT

Plaintiffs brought this action seeking the extraordinary remedy of judicial intervention into the State's budget determinations based on allegations that the State provided inadequate funding of education in eight small city school districts -- Jamestown, Kingston, Mount Vernon, Newburgh, Niagara Falls, Port Jervis, Poughkeepsie, and Utica ("the plaintiff districts"). A bench trial was conducted between January 21, 2015 and March 12, 2015. As discussed below, plaintiffs have failed to meet their burden to show that the State is failing to provide the students in the plaintiff districts with the opportunity for a sound basic education. Accordingly, the third amended complaint should be dismissed.

The Court of Appeals has long emphasized judicial restraint in matters of public school financing, a subject governed at both the State and local levels and one that presents issues of enormous complexity and intense debate properly addressed by the political branches. However, plaintiffs' theory of the case, and the remedy they request, disregard longstanding and critical separation of powers principles. In essence, plaintiffs assert, without any legal basis, that public school funding statutes passed in 2007 by the New York State Legislature established a constitutional floor such that these statutes could never be amended by future Legislatures. Plaintiffs ask the court to

examine one State funding stream in isolation rather than examining all sources of revenue utilized by the plaintiff districts. Moreover, plaintiffs seek a remedy -- judicially ordered, specific State budget amounts -- that is well outside the bounds of established precedent.

Further, before any judicial intervention is warranted, the Court of Appeals requires plaintiffs asserting claims of insufficient public school funding to prove both detailed evidence of gross and glaring deficiencies in educational inputs and outputs throughout the schools in a particular district and a causal link between the State funding system and any proven failure to provide the opportunity for a sound basic education.

In this case, applying the standards and benchmarks laid out by the Court of Appeals in the Campaign for Fiscal Equity v. State ("CFE") cases, plaintiffs have not met their burden to show that there are gross or glaring deficiencies in inputs in the plaintiff districts. On the contrary, the evidence shows that the inputs identified by the Court of Appeals as critical to a sound basic education are superior to the levels found deficient in CFE. Plaintiffs have also failed to meet their burden of proving that any deficiencies in outputs in the plaintiff districts are the result of inadequate funding.

How best to improve student achievement is a policy question continuously debated at every level of the education

system -- local, State, and federal. Plaintiffs' request has the benefit of being enticingly simple: provide the plaintiff districts with more State education aid. However, the State submits that, unfortunately, it is not that simple. New York State has the distinction of spending more per student than any other State in the Nation and has dramatically increased education spending over the past decade. If plaintiffs' theory that simply increasing school funding levels would meaningfully improve student outcomes were valid, New York should be experiencing increasing student achievement and some of the highest outcomes in the Nation. However, that is not the case.

The State shares the plaintiffs' goal of improving student performance and achievement, both in the plaintiff districts and across New York. The State's system of delivering educational services to students is extraordinarily complex and there are a multitude of interventions that have the potential to improve achievement throughout the State, including in the plaintiff districts. Here, the plaintiffs have not made the showing required by Court of Appeals precedent to warrant the extraordinary remedy of judicial intervention. In such a case, the State respectfully submits that the political branches are the entities in a position to make the policy and budgetary determinations regarding how best to accomplish the shared goal of improved student achievement.

LEGAL STANDARD

Plaintiffs bear a heavy burden of showing that the State is violating its constitutional obligation to provide students with the opportunity for a sound basic education. In CFE, the plaintiffs claimed that the State's educational financing scheme failed to provide public school students in New York City with the opportunity to obtain a sound basic education. In its first of three decisions in the case, the Court of Appeals held that the Education Article of the State Constitution requires the State "to offer all children the opportunity of a sound basic education.... Such an education should consist of 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." Campaign for Fiscal Equity v. State, 86 N.Y.2d 307, 316 (1995) ("CFE I").¹ The court held that plaintiffs' cause of action under the Education Article survived a motion to dismiss, reminding plaintiffs that they would "have to establish a causal link between the present funding system and any proven failure to

¹The Court of Appeals had previously acknowledged the existence of "significant inequalities in the availability of financial support for local school districts, ranging from minor discrepancies to major differences, resulting in significant unevenness in the educational opportunities offered." Board of Education, Levittown Union Free School District v. Nyquist, 57 N.Y.2d 27, 38 (1982). Nevertheless, such unevenness of educational opportunity did not render the school funding system constitutionally infirm unless it could be shown that the system's funding inequities resulted in the deprivation of the opportunity for a sound basic education. Id. at 47-48.

provide a sound basic education to New York City School Children." Id. at 318.

In its second decision in the case, the Court of Appeals defined sound basic education more exactly as the "opportunity for a meaningful high school education, one which prepares [children] to function productively as civic participants." Campaign for Fiscal Equity v. State, 100 N.Y.2d 893, 908 (2003) ("CFE II"). In determining whether New York City schools in fact delivered the opportunity for a sound basic education, the court considered: (1) the inputs children received -- teaching (referencing teacher quality indicators such as teacher certification, test performance, and experience); school facilities and classrooms (which provide enough light, space, heat, and air to permit children to learn); and instrumentalities of learning (including classroom supplies, textbooks, libraries, and computers); (2) their resulting outputs -- such as test results and graduation rates; and (3) whether plaintiffs had established a causal link between the present funding system and any proven failure to provide a sound basic education. 100 N.Y.2d at 908-19.

In CFE II, the Court of Appeals upheld the trial court's determination that the State had failed to provide students in New York City the opportunity for a sound basic education. 100 N.Y.2d at 902-03, 908-13. However, in deference to the

Legislature, the court did not order any specific funding remedy because it did not have "the authority, nor the ability, nor the will, to micromanage education financing." Id. at 925.

Instead, the Court directed the State to ascertain the actual cost of providing a sound basic education in New York City, take steps to reform school financing to ensure that New York City students have sufficient resources to have the opportunity for a sound basic education, and ensure a system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education. Id. at 930.

In order to prove a violation of the Education Article, plaintiffs must demonstrate "gross and glaring" inadequacies in their education which deprive them of the opportunity to receive a sound basic education. New York State Association of Small City School Districts, Inc. v. State of New York, 42 A.D.3d 648, 651 (3d Dept. 1984). See also CFE I, 86 N.Y.2d at 318-19 (finding plaintiffs stated a claim where they asserted "fact-based claims" supported by specific allegations of "inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc."); CFE II, 100 N.Y.2d at 932 (noting that plaintiffs prevailed because of "a unique combination of circumstances: New York [City] schools have the most student need in the state and the highest local costs yet receive some of the lowest per-student funding

and have some of the worst results. Plaintiffs in other districts who cannot demonstrate a similar combination may find tougher going in the courts."). Plaintiffs must show "first, that the State fails to provide them a sound basic education in that it provides deficient inputs -- teaching, facilities and instrumentalities of learning -- which lead to deficient outputs such as test results and graduation rates; and, second, that this failure is causally connected to the funding system." Paynter v. State of New York, 100 N.Y.2d 434, 440 (2003).

ARGUMENT

Point I

PLAINTIFFS' ASSERTION THAT THE FOUNDATION AID FORMULA AS ORIGINALLY ENACTED REPRESENTS THE MINIMUM SPENDING NECESSARY TO PROVIDE STUDENTS IN THE PLAINTIFF DISTRICTS WITH THE OPPORTUNITY FOR A SOUND BASIC EDUCATION IS WITHOUT MERIT

- A. A statutory funding formula enacted by the Legislature in 2007 is irrelevant to determining whether the State has satisfied its obligation to provide students with the opportunity for a sound basic education.

Although there is no dispute as to the constitutional meaning of the opportunity for a sound basic education as established by the Court of Appeals in CFE, plaintiffs go to great lengths to argue that the plaintiff districts are underfunded since they receive less funding than they had been "promised" by a former Legislature. Whether the facts bear this

out is not relevant to the issue before the court. The enactment of various statutory formulas that direct funding of the plaintiff districts is a discretionary act of the Legislature and not a constitutional determination.

Accordingly, the only question before this court is whether the funding currently available to the plaintiff districts from all sources -- i.e., State, federal, and local funding -- is adequate to provide the opportunity for a sound basic education. See CFE II, 100 N.Y.2d at 919 (In order to prevail, plaintiffs must establish "a causal link between the present funding system and any proven failure to provide a sound basic education...." (emphasis added)). What is not before the court is the smokescreen to which plaintiffs devoted much of their trial presentation and post-trial submissions. That is their misguided focus on the additional aid the plaintiff districts would have received had the increases contemplated by a statutory formula passed in 2007 been fully realized²

²Beginning in 2009-10, the State faced significant budget gaps as a result of declining overall revenues caused by the Great Recession, which had a profound nationwide impact on state education revenues. Consequently, the State became unable to continue the level of State education aid aspired to by the 2007 Foundation Aid legislation. As a result, the Legislature was forced to extend the Foundation Aid phase in and enact the Gap Elimination Adjustment ("GEA"). See Defendant's Proposed Findings of Fact dated October 28, 2015 ("DPFF") ¶¶20-26.

(Plaintiffs' Proposed Findings of Fact dated October 28, 2015 ("PPFF") ¶¶ 7, 16, 298, 300-12, 315-27, 330-42, 345-57, 362-74, 381-93, 398-410, 414-26; Plaintiffs' Post-Trial Memorandum dated November 25, 2015 ("PPTM") pp. 1-2, 16)³ and whether such additional funds could have benefitted the plaintiff districts

³Plaintiffs' Exhibits ("P.X.") 113 through 120 show "the difference between the amount that the Foundation Aid formula would have generated and the actual funding level..." as well as the "Net GEA" amounts. Despite this express language and the State's agreement that these documents be received in evidence with the understanding that these amounts do not represent "gaps" (Trial Transcript ("T.") pp. 3335-39), plaintiffs continually refer to these amounts as "gaps". Moreover, plaintiffs make the remarkable assertion that "the State refused to consent to the inclusion..." of these facts in the Joint Statement of Undisputed Facts ("JSUF"). PPFF footnote 3. In fact, the paltry nature of the JSUF is in no way attributable to this office, which engaged in a good faith effort to arrive at a comprehensive summary of the agreed upon facts. This office sent plaintiffs' counsel 341 pages of proposed agreed upon facts, which were an objective summary of most of the undisputed facts. Plaintiffs' counsel rejected out of hand 172 pages of defendant's proposed agreed upon facts, including a summary of the financial information that the plaintiff districts themselves reported to the State. Plaintiffs' counsel provided this office with two sets of proposed agreed upon facts. One included demographics, graduation rates, dropout and suspension rates, and test scores, which became part of the JSUF. The other was a 44-page document which included the so-called state aid "gaps" and could best be described as an adversarial piece. Despite the adversarial nature of this document, this office did not reject it out of hand. Rather, this office proposed deleting the adversarial statements and adding certain objective statements of undisputed facts. Only after plaintiffs' counsel made clear that they would not consent to the inclusion of the additional facts requested by the State did this office reject the document.

(PPTM pp. 2, 38, 44, footnote 16; PPF §§39, 299, 313, 358).⁴

Plaintiffs' assertion that Foundation Aid as originally enacted in 2007 represented the minimum spending necessary for providing the opportunity for a sound basic education (PPF §§266, 273, 329; PPTM p. 14)⁵ is severely flawed and should be rejected for multiple, independently sufficient reasons.

1. Under fundamental principles of constitutional law, the Legislature has no authority to determine the constitutionality of its actions.

Plaintiffs' theory that funding legislation adopted in 2007 set a constitutional minimum overlooks a foundational tenet of constitutional law. That is that the Legislature cannot, in

'Plaintiffs' assertion that all of the State's district experts acknowledged that additional funding "would improve student outcomes" (PPF §§39, 299; PPTM p. 38, 44, footnote 16) is misleading. In fact, Gregory Scott Hunter stated that, if Jamestown properly applied additional funds, it could have improved student outcomes. T. 3734. Gregory Aidala testified that, if Kingston used additional monies to improve instructional leadership and teaching, there could be improvements in outcomes (T. 3535) and that, if Newburgh spent additional funds appropriately, it would increase the likelihood of improved test scores and graduation rates (T. 3373-75, 3399). John McGuire agreed that Mount Vernon "would have benefitted" had there been no GEA and if Foundation Aid had been fully phased in. T. 3837. Thomas Coseo conceded that, if Niagara Falls had received the full Foundation Aid amount and used those funds appropriately, "that kind of money surely can impact outputs." T. 3901. Jeffrey McLellan acknowledged that additional funds, if used wisely by Pt. Jervis, had the capability of generating better student outcomes. T. 4594. Roger Gorham agreed that more resources, if applied well, would help generate better outcomes for students in Poughkeepsie and Utica. T. 3597-98, 3654. Eric Hanushek testified that, if the plaintiff districts had additional funds and spent those funds wisely, it would ultimately lead to improved performance. T. 4358.

⁵Plaintiffs' discussion on this point reads more like a breach of contract than an Education Article claim, with repeated references to receiving less state aid than the State had "promised" (PPTM pp. 1-2) and State aid being "owed" to districts (PPF §292).

passing a statute, make a constitutional determination. See City of Boerne v. Flores, 521 U.S. 507, 516, 536 (1997) (while the Legislature is responsible for determining what legislation is necessary to secure constitutional guarantees, it is the court's role to determine the constitutionality of laws). Rather, the courts are the ultimate arbiters of the State Constitution. Roberts v. Health and Hospitals Corp., 87 A.D.3d 311, 324 (1st Dept. 2011) (citing Cohen v. State of New York, 94 N.Y.2d 1, 11 (1999)). This fundamental principle of New York government, rooted in the separation of powers, defeats plaintiffs' attempt to transmute the judgments of a formerly elected Legislature and Governor, as reflected in the 2007 public school funding legislation, into judicially enforceable constitutional norms.

Since the Legislature has no authority to make a constitutional determination, plaintiffs' reliance on a statutory formula in and of itself as demonstrative of a constitutional standard is misguided. Instead, the Court of Appeals established certain educational inputs owed to students within the public education system and left to the Legislature the discretion to ensure funding is available for those services. Those factors expressly did not include a dictated dollar amount or cost schedule. Any particular funding provided by the Legislature -- or not provided by the Legislature --

cannot be substituted for the determination of a court as to whether students in a particular district are being provided with the opportunity for a sound basic education.⁶

2. Plaintiffs' attempt to mischaracterize Foundation Aid as representing the minimum funding required by the Constitution is inconsistent with the budget process.

Plaintiffs' characterization of the 2007 Foundation Aid formula as an ongoing and binding minimum entitlement under the Constitution ignores a critical point. It is well established that one Legislature cannot bind the legislative authority of its successors. United States v. Windstar Corp., 518 U.S. 839, 872 (1996). Thus, when enacting the 2007 Budget and Reform Act, the Legislature had no ability to preclude later repeal, amendment, or modification of the law.

Plaintiffs' argument also ignores the law surrounding appropriation of state funds. In crafting an annual budget, which constitutionally may appropriate funds for no more than two years, the State may never be bound by past assumptions of future economic growth or retraction. See New York Constitution Article VII §7 ("No money shall ever be paid out of the state treasury, or any of the funds under its management, except in

⁶It should be noted that the converse is also true. Under separation of powers principles, it is not the role of the courts to substitute their discretion for that of the Legislature on matters of State expenditures. Accordingly, as detailed in Point III, even if any of the plaintiffs prevail in this action, the court lacks the authority to direct the State to appropriate a specific amount of State aid for any of the plaintiff districts.

pursuance of an appropriation by law; nor unless such payment be made within two years after the passage of such appropriation act...."). In Anderson v. Regan, 53 N.Y.2d 356, 359 (1981), the Court of Appeals reiterated that Article VII §7 "requires that there be a specific legislative appropriation each time that moneys in the State treasury are spent." In so holding, the court noted that oversight by the people's representatives of the cost of government is an essential component of any democratic system and that the strictures imposed by Article VII §7 are necessary to the maintenance of the delicate balance of powers between the branches of government. 53 N.Y.2d at 365. See also Maron v. Silver, 58 A.D.3d 102, 124-25 (3d Dept. 2008), affirmed as modified, 14 N.Y.3d 230 (2010) (where state judges sought a writ of mandamus to compel the disbursement of funds appropriated in the 2006-07 budget, the Appellate Division found that mandamus was not available to compel payment of funds under Article VII §7 since more than two years had passed since appropriation act).

Therefore, the Legislature cannot be bound by a budgetary appropriation made nine years ago and such decision could not have legally been effective beyond its constitutional two year term.

B. Foundation Aid as adopted by the Legislature in 2007 was never intended to represent the constitutional definition of the resources necessary to provide a sound basic education and is substantially more generous than amounts determined by the Court of Appeals to be constitutionally adequate.

Simply put, Foundation Aid is not and cannot be the minimum funding required by the Education Article. In CFE II, the Court of Appeals directed the State to ascertain the actual cost of providing a sound basic education in New York City and invited the State, if it wished, to ascertain the actual cost of providing a sound basic education statewide. DPFF ¶3; 100 N.Y.2d at 928-30. In response to that directive, Governor Pataki created the New York State Commission on Education Reform, also known as the Zarb Commission, and charged it with recommending to the Executive and the Legislature education financing and other reforms that would ensure that all children in New York State have an opportunity to obtain a sound basic education. The Zarb Commission retained Standard and Poor's School Evaluation Services ("S&P") to calculate the additional spending required to provide a sound basic education. DPFF ¶¶4-6.

In its March 2004 Resource Adequacy Study (Defendant's Exhibit ("D.X.") T-1 pp. 1037-1135), S&P used various criteria to identify alternate spending targets. In its March 29, 2004 Final Report (D.X. T-1 pp. 965-1035), the Zarb Commission

recommended a five year phase in of a statewide amount ranging from 2.5 to 5.6 billion dollars from state, local, and federal sources. In his August 12, 2004 State Education Reform Plan (D.X. T-1 pp. 940-1035), Governor Pataki concluded that \$2.5 billion in additional combined state, local, and federal revenues statewide, including \$1.9 billion in New York City, to be phased in over five years, was a valid determination of the cost of providing a sound basic education in New York City.

DPFF ¶¶7-9. In Campaign for Fiscal Equity v. State, 8 N.Y.3d 14, 30 (2006) ("CFE III"), the Court of Appeals concluded that the methodology used to calculate the \$2.5 billion was not unreasonable. DPFF ¶10; 8 N.Y.3d at 30.

In 2007, newly elected Governor Spitzer proposed a new funding formula known as Foundation Aid as part of his four year educational investment plan. Governor Spitzer's proposal called for, among other things, a \$4.8 billion dollar increase in what would be Foundation Aid, to be phased in over four years, as well as various measures to strengthen educational accountability by establishing measureable performance targets, promoting strong educational leadership, and raising standards. In 2007, the Legislature enacted, and the Governor signed into law, Governor Spitzer's four year educational investment plan with some modifications. The enacted 2007 Foundation Aid formula called for an increase of \$5.5 billion in what would be

Foundation Aid, rather than the \$4.8 billion proposed by Governor Spitzer, also to be phased in over four years, in addition to other state aids such as high cost excess cost aid, transportation aid, hardware and technical aid, software aid, textbook aid, building aid, BOCES aid, and universal pre-kindergarten aid. DPFF ¶¶11-12, 15.

Since the funding level contemplated by the Foundation Aid formula as originally enacted in March 2007, i.e., an increase in just state aid of \$5.5 billion over four years, was significantly more generous than the amounts recommended in Governor Pataki's Education Reform Plan, which the Court of Appeals had just found to be reasonable in November 2006, i.e., a \$2.5 billion increase in total revenues (state, federal, and local) over five years, Foundation Aid is not and cannot be the minimum funding required by the Education Article.⁷

⁷At trial, plaintiffs tried to make much of the fact that the recommended \$2.5 billion increase was based on S&P's finding that 178 districts were underfunded (D.X. T-1 p. 953). T. 4159-62. However, regardless of the number of districts that S&P found to be underfunded, the ultimate point is that Governor Pataki and the Court of Appeals accepted S&P's finding that a \$2.5 billion increase in total revenues over five years was adequate additional funding to provide the opportunity for a sound basic education statewide. See CFE III, 8 N.Y.3d at 30 ("[W]e do not find unreasonable the assertion that '\$2.5 billion in additional revenues statewide (equating to \$1.9 billion in New York City) was a valid determination of the cost of providing a sound basic education in New York City' (State Education Reform Plan, at 14 [Aug. 12, 2004]). There is substantial record support for that statement.").

The Zarb Commission and S&P were tasked with calculating the cost of providing the opportunity for a sound basic education. The 2007 Foundation Aid formula, which was enacted without a new costing out study, did not constitute a revised calculation of the cost of providing the opportunity for a sound basic education. Rather, the formula as originally enacted reflected the policy determination of the Governor and the Legislature to go beyond what was recommended by the Zarb Commission and accepted as reasonable in CFE III.

Indeed, the fact that the political branches might make a policy determination to provide funding surpassing the constitutional minimum was anticipated, and welcomed, by the Court of Appeals. See CFE III, 8 N.Y.3d at 33 (Rosenblatt, J., concurring) ("That does not mean that the State is limited to the minimum, or 'floor,' of what it takes to provide a sound basic education. Judging by Governor Pataki's higher budgeting and the similarly heartening indications that Governor-elect Spitzer will continue in a direction higher than the minimum, there is every indication that the amounts dedicated will be well above the constitutional floor.... How much more it can and should spend, however, is a matter for the political branches, which will be free to avail themselves of the valuable work performed by the distinguished panel of referees.").

The subsequent legislation which modified the Foundation Aid formula phase in and enacted the GEA similarly reflected the policy determinations of those particular enacting Legislatures and Governors as to how much they could and would provide for education. If the 2007 legislation did represent a new minimum determination by the Legislature and the Governor (which it did not), then subsequent Legislatures and Governors would have had an equal right to make their own determinations and all would be presumed to have acted constitutionally. See Schulz v. State, 84 N.Y.2d 231, 241 (1994) (Legislative enactments are entitled to a "strong presumption of constitutionality.").

Despite these clear legal bars to their theory, plaintiffs rely on the testimony of John Clarkson in support of their assertion that Governor Spitzer's Foundation Aid proposal was designed to deliver the minimum amount necessary to provide a sound basic education. PPF ¶266; PPTM p. 14. Mr. Clarkson's testimony on this issue is irrelevant. Whatever individual employees of the Executive or the Legislature might have thought about the relationship between Foundation Aid and the requirements of the Constitution at the time of the enactment of Foundation Aid is beside the point. The only question here is whether, in the view of this court based on the trial evidence, the plaintiff districts are providing their students with the

opportunity for a sound basic education.

Mr. Clarkson's testimony on this issue is also unreliable for several reasons. First, although Mr. Clarkson stated that the Foundation Aid formula was meant to provide the minimal amount needed to provide a sound basic education (T. 3076-77), he provided no basis whatsoever for such an understanding. Second, based on his testimony, Mr. Clarkson's personal involvement with the Foundation Aid formula was minimal. T. 3082, 3084. Third, perhaps due to his limited involvement with Foundation Aid, Mr. Clarkson's understanding and recollection of its details is, at best, vague. For instance, he could not attest to the accuracy of basic factual statements about the Foundation Aid proposal, such as that it would have placed 45 percent of the districts on a permanent save harmless. T. 3093-94. Moreover, when asked about the State Education Department's ("SED") use of the lower half spending successful school districts to calculate the foundation amount (see DPFF ¶16), Mr. Clarkson stated, "[i]t sounds familiar, but that was 8 years ago so my memory is not perfect." T. 3082. Finally, when shown Governor Spitzer's January 31, 2007 press release, stating that the 2007-08 executive budget "provides more than sufficient funds to address the school financing needs highlighted by the

[CFE] lawsuit..." (D.X. U-1 p. 2), Mr. Clarkson stated that he probably would have worked on it (T. 3085), "but it was 8 years ago I can't specifically recall..." (T. 3098).

Plaintiffs make reference to the 2004-05 Regents State Aid Proposal (P.X. 107) and assert that "the Regents maintained that their plan was designed to provide all students in New York with the opportunity for a sound basic education." PPF 258. However, that is not what the 2004-05 Regents State Aid Proposal provided. In fact, in its 2004-05 State Aid Proposal, the Board of Regents stated that the Foundation Aid formula was designed to calculate the cost of providing the average student with an education that meets the State's learning standards (P.X. 107 p. 8) or the cost of providing "an adequate education" (P.X. 107 pp. 47-52 (emphasis added)).⁸ According to the 2004-05 Regents State Aid Proposal, the measure of an adequate education was the "unweighted average of 80 percent of its test takers scoring at Level 3 or above on seven examinations (Fourth Grade English Language Arts, Fourth Grade Mathematics, high school Mathematics A, Global History, U.S. History, English and Earth Science)"

⁸Elsewhere, plaintiffs do accurately state that the Regents State Aid Proposals estimated the cost of providing an "adequate education". See, e.g., PPF 8, 259; PPTM p. 12.

over three years.⁹ P.X. 107 p. 52. This is plainly a higher standard than the opportunity for a sound basic education as enunciated by the Court of Appeals in CFE, i.e., the "opportunity for a meaningful high school education, one which prepares [children] to function productively as civic participants." CFE II, 100 N.Y.2d at 908. In fact, in developing its standards for measuring an adequate education, the Board of Regents did not employ the requirements of a sound basic education set forth in the CFE decisions.¹⁰ T. 4121-23.

Similarly, plaintiffs inaccurately assert that the 2005-06 Regents State Aid Proposal stated that the Board of Regents was "responding to the call of the Panel of Referees in the CFE case to provide a statewide solution so that all children would be provided the opportunity for a sound basic Education. (P.X. 108, pp. i, 15)." PPF 259. Once again, that is not what the pages cited by plaintiffs say. In fact, the 2005-06 Regents State Aid Proposal states that it:

builds upon a foundation formula proposal begun last year and responds to recommendations of a CFE Referee Panel. Its goal is to provide a State funding system

⁹There are only a select number of districts in the State that are achieving the Board of Regents' standard. T. 4127.

¹⁰That the Board of Regents' memorandum of law to the Referees in CFE "asserted that their 2004-05 State Aid Proposal satisfied the mandates of the Court of Appeals in that case..." (PPF 257) does not establish that the Foundation Aid formula represented the minimum funding required by the Constitution. Of course, a funding level that exceeds the constitutional minimum satisfies that standard.

for education that provides adequate resources through a State and local partnerships so that all students have the opportunity to achieve the State's learning standards....

P.X. 108 p. i (emphasis added).

Further and most importantly, the Court of Appeals has already warned that Regents standards should not be conflated with the requirements of a sound basic education. In CFE I, the Court of Appeals stated that, "because many of the Regents'... standards exceed notions of a minimally adequate or sound basic education -- some are also aspirational -- prudence should govern utilization of the Regents' standards as benchmarks of educational adequacy." 86 N.Y.2d at 317. In CFE II, the Court of Appeals noted that the trial court had "declined to fix the most recent, and ambitious, statement of educational goals -- the Regents Learning Standards, adopted in 1996 -- as the definition of a sound basic education. As the trial court observed, so to enshrine the Learning Standards would be to cede to a state agency the power to define a constitutional right." 100 N.Y.2d at 907 (citation omitted).

Finally, relying on Bruce Baker's report (Court Exhibit ("C.X.") 21, summary ¶¶5, 5(a)),¹¹ plaintiffs assert that the

¹¹The first several pages of C.X. 2, 4, 6, 8, 10, 12, 14, 16, and 21 consist of a summary of Drs. Wozniak, Uebbing, Fraser, and Baker's second reports, which are followed by the second reports themselves. The summary sections of these exhibits will be referred to as "C.X. ___, summary". The reports themselves will be referred to as "C.X. ___, report".

"foundation amount" provided for in the enacted Foundation Aid formula "represents the minimum spending necessary for providing a sound basic education, or the 'SBE spending target.'" PPF 9, 12, 272-79, 290, 292, 429-30, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484-85, 487, 489, 491; PPTM pp. 14-16. However, the term "SBE spending target" was simply concocted by Dr. Baker, who did nothing more than rename the Foundation Aid formula's calculation of a district's "foundation amount" as the "SBE spending target". Indeed, Dr. Baker admitted that his so-called "SBE spending target" calculations are simply the amounts that the original Foundation Aid formula calculated for each district had the formula been fully implemented. T. 3177-78. Thus, Dr. Baker's so-called State aid "shortfalls" or "spending gaps" (PPF 308, 311, 323, 326, 338, 341, 353, 356, 370, 373, 389, 392, 406, 409, 422, 425, 429-92; PPTM p. 17) consist of nothing more than a calculation of the difference between what the plaintiff districts would have received had Foundation Aid been fully implemented as originally

enacted and what they have actually received.¹² C.X. 21, summary ¶¶22, 25; T. 3263-64, 3177-78. Since these amounts have been stipulated to (P.X. 113-120), and, defendant submits, are irrelevant to plaintiffs' adequacy claims, Dr. Baker's

¹²In PPF 306-07, 309-10, 321-22, 324-25, 336-37, 339-40, 351-52, 354-55, 368-69, 371-72, 387-88, 390-91, 404-05, 407-08, 420-21, 423-24, plaintiffs list the differences between the amounts that the Foundation Aid formula would have generated and the actual funding level as well as the GEA amounts for 2013-14 and 2014-15 stipulated to in P.X. 113 to 120. Although these numbers differ (in some instances dramatically) from Dr. Baker's "state aid shortfalls" for those years (C.X. 21, summary ¶23), plaintiffs are, nonetheless, content to list Dr. Baker's "shortfall" percentages, which are based on his own significantly different "shortfall" amounts (PPF 308, 311, 323, 326, 338, 341, 353, 356, 370, 373, 389, 392, 406, 409, 422, 425). Moreover, in PPF 431, 433, 435, 437, 439, 441, 443, 445, 447, 449, 451, 453, 455, 457, 459, 461, 463, 465, 467, 469, 471, 473, 475, 477, 479, 481, 483, 486, 488, 490, 492, plaintiffs assert that the "state aid gaps" for certain years represent a percentage of each district's "actual spending" for that year. However, the so-called "actual spending" is the district's general education instructional expenditures, which is only a portion of the district's total expenditures. For example, in paragraph 457, plaintiffs assert that Newburgh's 2011-12 "state aid gap" (\$53,270,913) represents 36% of Newburgh's actual spending for 2011-12. However, the so-called "actual spending" (\$146,686,922) represents Newburgh's general education instructional expenditures (PPF 456). In fact, Newburgh's "actual spending", i.e., its total expenditures, in 2011-12 was \$242,186,405 (DPFF Appendix ("App.") A p. 57). In addition, in PPF 434, 442, 450, 458, 466, 474, 482, 489, plaintiffs state each district's 2012-13 general education instructional expenditures, which they obtained from the fiscal supplement contained in the 2013-14 report cards. However, the report cards that have been received in evidence (P.X. 1, 2, 3, 45, 50, 56, 74, 79) do not include the fiscal supplements contained in the 2013-14 report cards. Finally, in PPF 436, 444, 452, 460, 468, 476, 491, plaintiffs purportedly report the actual general education instructional expenses for 2013-14. However, the numbers reported are the estimated general education instructional expenses for 2013-14 contained in Table 3 of Dr. Baker's second report (C.X. 21, report p. 23).

calculations, which are the focus of his expert opinion, have no probative value.¹³

So the only remaining question is: what is the basis for Dr. Baker's assertion that the foundation amount provided for in the enacted Foundation Aid formula represents the minimum spending necessary for providing a sound basic education? In fact, Dr. Baker has no basis for this assertion. In his first report, Dr. Baker reasoned by assertion that "[t]he foundation aid formula *IS* the state's own definition of its constitutional responsibility to provide for local public school districts to achieve sufficient spending levels to produce adequate educational outcomes."¹⁴ C.X. 20 p. 10 (emphasis in original). However, nowhere in either of his reports (C.X. 20 and 21) does Dr. Baker articulate any basis for this conclusory assertion, from which his entire analysis flows. When pressed on this point at trial, Dr. Baker conceded that he could point to no particular document to support his supposition that the

¹³Moreover, cross-examination revealed that Dr. Baker's calculations are unreliable because they are infused with a large number of mathematical, typographical, and transcription errors, almost all of which ended up overstating the asserted funding "gaps". T. 3242-44, 3260-62, 3267-81, 3294-95. For example, Dr. Baker admitted that he overstated Mount Vernon's 2013-14 "gap" by approximately \$10 million. T. 3243.

¹⁴At trial, Dr. Baker similarly reasoned by assertion that "the state has come up so short in its funding of these particular districts and many others that I look as [sic] in related reports, that it likely does not meet the standards set forth in CFE." T. 3178.

Foundation Aid formula was enacted to meet the sound basic education standard announced in CFE. T. 3326-27.

Thus, plaintiffs' so-called evidence in support of their assertion that Foundation Aid as originally enacted represented the minimum funding required by the Constitution consists of nothing more than vague understandings, assumptions, and mischaracterizations. By contrast, the evidence presented by the State has established that Foundation Aid as originally enacted provided for significantly more education funding than the amount endorsed by the Court of Appeals in CFE. The enactment of the Foundation Aid formula represented a policy determination by the political branches to provide increased funding to school districts and was in no way a determination of a new constitutional minimum.

In January 2007, after proposing a \$4.8 billion dollar increase in what would be Foundation Aid to be phased in over four years, newly elected Governor Spitzer issued a press release entitled "Unprecedented Expansion of School Aid Tied to Accountability". In that press release, Governor Spitzer stated, "[t]he Budget provides more than sufficient funds to address the school funding needs highlighted by the Campaign for Fiscal Equity lawsuit..." (D.X. U-1 p. 2). DPFF ¶¶11-13. In its February 2007 Staff Analysis of the 2007-08 Executive Budget, the Senate noted that "the Executive far surpasses the

funding requirements of [CFE]..." and "[t]he Executive's approach goes far beyond the November 2006 Court of Appeals ruling..." (D.X. V-1 pp. 7, 66). DPFF ¶14.

Unlike John Clarkson's vague and unsubstantiated understanding, plaintiffs' mischaracterization of the language of the Regents State Aid Proposals, and Bruce Baker's reasoning by assertion, these contemporaneous official documents further establish that Foundation Aid as originally proposed by Governor Spitzer was substantially more generous than the amounts endorsed by the Court of Appeals in CFE.¹⁵

Indeed, when asked whether Foundation Aid as originally enacted provided more than sufficient funds to address the school funding needs highlighted in CFE, plaintiffs' own expert, Frank Mauro, stated:

you can argue that it did, but if it did it did it in the fully implemented state which involves two steps that never occurred and one is to deliver on the first 5.5. billion, and then to adjust it for updating every periodically approximately, evert [sic] three or four years.... So, if Governor Spitzer was correct that this provided more than was necessary, we provided a lot less, than was provided then.

¹⁵Since the enacted 2007 Foundation Aid formula called for an increase of \$5.5 billion in what would be Foundation Aid, rather than the \$4.8 billion proposed by Governor Spitzer (DPFF ¶15), there can be no question that Foundation Aid as originally enacted went well beyond what was endorsed as reasonable in CFE.

T. 3054-55 (emphasis added). Thus, Mr. Mauro has confirmed the ultimate point that Foundation Aid as originally enacted was not the minimum funding required by the Constitution.¹⁶

C. Under Court of Appeals precedent, all State, federal, and local funding sources must be considered in determining whether overall funding is adequate and Foundation Aid is merely one source of funding, representing roughly 25 percent of total school districts revenues.

Plaintiffs' position that the State violated the Constitution by failing to fully implement State education aid increases envisioned in 2007 unduly focuses on one particular component of State aid and ignores other State aids, as well as federal and local funding, that school districts appropriately use to provide a sound basic education to their students. The court should not consider Foundation Aid, or even all State aid, in isolation. Rather, it is critical to consider the funding available from all sources. See CFE II, 100 N.Y.2d at 904 ("[A] combination of local, state and federal sources generates school funding.").

While Foundation Aid is a significant portion of the total State funding provided to school districts, it is by no means the only funding. Governor Spitzer's four year educational investment plan called for an increase in what would be Foundation Aid in addition to other state aids such as high cost

¹⁶Frank Mauro's report (C.X. 25) does not assert that Foundation Aid is the minimum funding required under the Education Article.

excess cost aid, transportation aid, hardware and technical aid, software aid, textbook aid, building aid, BOCES aid, and universal pre-kindergarten aid. DPFF ¶15. In 2012-13, Foundation Aid represented approximately 25 percent of total school district revenue in New York State. DPFF ¶24.

D. In any event, both state and total funding in each of the plaintiff districts have increased substantially since before Foundation Aid was enacted.

New York spends more on public education, on a per pupil basis, than any other State in the Union, with low wealth districts receiving six times more State aid per pupil than the highest wealth districts. DPFF ¶¶1-2.

The actual financial information about the plaintiff districts (DPFF App. A) reveals that, despite the GEA and the Legislature's modifications to the Foundation Aid phase in (in response to the Great Recession), the plaintiff districts now receive substantially more general fund State aid and have significantly higher general fund revenues (from all sources) than they did in 2006-07, the year before Foundation Aid was enacted, as follows:

	<u>2006-07 General Fund State Aid</u>	<u>2013-14 General Fund State Aid</u>	<u>2014-15 Estimated General Fund State Aid</u>
Poughkeepsie	\$44,129,050	\$55,095,868	\$57,246,902 ¹⁷
Utica	\$71,720,814	\$98,879,474	\$107,493,200
Jamestown	\$43,557,103	\$52,312,926	\$57,051,485
Kingston	\$43,843,830	\$46,793,950	\$50,807,242 ¹⁸
Niagara Falls	\$80,540,631	\$90,089,723	\$95,543,539 ¹⁹
Newburgh	\$93,689,187	\$123,841,314	\$126,543,821 ²⁰

¹⁷Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Poughkeepsie to SED as of the first Wednesday in October ("BEDS Day") went from 4,660 to 4,240. JSUF App. A p. 1. Despite the parties' stipulation that Poughkeepsie's 2013-14 enrollment reported on BEDS Day was 4,240 (JSUF App. A p. 1), plaintiffs inaccurately state that the 2013-14 report card lists 4,382 students in Poughkeepsie. PPF ¶164. In fact, as stipulated by the parties (JSUF App. A p. 1), the 2013-14 report card lists 4,240 students in Poughkeepsie. P.X. 1, 2013-14 report card, enrollment. Further, plaintiffs assert that, at the time of trial, there were approximately 4,700 students in Poughkeepsie. PPF ¶165. However, according to Superintendent Nicole Williams' rather confused testimony, in 2014-15, Poughkeepsie had about 124 more students than it did in 2013-14. T. 293, 308. Since Poughkeepsie's 2013-14 enrollment was 4,240 (JSUF App. A p. 1; P.X. 1, 2013-14 report card, enrollment), even if there had been a 124 student increase in 2014-15, that would have increased Poughkeepsie's enrollment to 4,364 (T. 308). According to plaintiffs' expert, Peggy Wozniak, the 4,700 figure posited by Ms. Williams likely includes pre-kindergarteners. T. 1424-25, 1429.

¹⁸Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Kingston to SED as of BEDS Day went from 7,363 to 6,222. JSUF App. A p. 2.

¹⁹Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Niagara Falls to SED as of BEDS Day went from 7,528 to 6,704. JSUF App. A p. 3.

²⁰Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Newburgh to SED as of BEDS Day went from 12,164 to 10,991. JSUF App. A p. 3.

Port Jervis	\$26,226,549	\$31,154,997	\$33,903,583 ²¹
Mount Vernon	\$68,473,278	\$71,730,597	\$79,520,545 ²²

(DPFF App. A pp. 1, 10, 11, 12, 20, 22, 31, 32, 33, 41, 43, 52, 53, 62, 63, 64, 72, 74, 83).

	<u>2006-07 General Fund Revenues</u>	<u>2013-14 General Fund Revenues</u>	<u>2014-15 Estimated General Fund Revenues</u>
Poughkeepsie	\$67,619,337	\$84,930,667	\$85,745,433
Utica	\$104,825,763	\$134,541,672	\$145,103,930
Jamestown	\$60,960,706	\$71,249,878	\$72,804,738
Kingston	\$123,951,244	\$145,806,405	\$148,668,875
Niagara Falls	\$113,172,518	\$124,447,126 ²³	\$126,363,144
Newburgh	\$184,862,923	\$236,291,580	\$244,792,719
Port Jervis	\$51,841,476	\$61,064,563	\$63,856,785
Mount Vernon	\$166,302,263	\$214,891,725	\$217,760,553

(DPFF App. A pp. 1, 2, 10, 11, 12, 21, 22, 23, 32, 33, 42, 43, 52, 53, 63, 72, 74, 83).

²¹Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Port Jervis to SED as of BEDS Day went from 3,224 to 2,725. JSUF App. A p. 3.

²²Between 2006-07 and 2014-15, the kindergarten through grade 12 enrollments reported by Mount Vernon to SED as of BEDS Day went from 9,735 to 8,182. JSUF App. A p. 3.

²³These increases are remarkable given the fact that Niagara Falls did not increase its tax levy between 1993 and 2013. D.X. QQQ p. 2; T. 1636, 1740, 1742, 1826-27, 3886.

In addition, the amounts of the plaintiff districts' enacted budgets are now substantially higher than they were in 2006-07, as follows:

	<u>2006-07 Enacted Budget</u>	<u>2014-15 Enacted Budget</u>
Poughkeepsie	\$71,092,632	\$87,341,000
Utica	\$107,018,838	\$146,709,543
Jamestown	\$62,929,245	\$75,768,676
Kingston	\$123,368,170	\$150,168,875
Niagara Falls	\$111,414,400	\$126,363,144
Newburgh	\$183,118,102	\$244,792,719
Port Jervis	\$50,049,514	\$63,856,785
Mount Vernon	\$164,800,785	\$227,475,244

(DPFF App. A pp. 1, 10, 11, 20, 22, 31, 32, 41, 42, 51, 53, 62, 63, 72, 73, 82).

Accordingly, despite the plaintiff districts' complaints about "cuts" to their State aid and their budgets, the plaintiff districts, most of which have had greatly decreasing enrollments, now receive substantially more State aid, have significantly higher revenues, and have considerably higher enacted budget amounts than they did before Foundation Aid was

enacted.²⁴

As demonstrated above, there is no merit to plaintiffs' assertion that the Foundation Aid formula as originally enacted represents the minimum spending necessary to provide the opportunity for a sound basic education. Moreover, as will be shown below, the plaintiff districts do have adequate resources to provide the opportunity for a sound basic education, which is the specific issue before this court.

Point II

**PLAINTIFFS FAILED TO MEET THEIR BURDEN TO
SHOW THAT STUDENTS IN THE PLAINTIFF DISTRICTS
DO NOT HAVE THE OPPORTUNITY TO RECEIVE A
SOUND BASIC EDUCATION AS REQUIRED BY THE
COURT OF APPEALS IN CFE**

As described above, in order to prevail on their Education Article claims, the plaintiffs must satisfy three criteria as set forth in CFE. First, the plaintiffs must establish deficiencies in educational inputs, such as teaching, school facilities, and instrumentalities of learning. Second, plaintiffs must establish deficiencies in educational outputs, as measured by factors such as test scores and graduation rates. Finally, plaintiffs must establish a causal link between the

²⁴Appendix E to the joint statement of undisputed facts reflects the general and special education per pupil instructional expenditures for the plaintiff districts for 2005-06 through 2011-12 (the last year for which this data was available at the time of trial). This reveals that these expenditures also substantially increased over this period. JSUF App. E pp. 1, 4, 5, 8, 9, 12, 13, 16, 17, 20, 21, 24, 25, 28, 29, 32.

present funding system and any proven failure to provide the opportunity for a sound basic education. As the plaintiffs have failed to establish all of these elements, their claims should be dismissed.

A. Plaintiffs have failed to meet their burden of establishing deficiencies in educational inputs.

Plaintiffs place significant weight on the list of additional items they believe would improve the performance of their students. However, this is irrelevant to determining whether there is a constitutional violation. Rather, the only inquiry is whether the plaintiff districts' existing resources are adequate to provide their students with the opportunity for a sound basic education as established by the court in CFE. Defendant submits that, when the court applies the minimum standards articulated by the Court of Appeals in CFE to the evidence presented at trial, it will find that the plaintiff districts do have adequate resources to provide their students with the opportunity for a sound basic education.

1. The Court should give limited weight to the plaintiffs' expert testimony.

The State's education experts, Gregory Aidala (Kingston and Newburgh), Roger Gorham (Poughkeepsie and Utica), Thomas Coseo (Niagara Falls), Jeffrey McLellan (Port Jervis), Gregory Scott Hunter (Jamestown), and John McGuire (Mount Vernon), have opined that the resources of the plaintiff districts are adequate based

upon the standard enunciated by the Court of Appeals in CFE. DPFF ¶¶107, 117, 127, 137, 147, 157, 167, 177. Their opinions were grounded on their personal examinations of the resources available in every school in the plaintiff districts, including their observations of the teaching occurring in numerous classrooms.²⁵

In stark contrast, the plaintiffs' education experts, Peggy Wozniak (Poughkeepsie, Utica, and Jamestown), Stephen Uebbing (Kingston, Newburgh, Port Jervis, and Mount Vernon), and Bruce Fraser (Niagara Falls), did not conduct their own independent evaluations of the adequacy of the resources available in the plaintiff districts. Rather, their opinions as to the adequacy of the plaintiff districts' resources were based on what district personnel told the experts about alleged inadequacies in their available resources. Drs. Wozniak, Uebbing, and Fraser's investigations consisted largely of interviewing district personnel (see C.X. 1 pp. 7, 13, 15, 20; C.X. 2, summary p. 3; C.X. 2, report pp. 19, 25, 27, 32; C.X. 3 p. 16; C.X. 4, summary pp. 2-3; C.X. 4, report p. 28; C.X. 6, summary p. 2; C.X. 7 p. 9-12, 27; C.X. 8, summary p. 3; C.X. 8 report

²⁵Dr. Aidala visited 130 classrooms in Kingston (C.X. 34 p. 3) and 141 in Newburgh (C.X. 28 p. 2). Dr. Gorham sat in on 119 classes in Utica (C.X. 40 pp. 8, 15) and 77 in Poughkeepsie (C.X. 44 p. 8). Dr. Coseo observed 126 classes in Niagara Falls. C.X. 49 p. 9. Mr. Hunter examined 101 classrooms in Jamestown. C.X. 64 p. 13. Mr. McGuire visited 104 classes in Mount Vernon. C.X. 56 p. 10. Mr. McLellan visited 39 classes in Port Jervis. C.X. 53 pp. 54, 66, 78, 89.

pp. 10-14, 28; C.X. 9 p. 7; C.X. 10, summary p. 3; C.X. 10, report pp. 8-9; C.X. 11 pp. 6, 9, 11; C.X. 12, summary p. 3; C.X. 12, report pp. 8, 12; C.X. 13 pp. 11-12, 28; C.X. 14, summary p. 3; C.X. 14, report pp. 14, 16, 30; C.X. 15 pp. 2-3, 29; C.X. 16, summary p. 3; C.X. 16, report p. 32; T. 1235, 1237-40, 2556-60, 2564, 2851, 2853-54) and the alleged inadequacies noted by Drs. Wozniak, Uebbing, and Fraser consist of nothing more than a regurgitation of the district personnel's complaints²⁶ (C.X. 1 pp. 7, 10, 13-16, 19-20; C.X. 2, summary ¶¶13-14, 17-24, 26-27, 31-32, 34, 36, 39-40, 47-48, 50, 52, 54-56, 59, 61-64; C.X. 2, report pp. 19, 21-22, 25-27, 31-32; C.X. 3 pp. 7-8, 10-11, 13-14, 16-17; C.X. 4, summary ¶¶9, 11-45, 61; C.X. 4, report pp. 19-20, 22-23, 25-26, 28-29; C.X. 5 pp. 48-51, 53, 59; C.X. 6, summary ¶¶13, 15-33; C.X. 6 report, pp. 48-51, 53, 59; C.X. 7 pp. 9-12, 21-23, 27-30, 32-37; C.X. 8, summary ¶¶13-15, 17-40; C.X. 8, report pp. 10-14, 20, 23-24, 28-31, 34-38; C.X. 9 pp. 7-12, 20-21, 23-26; C.X. 10, summary ¶¶10-23; C.X. 10, report pp. 8-15, 23-24, 26-31; C.X. 11 pp. 6-11, 13, 20-21, 27; C.X. 12, summary ¶¶15-26, 28-35, 62; C.X. 12, report pp. 9-15, 17, 21-23, 28-29; C.X. 13 pp. 7, 9-13, 20-22, 28-31; C.X. 14, summary ¶¶14-41; C.X. 14, report pp. 8, 11-16, 23-24, 30-33; C.X. 15 pp. 30-35; C.X. 16, summary ¶¶13-38, 40-43, 49-

²⁶Many of the Jamestown officials' complaints noted by Dr. Wozniak in her reports (C.X. 5 and 6) were not even made directly to her. T. 1236-37, 1239, 1278-79, 1314-16.

74; C.X. 16, report pp. 4, 33-44; T. 1236-38, 1268-69, 1275-76, 1278-79, 1284, 1288, 1299, 1314-16, 1323-26, 1328, 1331, 1333, 1336-37, 1346-47, 1381-82, 1400-01, 1415, 1423-27, 1429-30, 1438-40, 1784-85, 1788-89, 1797-98, 2564, 2568-69, 2595, 2597-2600, 2602-03, 2615-16, 2630-31, 2646, 2709, 2714, 2716, 2718, 2728-29, 2741-42, 2759, 2802-03, 2818, 2822, 2825, 2860, 2869-71, 2884).²⁷

Dr. Wozniak did not set foot in a single school in Jamestown²⁸ (T. 1233-35), visited only three of the 13 schools in Utica (T. 1352-53), and entered none of the elementary schools in Poughkeepsie (T. 1397). In the few schools that she did

²⁷Dr. Fraser's reports made clear that the alleged inadequacies that he noted were based upon what he was told by Niagara Falls personnel (C.X. 15 pp. 29-35; C.X. 16, report pp. 32-44). In their reports (C.X. 1 through 14), Drs. Wozniak and Uebbing attribute only some of the statements about the alleged inadequacies in Poughkeepsie, Utica, Jamestown, Mount Vernon, Kingston, Port Jervis, and Newburgh to district personnel. However, cross-examination confirmed that the source of all of the alleged inadequacies noted by Drs. Wozniak and Uebbing was district personnel.

²⁸As eloquently stated by Utica's Superintendent, Bruce Karam:

Q. Okay. And so my question for you is if someone wrote a report that opined about a school district and they'd never set foot in that district, do you believe that they could offer as good an opinion as someone from that district as to what was happening there?

A. I guess it would depend on what they wrote in their report.

Q. Say we're talking about things going on in the district?

A. Well if they hadn't been there how do they do that?

Q. That's an excellent question....

(T. 644 (emphasis added)).

visit in Utica and Poughkeepsie, Dr. Wozniak merely walked through an unknown number of classrooms. T. 1398. Dr. Uebbing toured three schools in Newburgh²⁹ (T. 2561-62, 2593-95, 2600), three in Mount Vernon (T. 2706-07, 2709), three in Port Jervis (T. 2797), and six of the ten Kingston schools that are currently open (T. 2856-58). However, during those visits, Dr. Uebbing merely walked through a few classrooms (T. 2558, 2562-63, 2714, 2717-18, 2798, 2860) and did not observe instruction or evaluate any of the districts' educational programs, teachers, or school or district leaders (T. 2554, 2713-14, 2716-19, 2748, 2797-99, 2815, 2858-60; C.X. 7 p. 1; C.X. 8, report p. 1; C.X. 9 p. 1; C.X. 10, report p. 1; C.X. 11 p. 1; C.X. 12, report p. 1; C.X. 13 p. 1; C.X. 14, report p. 1). Although Dr. Fraser did visit most of the schools in Niagara Falls (T. 1769-70), his reports make clear that those visits consisted not of classroom observations, but of interviews of district personnel (C.X. 15 pp. 2-3, 29; C.X. 16, summary p. 3; C.X. 16, report pp. 4; C.X. 16, report p. 32).

Moreover, substantial portions of Drs. Wozniak, Uebbing, and Fraser's reports focus solely on the plaintiff districts' poor outputs (C.X. 1 pp. 3-5, 10; C.X. 2, summary ¶¶65-76; C.X. 2, report pp. 4-17, 22, 27-28; C.X. 3 pp. 3-6; C.X. 4, summary

²⁹Two of the Newburgh schools that Dr. Uebbing visited were Newburgh Free Academy and South Middle School. T. 2593-95. Dr. Uebbing did not enter the middle school and could not recall whether he entered the elementary school. T. 2593-95.

¶¶4, 47-54; C.X. 4, report pp. 4-18; C.X. 5 pp. 4-47, 62; C.X. 6, summary ¶¶34-46; C.X. 6, report pp. 4-47, 62; C.X. 7 pp. 14-20; C.X. 8, summary ¶¶41-51; C.X. 8, report pp. 16-22; C.X. 9 pp. 14-19; C.X. 10, summary ¶¶24-32; C.X. 10, report pp. 17-22; C.X. 11 pp. 13-19; C.X. 12, summary ¶¶36-56; C.X. 12, report pp. 17-20; C.X. 13 pp. 14-19; C.X. 14, summary ¶¶42-57; C.X. 14, report pp. 17-22; C.X. 15 pp. 15, 20-28; C.X. 16, summary ¶¶75-94; C.X. 16, report pp. 16-31)³⁰ and their opinions consist of little more than conclusory assertions that the inputs for a sound basic education must be lacking since the outputs are poor. For example, Dr. Uebbing repeatedly reported the poor performance of the Mount Vernon, Kingston, Port Jervis, and Newburgh students and, immediately thereafter, asserted, in conclusory fashion, that these children are not receiving a sound basic education due to inadequate resources. C.X. 7 p. 17-18; C.X. 8, report pp. 16, 18, 20-21; C.X. 9 pp. 16-17; C.X.

³⁰Drs. Wozniak, Uebbing, and Fraser consistently compared the outputs of the plaintiff districts to more affluent districts that have significantly lower percentages of students who are economically disadvantaged. C.X. 1 pp. 3, 5, 16-17; C.X. 2, report pp. 3, 13-14, 28-29; C.X. 3 pp. 3, 6, 19; C.X. 4, report pp. 3, 14, 31-32; C.X. 5 pp. 2, 39, 55; C.X. 6, report pp. 2, 39, 55; C.X. 7 pp. 3-4, 13-16, 20, 26, 28; C.X. 8, report pp. 3-4, 14-16, 27, 3; C.X. 9 pp. 3-4, 13-16, 22; C.X. 10, report pp. 4, 16-18, 25; C.X. 11 pp. 2, 12-15, 24; C.X. 12, report pp. 2, 15-16, 25; C.X. 13 pp. 4, 14-15, 26; C.X. 14, report pp. 4, 17, 21, 28; C.X. 15 pp. 10, 13-15, 21-27; C.X. 16, report pp. 6, 22-24, 26-28; T. 1316-17, 1358-61, 1446-47, 1770-74, 2575-77, 2720-22, 2800-01, 2862-66. Defendant submits that such comparisons have little, if any, probative value since, as discussed below, non-funding factors have a much more sizeable impact on student achievement than does spending.

10, report pp. 19-21; C.X. 11 pp. 15-16; C.X. 12, report pp. 18-20; C.X. 13 pp. 16-17; C.X. 14, report pp. 18-19, 21.

This circular reasoning -- examining outputs rather than inputs -- was also prevalent in the trial testimony of both the plaintiffs' experts and the plaintiff districts' employees. For example, when she was questioned about the quality of the instruction at Clinton Elementary School in Poughkeepsie, Dr. Wozniak stated that she could not speak to it since she did not observe any teaching. However, she did volunteer that "they don't have the outcomes which I did report on." T. 1399, 1402. Asked whether she took the many recent changes in district leadership into account when making her assessment of Poughkeepsie, Dr. Wozniak stated, "I was looking at outcomes for students...." T. 1410-11. Jamestown's Director of Curriculum, Instruction, and Assessment testified that a statement on Jamestown's website (D.X. O), that Jamestown's academic programs "provide students a solid foundation in core academic subjects", must be inaccurate because, "[i]f we provided the solid foundation, we wouldn't have 50% of our students in grades three through eight well below academic standards." T. 728-29. The Principal of Niagara Falls High School testified that the Academic Intervention Services at the high school must be inadequate because the ninth grade students' passing rates on the integrated algebra and living environment Regents

examinations are below the State average. T. 1681. Asked whether Mount Vernon has sufficient resources to meet the needs of its students, its former Assistant Superintendent stated, "I think that when you look at the outcomes of our students and we look at the difficulties that we've had in recent budgets and the kinds of services that our administrators would like to have, I would have to say that there aren't the resources." T. 2272-73. Mount Vernon's Superintendent testified that the graduation rates and test scores demonstrate that "we have failed to provide our children with the resources they need in order to be successful." T. 2333.

Finally, Drs. Wozniak, Uebbing, and Fraser's reports focus extensively on how much state aid the plaintiff districts have "lost" as a result of modifications to the Foundation Aid phase in and the GEA. C.X. 1 pp. 17-18; C.X. 2, summary ¶¶79-80; C.X. 2, report pp. 29-31; C.X. 3 pp. 19-20; C.X. 4, summary ¶¶10, 59-60; C.X. 4, report p. 33-34; C.X. 5 pp. 54, 56, 58-59; C.X. 6, summary ¶53; C.X. 6, report pp. 54, 56, 58-59; C.X. 7 pp. 26-27, 37; C.X. 8, summary ¶¶56-57; C.X. 8, report pp. 27-28, 38; C.X. 9 pp. 22-23; C.X. 10, summary ¶¶36-37; C.X. 10, report pp. 25-26; C.X. 11 pp. 24-25, 27; C.X. 12, summary ¶¶61-62; C.X. 12, report pp. 25-26, 29; C.X. 13 pp. 26-27, 32; C.X. 14, summary ¶¶62-63; C.X. 14, report pp. 28-29; C.X. 15 pp. 37-39; C.X. 16, summary ¶98; C.X. 16, report pp. 9-12. But, as demonstrated

above, the issue before the court is not how much the districts would be receiving had Foundation Aid been fully implemented and there been no GEA, but whether the plaintiff districts have adequate resources -- from all sources of State, federal, and local funding -- to provide their students with the opportunity for a sound basic education.

Drs. Wozniak, Uebbing, and Fraser did not conduct their own analysis of the inputs available in the plaintiff districts, but, rather simply asked the plaintiff districts to recount their lists of desired additional services.³¹ These experts also unduly focused on the outputs of the plaintiff districts and the amounts of state aid that they would have received but for the modifications to the Foundation Aid phase in and the GEA. Accordingly, the court should give limited weight to the testimony of plaintiffs' three education experts.

2. Plaintiffs failed to establish that the teaching quality indicators identified in CFE II are inadequate.

The first input which the Court of Appeals considered in CFE II was teaching, which the court found to be the most important input. 100 N.Y.2d at 909. When evaluating this input, the Court of Appeals considered teacher quality indicators such as teacher certification and teacher experience.

³¹For example, Dr. Uebbing "asked officials at the Newburgh City School District what additional resources they believed were necessary to provide a sound basic education for their students." C.X. 13 p. 28; CX. 14, report p. 30; T. 2564.

Specifically, the court noted that 17 percent of New York City public school teachers either were uncertified or taught in areas other than those in which they were certified; New York City schools had the largest percentage of teachers with two or fewer years of experience, the biggest percentage of which was in the schools with the greatest student need; and the "colossal failure rates" of City teachers on the State's certification content-specialty tests, which was above 40 percent in Math. Id. at 909-11. Applying these teacher quality indicators to the present case, the evidence establishes that the quality of schoolteachers in the plaintiff districts is adequate. The most recent available district report card data (2012-2013) reveals that the certification and experience of the teachers in the plaintiff districts exceeds State averages, as follows:

Poughkeepsie

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	4	6

(P.X. 1, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 187-88, 190-91, 1408).

Utica

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	2	6

(P.X. 2, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 520-23, 525-28).

Jamestown

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	2	3
Percent with fewer than three years of experience	3	6

(P.X. 3, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 786-87, 1280-81).

Kingston

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	2	6

(P.X. 45, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 1174).

Niagara Falls

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	1	6

(P.X. 56, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 1598-99, 1601).

Newburgh

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	2	3
Percent with fewer than three years of experience	1	6

(P.X. 74, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4).

Port Jervis

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	3	6

(P.X. 50, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 2196-97, 2816-17).

Mount Vernon

	District	State
Percent with no valid teaching certificate	0	1
Percent teaching out of certification	0	3
Percent with fewer than three years of experience	1	6

(P.X. 79, 2012-13 district report card, p. 4; P.X. 7 2012-13 report card, p. 4; T. 2357-59, 2749-51).

In sum, every teacher in the plaintiff districts had a valid teaching certificate. Six of the plaintiff districts had no teachers that taught out of certification and, in the remaining two districts, both were below the state average. Finally, in every plaintiff district, the percentage of teachers with fewer than three years of experience was lower than the State average. Accordingly, applying the CFE teacher quality indicators to the present case demonstrates that the quality of schoolteachers in the plaintiff districts is adequate.

3. Plaintiffs have failed to establish inadequate numbers of staff.

Plaintiffs assert that the plaintiff districts lack an adequate number of teachers, administrators, social workers, counselors, psychologists, and other essential personnel to meet the needs of their students. PPTM pp. 18-21. While plaintiffs' post-trial submissions contain lengthy discussions about the number of teachers, administrators, and other personnel that have been reduced from earlier levels (see, e.g., PPTM pp. 2, 18-21, 23, 25, 41; PPF ¶¶18, 499-500, 503-04, 506-07, 510, 516, 524, 544, 555-57, 598, 600, 602, 604, 608, 622, 636, 642-47, 661, 664, 651, 667, 676-77, 695-96, 715-16, 720, 780, 782-85, 790-92, 823, 826),³² the record is devoid of any credible evidence that the current level of teachers, administrators, and other personnel is inadequate to provide their students with the

³²Plaintiffs sometimes exaggerate the extent of the district staffing reductions. For example, at paragraph 557 of their proposed findings of fact, plaintiffs assert that "Mt. Vernon has also reduced its nursing staff from full to part time." In fact, the cited testimony was that Mount Vernon reduced nursing staff to part time in some of the elementary schools. T. 2258. Further, at paragraph 606 of their proposed findings of fact, plaintiffs assert that Newburgh is going to have to eliminate social workers and bilingual special education teachers in 2015-16. However, the cited testimony (T. 2074-75) contains no such statement. Newburgh's Superintendent merely asserted a need for additional social workers and bilingual special education teachers. T. 2074-75.

opportunity for a sound basic education.³³ The only such "proof" offered at trial was the vague assertions of the administrators from the plaintiff districts, which were echoed by their experts, that the districts need more teachers, administrators, and other personnel. See, e.g., PPTM pp. 20-21, 25-27; PPF ¶¶19-20, 502, 504, 512-13, 515-16, 518, 526-29, 551, 558-59, 582, 594-95, 599, 603-05, 609, 625, 660-62, 666, 671, 676, 687-

³³To the extent that Jamestown, Newburgh, and Poughkeepsie state that they are out of compliance with SED's regulations concerning the provision of services to English language learners; Jamestown, Poughkeepsie, and Utica state that they are out of compliance with SED's regulations concerning the provision of academic intervention services; and Poughkeepsie asserts that it is "out of compliance with respect to its special education program..." (PPTM pp. 26-27; PPF ¶¶515, 517, 606, 632, 763, 769, 814, 816), two points should be noted. First, no specifics were offered as to the alleged lack of compliance. Rather, district officials merely asserted that they were out of compliance with the Commissioner's requirements. T. 140, 155-57, 342-47, 360-61, 466-67, 693-94, 699-700, 2075. Second, even if such vague, conclusory assertions established a lack of compliance with SED's regulations, such a lack of compliance would not establish that the districts are not providing the opportunity for a sound basic education within the meaning of the Education Article. As the Court of Appeals stated in CFE I, "because many of the... Commissioner's standards exceed notions of a minimally adequate or sound basic education -- some are also aspirational... [p]roof of noncompliance with one or more of the... Commissioner's standards may not, standing alone, establish a violation of the Education Article." 86 N.Y.2d at 317. Moreover, at paragraph 791 of their proposed findings of fact, plaintiffs assert that cuts in the number of teaching assistants have put Utica "in noncompliance with the State Commissioner's regulations for students with disabilities' student - to - teacher ratio." However, while the cited testimony (T. 480) does reflect that there were cuts in the number of teaching assistants, the witness did not state that such cuts had caused the district to be out of compliance with SED's regulations.

89, 698-99, 700, 702-03, 718, 721, 723, 829.³⁴ However, when a district administrator is asked (either by counsel at trial or by an expert during an interview) whether the district needs additional resources, it is not surprising when the administrator responds in the affirmative.³⁵ As succinctly stated by one of the State's experts, John McGuire, "[i]n my experience as an administrator and consultant with urban, suburban and rural school districts, consistently, I have found educators to indicate that they would like, and have ideas for the use of, additional resources." C.X. 58 p. 30.

Moreover, many of the positions on the plaintiff districts' lists (see PPTM pp. 21, 23-26; PPF ¶¶75, 80, 665-66, 703) are not necessary to satisfy the Education Article as interpreted by the Court of Appeals in CFE. There is nothing in the CFE

³⁴After asking officials of Newburgh what additional resources they believe they need (C.X. 14, report p. 30; T. 2564), Dr. Uebbing recommended scores of additional social workers, counselors, teachers, administrators, and other professionals (PPF ¶¶599). However, Dr. Uebbing concedes that he knows of no school district that has the level of resources that he recommends. T. 2571-73.

³⁵Plaintiffs lament the lack of positions that they have never had, even during 2007-08 and 2008-09 when Foundation Aid was still being phased in substantially as originally enacted. For example, plaintiffs assert that Jamestown needs social workers. PPF ¶513. However, Jamestown has never employed social workers. T. 701, 740, 747-49, 878, 964. Rather, Jamestown has chosen to have six counselors at the high school, four counselors assigned to the three middle schools, and a counselor in each of the five elementary schools. T. 741-43, 967. Indeed, as Laurence Spring testified, social workers are not a mandated service in public schools. T. 2492-94.

decisions to suggest that any of these positions are necessary to provide the opportunity for a sound basic education.

Further, many of the functions for which the plaintiff districts claim a need for additional staff are outside the scope of services required for a sound basic education. While plaintiffs wish to provide certain social services within their schools, the services they cite (see, e.g., PPTM pp. 10, 25; PPF ¶¶68, 73-74, 76-77, 79-81, 95, 549, 592-93, 625, 645-47, 663-64, 667, 698-99, 826, 829) are not mandated by State education law. Nor are they required to provide the opportunity for a sound basic education as described by the Court of Appeals in CFE.

In fact, the evidence has established that the plaintiff districts do have an adequate number of teachers, administrators, and other personnel to satisfy the minimum requirements of the Education Article. Based upon their exhaustive investigations, including visits to numerous classrooms in every school in each of the plaintiff districts, defendants' education experts, each an experienced teacher and building and district administrator, testified that the plaintiff districts have an adequate number of experienced and

adequately trained classroom and special education teachers,³⁶ district and building administrators, and ancillary personnel to provide their students with the opportunity for a sound basic education. DPFF ¶¶113-15, 123-25, 134-36, 144-46, 154-56, 164-66, 174-76, 185-87.

Defendant's education experts' opinions as to the adequacy of the staffing in the plaintiff districts are corroborated by the staff counts and ratios reported to SED by the plaintiff districts (C.X. 11). In 2013-14, the ratios of students to classroom teachers (the most important input) were favorable relative to county, region, and State averages.³⁷ The plaintiff districts' 2013-14 ratios of administrative staff, guidance counselors, nurses, psychologists and psychiatrists, librarians,

³⁶Newburgh's Deputy Superintendent asserts that IDEA does not provide sufficient funding to meet the needs outlined in the individual education plans of Newburgh's students with disabilities. PPF ¶629. However, Dr. Uebbing states that Newburgh is meeting its requirements under part 200 of SED's regulations (C.X. 14, summary ¶39; C.X. 14, report p. 14), which means that Newburgh is meeting the requirements of the individual education plans of its students with disabilities (T. 2647-48).

³⁷Two points should be noted concerning plaintiffs' assertion that "Niagara Falls has had a significantly higher student-to-teacher ratio than the other ten districts in the county." PPF ¶648. First, while Niagara Falls' student to teacher ratio exceeds the Niagara County average, there is no evidence in the record that Niagara Falls' student to teacher ratio exceeds that of all of the other ten districts in the county. Second and more significantly, Niagara Falls has chosen to have a large non-teaching staff and could redeploy those resources to increase the number of teachers. DPFF ¶154.

teaching assistants, and other para-professionals to students also largely compared favorably to county, region, and State averages. JSUF App. "C" pp. 1, 9, 17, 25, 33, 41, 49, 57. The staffing ratios that plaintiffs' experts propose (PPTM pp. 10-11; PPF ¶¶72, 77-79, 515, 517, 528, 586, 591, 604, 628, 662, 701) are simply not required by the Constitution. Nor do they have any basis in reality, as plaintiffs have not identified a single school district that has the levels of staffing that they claim are necessary. Moreover, as noted above, Dr. Uebbing concedes that he knows of no school district that has the level of resources that he recommends. T. 2571-73.³⁸

While the staffing counts and ratios were not available for 2014-15 at the time of trial, the evidence suggests that these ratios should bode at least as well for the plaintiff districts in 2014-15. Between 2013-14 and 2014-15, the budgets of each of the plaintiff districts increased, as follows:

³⁸Nor could Dr. Wozniak identify a school district that has the 7.5 to one ratio of English language learners to English as a second language teachers that she recommended. PPF ¶515; C.X. 6, summary ¶28; T. 1324-28.

	2013-14 <u>Enacted Budget</u>	2014-15 <u>Enacted Budget</u>
Poughkeepsie	\$86,464,000	\$87,341,000
Utica	\$138,776,446	\$146,709,543
Jamestown	\$75,369,680	\$75,768,676
Kingston	\$146,103,322	\$150,168,875
Niagara Falls	\$124,060,725	\$126,363,144
Newburgh	\$236,318,331	\$244,792,719
Port Jervis	\$62,170,300	\$63,856,785
Mount Vernon	\$224,730,413	\$227,475,244

(DPFF App. A pp. 1, 11-12, 22, 32-33, 42-43, 53, 63-64, 73-74).³⁹

While the amounts of their budgets increased in 2014-15, the enrollments of the plaintiff districts decreased, remained flat, or increased only slightly. In 2014-15, the enrollments in Jamestown, Kingston, Newburgh, and Port Jervis went down from the previous year;⁴⁰ Poughkeepsie's enrollment remained flat; and

³⁹Moreover, as shown at pages 30-31, the 2014-15 general fund state aid and general fund revenue amounts for each of the plaintiff districts was projected to be significantly more than the 2013-14 amounts.

⁴⁰Plaintiffs inaccurately state that P.X. 3 reflects that Jamestown's 2014-15 enrollment was 4,911. PPF 98. In fact, P.X. 3 does not contain 2014-15 enrollment data. As the parties have stipulated (JSUF App. A p. 2), P.X. 106 reflects that Jamestown's 2014-15 enrollment was 4,840, reduced from 4,911 in 2013-14.

Utica, Niagara Falls, and Mount Vernon's enrollments only slightly increased. JSUF App. "A". In 2014-15, Kingston, Jamestown, and Port Jervis had no layoffs. T. 735-36, 1032-33, 1083, 1169, 2203. In 2014-15, Niagara Falls laid off 3.5 full time equivalents and 26 part time employees, none of whom were teachers, teaching assistants, administrators, social workers, counselors, psychologists, nurses, or librarians. T. 1554-55; P.X. 68. In 2014-15, Mount Vernon eliminated 15.5 teaching positions as a result of declining enrollments. T. 2354. Although Utica did cut 57.5 positions in 2014-15 (P.X. 44), it was, as a result of receiving more State aid than expected, able to restore 73 teaching positions that would otherwise have been eliminated. T. 517, 634. There was no evidence presented about any 2014-15 layoffs in Poughkeepsie or Newburgh.

4. Plaintiffs have failed to establish inadequate resources to provide necessary professional development.

Several of the plaintiff districts assert that they do not have adequate resources to provide their teachers with necessary professional development. PPTM p. 20; PPF ¶¶505, 551, 583,

609, 675, 693.⁴¹ However, in addition to those portions of their budgets which are allocated to professional development, the districts receive substantial amounts of federal education aid which may also be used to fund professional development. DPF 59-61; P.X. 26.

For example, Jamestown's 2014-15 budget allocated \$483,889 from general revenues for professional development, as compared to \$183,819 in its 2013-14 budget. The \$483,889 budget amount is in addition to state and federal grant money, such as Strengthening Teacher and Leader Effectiveness, Title II, and School Improvement grants, that Jamestown is using for professional development. T. 786, 808-11, 815, 959-61; D.X. L p. 3. In its 2014-15 District Comprehensive Improvement Plan

⁴¹While plaintiffs assert that Port Jervis has limited resources to provide training opportunities for its teachers (PPFF ¶693), when its Superintendent was asked what type of training the district provides to its teachers, he stated that Port Jervis has "a multitude of in-house programs that we provide for our teachers." T. 2159-60. In addition, Port Jervis "[t]eachers and administrators are given the opportunity for development through the use of just in time training, after school workshops and online classes." D.X. JJJJ p. 4; T. 2182. Similarly, plaintiffs assert that "Kingston lacks the capacity to provide sufficient professional development. It cannot 'provide the level of professional development necessary to fully implement RtI, the common core standards or any of the reform initiatives that are part of the Regents Reform Agenda with the level of fidelity necessary to be successful.'" PPFF ¶551. However, in the 2014-15 Kingston Diagnostic Tool for School and District Effectiveness ("DTSDE") report, it was noted that "schools were provided with a range of suitable PD, such as opportunities to develop expertise in data driven instruction, the CCLS, and the Response to Intervention (RtI).... District leaders have made instructional coaches available so they can support schools as they adjust to demands of the CCLS and as they make modifications to meet student needs...." P.X. 46, Kingston DTSDE dated February 18, 2014 p. 8.

("DCIP"), Jamestown stated that it allocated \$375,148 of its School Improvement, Title I, Title II, and Title III grant monies to professional development. P.X. 31, 2014-15 DCIP p.

18. In its 2014-15 DCIP, Jamestown also stated:

We will provide professional development for teachers and school leaders in the following areas: (1) Leadership for Data-Driven Instructional Improvement (virtual coaching individual [sic]/small groups), (2) Calibration and Coaching to Improve Teacher Observation (individual/small group coaching and periodic workshops); (3) Common Core Curriculum Alignment and Instructional Practice (in-person and online workshop, job-embedded coaching provided by teacher leaders); (4) School-wide Systems of Response to Intervention (online course for building and teacher leaders, NYS RTI/TASC Project workshops), (5) Systems and Supports for Social-Emotional Learning and Developmental Health (workshops for teachers and leadersin [sic] PBIS by RSE-TASC).

P.X. 31, 2014-15 DCIP p. 15.

Utica's 2014-15 budget allocated \$288,085 for staff development. P.X. 37, 2014-15 budget p. 1. In its 2014-15 DCIP, Utica stated that it had allocated \$202,046 of its Title I grant monies for professional development. P.X. 30, 2014-15 DCIP pp. 22-24, 26-28, 32, 36. In its 2014-15 DCIP, Utica also stated, "[a]ll teachers will be provided professional development in the areas of Differentiated Instruction (DI), Data Driven Instruction (DDI), and Higher Order Thinking Skills (HOTS) to maximize teacher effectiveness and thereby increase student academic performance..." and that "[a]t least eight professional development workshops (using four topics) will be

provided by teachers (formerly STLE) to enhance student achievement for all students, including SWDs and ELLs." P.X. 30, 2014-15 DCIP pp. 8, 20.

In its 2014-15 DCIP, Poughkeepsie stated that it had allocated \$388,000 of its Race to the Top, Title I, Title II, and School Improvement grant monies for professional development.⁴² P.X. 29, 2014-15 DCIP pp. 20-23. In its 2014-15 DCIP, Poughkeepsie also stated:

[T]he Data Inquiry Team will train teachers in their school communities on data-driven instructional strategies; specifically, how to use data as a means to understand each student's progress, identify patterns of performance, and improve educational outcomes for students.... Additional training and support on adapting the EngageNY modules will be implemented during superintendent's conference days and school-based professional development to ensure academic rigor and a robust approach to the instructional shifts necessary in English language arts (ELA) and mathematics. Teachers will be encouraged to attend professional development....

P.X. 29, 2014-15 DCIP p. 9.

In its 2014-15 DCIP, Mount Vernon stated that it had allocated \$247,000 of its Title I, Title II, School Improvement, Strengthening Teacher and Leader Effectiveness grant monies for professional development.⁴³ P.X. 80, 2014-15 DCIP pp. 20-21, 31, 41. In its 2014-15 DCIP, Mount Vernon also stated:

⁴²Poughkeepsie's 2014-15 budget (contained in P.X. 32) did not itemize the amount allocated for professional development.

⁴³Mount Vernon's budgets were not received in evidence. T. 3348-49.

The professional development options include but are not limited to: Workshops, Institutes and Seminars; Independent Study and Immersion in Content Area; Curriculum Development Projects; Action Research Projects; Collaborative Discussions/Study Group; Mentoring and coaching; Professional Networks; Developing Professional Instructors/Mentors; on demand p/d through internet platform, Publishing Related to the Educational Profession Job Embedded Training; and PLC Projects that include the videotaping of teachers. Professional development will be provided in RtI which emerged as one of our biggest needs.... 100% of district teachers will participate in a minimum of 40 hours of Common-Core professional development.... District Coaches will provide monthly workshops to classroom teachers focused on Common Core modules to ensure all teachers are prepared for Instructional Shifts.... 100% of all district educators all educators [sic] will participate in professional learning communities that allow them to continuously grow as instructional experts in response to our rapidly evolving, culturally diverse society.

P.X. 80, 2014-15 DCIP pp. 14, 20-21.

In 2014-15, Newburgh used portions of \$574,763 in federal improvement grants (P.X. 75, 2014-15 DCIP p. 6) and \$9.3 million in Contract for Excellence funds (D.X. FFFF) for professional development. T. 2029-33. In its 2014-15 DCIP, Newburgh stated, "100% of district teachers will participate in a minimum of 40 hours of Common-Core professional development.... District Coaches will provide monthly workshops to classroom teachers focused on Common Core modules to ensure all teachers are prepared for Instructional Shifts." P.X. 75, 2014-15 DCIP p. 22.

5. Plaintiffs have failed to establish inadequate school facilities.

In CFE I and CFE II, the Court of Appeals noted that children are entitled to "classrooms which provide enough light, space, heat, and air to permit children to learn." 86 N.Y.2d at 317; 100 N.Y.2d at 911. In their post-trial memorandum, plaintiffs make no mention of any concerns regarding the adequacy of the facilities in the plaintiff districts. Although plaintiffs' proposed findings of fact contain some allegations about the facilities in Kingston (PPFF ¶541),⁴⁴ Mount Vernon (PPFF ¶¶566-80), Newburgh (PPFF ¶¶615-18),⁴⁵ Port Jervis (PPFF ¶¶705-13), Poughkeepsie (PPFF ¶¶737-43), and Utica (PPFF ¶807-10), plaintiffs presented absolutely no evidence to establish that any of the facilities in any of the plaintiff districts would negatively affect student performance. Rather, the limited testimony about facilities consisted of nothing more than anecdotal complaints about general building issues, many of which have been corrected through the plaintiff districts' capital projects (see, e.g., DPF 82-100; T. 96-97, 104, 368-

⁴⁴The only allegation concerning the adequacy of the facilities in Kingston is that 13 out of 17 buildings received an unsatisfactory rating in the most recent building condition survey. PPFF ¶541. In fact, Dr. Uebbing testified that, based upon Kingston's recent \$137.5 million capital project, he has no concerns about the facilities in Kingston. T. 2859.

⁴⁵Dr. Uebbing testified that, with two exceptions (which he did not observe), the buildings in Newburgh are generally acceptable. T. 2592-95, 2598-99.

70, 504-08, 540, 542-51, 1161-65, 1383-94, 1487-88, 2175-76, 2202-04, 2267-72, 2303, 2580-82, 2820-21, 2859, 4339, 4490-91, 4514, 4517-18, 4534; D.X. E; D.X. HH; D.X. MMMM).⁴⁶

This is supported by the State's architect, Robert Moje, who opined that the facilities in the plaintiff districts are adequate to provide the opportunity for a sound basic education. DPF ¶¶109, 119, 129, 139, 149, 159, 169, 179). Mr. Moje's opinions are confirmed by the State's education experts, who visited every building in each of the plaintiff districts and also opined that the facilities are adequate. DPF ¶¶108, 118, 128, 138, 148, 158, 168, 178. Notably, plaintiffs did not retain an architect to rebut Mr. Moje's testimony.

The fact that many of the plaintiffs' building condition surveys contain an overall rating of unsatisfactory (PPF ¶¶540-41, 566, 575, 743, 810) does not establish that their facilities are inadequate. A building may be rated excellent, good, satisfactory, or unsatisfactory. An individual system in a building may be rated excellent, good, satisfactory, unsatisfactory, or failing. Pursuant to SED's definitions, an unsatisfactory rating does not imply that there is an unsafe or unhealthy condition. An unsatisfactory system is one that is not operating as it was designed to do or has exceeded its

⁴⁶For example, plaintiffs cite an incident when a wall collapsed in Mount Vernon High School in 2010 (PPF ¶570), which was repaired that same year and found to be the result of improper construction in the early 1960's (DPF ¶106).

useful life. If any health, safety, or structural system is rated unsatisfactory, the building must receive an overall rating of unsatisfactory. The most recent building condition surveys submitted by the plaintiff districts did not contain any failing ratings. DPFF ¶¶103-04. According to the State's architect's unrebutted opinions, none of the unsatisfactory ratings contained in the plaintiff districts' building condition surveys had any impact on education. T. 4532.

SED also conducts annual fire and safety inspections of every instructional facility in the State. If SED finds a school building to be unsafe or unhealthy, SED revokes the building's certificate of occupancy. The only time that SED has ever revoked a certificate of occupancy for any building in any of the plaintiff districts was after a wall collapsed in the Mount Vernon High School in 2010. As a result of this incident, SED directed that the impacted area of the building be temporarily closed off. The condition was found to be the result of improper construction in the early 1960's and was repaired in 2010. DPFF ¶¶105-06.

To the extent that some of the plaintiff districts complain about the age of some of their buildings (PPFF ¶¶568-69, 618, 738), it should be noted that the fact that a building is old does not mean that the building is inadequate. On the contrary, some of the best school buildings were constructed many years

ago. T. 4532-33. Similarly, to the extent that some of the plaintiff districts complain that some of their buildings do not comply with current building code requirements (PPFF ¶¶571, 615, 617, 707), it should be noted that buildings are only required to meet the building code at the time of their construction (T. 4531).

The plaintiff districts have adequate existing resources to remedy building concerns should they desire to utilize them. Plaintiffs can mount no serious challenge to the adequacy of the State's building aid given the high rates at which the State reimburses the plaintiff districts for the costs of general capital maintenance and new construction (DPFF ¶¶78-79; T. 2591, 4524, 4544-45) and the fact that the State allocated large amounts of EXCEL funds to the plaintiff districts, which can be used to make up the district's local share of the costs of capital projects (DPFF ¶¶80-81). It is up to the plaintiff districts to determine how to take advantage of the State aid programs for capital improvements.⁴⁷ C.X. 67 p. 121; T. 2597, 4545.

Finally, there is no merit to complaints made by Utica, Mount Vernon, or Poughkeepsie about their facilities since they have substantial sums of unused EXCEL funds. Since Utica's

⁴⁷The extent to which the plaintiff districts have taken advantage of the State aid programs for capital improvements has varied among the plaintiff districts. C.X. 67 p. 121; DPFF ¶¶82-100; T. 4545.

building aid ratio is 98 percent (DPFF ¶79) and its remaining EXCEL allocation is approximately \$4.2 million (DPFF ¶80), Utica could finance approximately \$210 million in general capital maintenance and new construction with no cost to the taxpayers of the district.⁴⁸ Since Mount Vernon's building aid ratio is 70.3 percent (DPFF ¶79) and its remaining EXCEL allocation is approximately \$4.2 million (DPFF ¶80), Mount Vernon could finance approximately \$14 million in general capital maintenance and new construction with no cost to the taxpayers of the district. Since Poughkeepsie's building aid ratio is 78.5 percent (DPFF ¶79) and its remaining EXCEL allocation is approximately \$824,000 (DPFF ¶80), Poughkeepsie could finance approximately \$3.8 million in general capital maintenance and new construction with no cost to the taxpayers of the district.

6. There is no record support for plaintiffs' assertion that the plaintiff districts are unable to provide a safe and orderly environment.

There is also no record support for plaintiffs' assertion that the plaintiff districts are unable to provide a safe and orderly environment for their students to learn. PPTM p. 23. There are only two allegations contained in plaintiffs' 1,073 paragraph proposed findings of fact that even address this issue. First, plaintiffs refer to Dr. Wozniak's conclusory

⁴⁸To calculate the amount of construction that a district can undertake with no local contribution, one divides the remaining EXCEL allocation by the district's local share under the building aid ratio. T. 4325-26.

assertion that "the security in the [Port Jervis Middle] [S]chool is inadequate. There are no cameras, and no other security measures to stop intruders from entering. Only one person is stationed at a single security checkpoint." PPF 714. However, there was no testimony offered at trial to suggest that the security measures employed at Port Jervis Middle School fail to provide the students with a safe and orderly learning environment, much less that there is any district-wide inadequacy in the security measures at the Port Jervis schools.

Second, there is the assertion that "Jamestown has problems with building safety." PPF 509. The evidence that plaintiffs rely on in support of this assertion is the following testimony of Jamestown's Superintendent, which was in relation to a statement contained on Jamestown's website (D.X. N):

Q. And then if you would please look at the third full paragraph it reads JPS provides a comprehensive safety and security program designed to provide students, staff and visitors with facilities that meet or exceed standards in fire safety, air quality, hazardous materials management, chemical safety and building safety. My question, sir, is, is that an accurate statement?

A. I'm sad to say no, it is not.

Q. Is it inaccurate in its entirety, some of it true, some of it false or what?

A. Most of it is true, but I believe at this point, based on our safety audit, I cannot say that we have

state of the art building safety based on the report we got from our safety consultant.

T. 982-83. A lack of "state of the art building safety" cannot reasonably be translated into an assertion that "Jamestown has problems with building safety...", which contradicts the district's own public proclamation of its building safety.

In fact, after having visited every school in each of the plaintiff districts, the State's education experts have all opined that the plaintiff districts have adequate security measures and staff to provide their students with a safe and orderly learning environment. DPF ¶¶108, 116, 118, 126, 128, 130, 138, 140, 148, 150, 158, 160, 168, 170, 178, 181.

7. Class sizes in the plaintiff districts are adequate to provide the opportunity for a sound basic education.

Plaintiffs also cannot demonstrate that the class sizes in the plaintiff districts are excessive and limit a student's opportunity to obtain a sound basic education. In CFE II, when it sustained the trial court's finding that the plaintiffs had demonstrated "excessive class sizes" in New York City, the Court of Appeals stressed that over half of the New York City kindergarten through third graders were in classes of 26 or more and tens of thousands were in classes over 30. The court further noted that New York City elementary school classes average five more pupils than those of other schools statewide excluding Buffalo, Rochester, Syracuse, and Yonkers. 100 N.Y.2d

at 911-12. Applying these standards to the present case demonstrates that the class sizes in the plaintiff districts are adequate to provide the opportunity for a sound basic education.

All of the average kindergarten through third grade class sizes reported by Poughkeepsie, Jamestown, Kingston, Niagara Falls, Newburgh, Port Jervis, and Mount Vernon in 2013-14 (P.X. 12) were less than 26, in most cases substantially less. JSUF App. D pp. 1, 17, 25, 33, 41, 49, 57. Utica's reported 2013-14 second and third grade average class sizes were also less than 26. Although Utica's reported 2013-14 kindergarten and first grade average class sizes were more than 26, they were less than 30. JSUF App. D p. 9.

In addition, unlike the New York City elementary school classes in CFE, the most recent available elementary class sizes reported by the plaintiff districts compare favorably to State averages and, with the exception of Utica's kindergarten, none exceed those averages by five (JSUF App. D pp. 1, 9, 17, 25, 33, 41, 49, 57).⁴⁹ Further, as noted by defendant's education experts (DPFF ¶¶112, 122, 133, 143, 153, 163, 173, 184), all of the most recent available class sizes reported by the plaintiff

⁴⁹Utica's 2013-14 average kindergarten class size exceeded the State average by 6.9. JSUF App. D p. 9.

districts compare favorably to State averages (JSUF App. D pp. 1-2, 9-10, 17-18, 25-26, 33-34, 41-42, 49-50, 57-58).⁵⁰

In addition, having visited hundreds of classrooms in the plaintiff districts, defendant's education experts have determined that the sizes of those classes are adequate to provide the opportunity for a sound basic education. DPF ¶¶112, 122, 133, 143, 153, 163, 173, 184.

Much of plaintiffs' post-trial submissions is devoted to a discussion of the advantages of smaller class sizes. See, e.g., PPTM pp. 10, 21-22; PPF ¶¶77, 88-89, 561, 563-64, 611-14, 650, 682, 686, 733, 736. However, the issue before the court is not whether it would be desirable for the plaintiff districts to have smaller classes, but whether the sizes of the classes in the plaintiff districts are excessive within the meaning of the Education Article as interpreted by the Court of Appeals in CFE. While unspecified "research" purportedly relied upon by Dr.

⁵⁰The 2013-14 reported class sizes (P.X. 12) include kindergarten; grades 1 through 6; seventh, ninth, and eleventh grade English; seventh grade Math and United States & New York History; and ninth and tenth grade Global History and Geography. The most recent available class sizes for eighth and tenth grade English, Math, Science, and Social Studies are contained in the 2012-13 report cards (P.X. 1, 2, 3, 45, 50, 56, 74, 79). According to Dr. Uebbing, social studies classes at the Newburgh Free Academy average 27 students. PPF ¶612. However, the most recent available Newburgh high school social studies class size data reflects an average class size of 27 in tenth grade social studies and 22 in eighth grade social studies. JSUF App. D p. 42. Moreover, in paragraph 611 of their proposed findings of fact, plaintiffs discuss 2014-15 class sizes in Newburgh and cite to "Class Size Report Card". However, there is no 2014-15 "Class Size Report Card" in the record.

Uebbing may "suggest[] that entry-level high school courses be capped at 20..." (PPFF ¶561; C.X. 7 p. 32); Dr. Uebbing may believe that kindergarten classes should be no larger than 16 students (PPFF ¶¶530, 532); "most people" might say "your kindergarten, first and second grade are the grades where you really want to have the lower number of students, 17, 18, 19 students..." (PPFF ¶530); and an American Institutes for Research study cited by Dr. Uebbing may have recommended class sizes of 15 or less for elementary students in high poverty districts (PPFF ¶564), the Constitution, as interpreted in the CFE decisions, imposes no such requirements. Further, Dr. Uebbing was unable to identify a single school district in New York State that has the class sizes recommended by the American Institutes for Research.⁵¹ T. 2606-07.

Nor is there any language in any of the CFE decisions that remotely supports plaintiffs' assertion that "[c]lasses should be around 18-20 children per class in kindergarten through

⁵¹In the American Institutes for Research study cited by Dr. Uebbing, the authors stated, "although the Professional Judgment Panels derived instructional designs by which schools could construct an adequate opportunity to meet the Regents Learning Standards, this theoretical design does not include, or recommend, that the specific components of these models become mandates for local practice. However insightful the instructional designs created by the Professional Judgment Panels or persuasive the case for their effectiveness, education continues to be as much an art as it is a science. Harnessing creativity and commitment, and taking advantage of the experience of local educators, necessitates providing them with discretion to determine exactly how funds should be used." T. 2605-06.

second grade." PPF ¶610. Thus, plaintiffs' assertion that class sizes in Newburgh are "well above the 20 student size noted by the Court of Appeals..." (PPF ¶610) is misleading. In fact, the court simply noted that "federal and state programs seek to promote classes of 20 or fewer, particularly in the earliest years, and plaintiffs' experts testified on the advantage of smaller classes." CFE II, 100 N.Y.2d at 912.

Plaintiffs rely on vague, anecdotal suggestions that class sizes in the plaintiff districts are excessive. For example, plaintiffs assert that kindergarten classes in Kingston, Mount Vernon, and Niagara Falls are "in the mid to high twenties or higher...." PPTM p. 22. This statement is incorrect. In fact, the most recent kindergarten class sizes reported by Kingston, Mount Vernon, and Niagara Falls were 20.7, 18.6, and 23, respectively, in 2013-14.⁵² JSUF App. D pp. 25, 33, 57. As shown above, none of these districts experienced any significant increase in enrollment or decrease in teaching staff in 2014-15.

Plaintiffs also assert that a single kindergarten class in Gardnertown Elementary School in Kingston contains "about 27-28

⁵²Plaintiffs mischaracterize Thomas Coseo's testimony by stating that he indicated that Niagara Falls would "need to add 110 teachers to have an appropriate student teacher ratio." PPTM p. 22. In fact, Dr. Coseo was asked how many teachers Niagara Falls would have to hire to bring its ratio in line with the region, not to have an "appropriate" ratio. T. 3910-11. It is Dr. Coseo's opinion that Niagara Falls has reasonable and manageable class sizes and an adequate number of qualified teachers. DPF ¶¶153-54.

students...."⁵³ PPF 610. However, this is insufficient to establish that the class sizes in the district are excessive.⁵⁴

Further, plaintiffs note that, according to Dr. Uebbing, when he visited Mount Vernon in April 2013, an unnamed elementary school principal "indicated class sizes in Mount Vernon at the Kindergarten level were as high as 27 and were expected, at that time, to rise to 30...." (C.X. 7 pp. 8, 22; PPF 561). Not only is this vague, unattributed hearsay statement unsupported by any evidence in the record, but it directly contradicts the class sizes reported by Mount Vernon to SED. In fact, in 2012-13, the average kindergarten class size in Mount Vernon was 20.7. JSUF App. D p. 58. The assertion that class sizes for Mount Vernon middle and high school entry level courses have increased from 25 to approximately 30 (PPF 561) is also contradicted by Mount Vernon's own reported class sizes. In fact, not one of the most recent reported Mount Vernon class sizes is as high as 30 and most are not even close to that number. JSUF App. D pp. 57-58.

⁵³Having testified that a kindergarten class in Gardnertown had "about 27-28 students", Kingston's Superintendent was unable to state how many kindergarten classes there are in Gardnertown or how many he visited. T. 2077-78, 2092-93. Newburgh's Deputy Superintendent testified that the largest kindergarten class that he was aware of was in Gardnertown and contained 26 students. He did not know how many kindergarten classes in Newburgh contained as many as 26 students. T. 1975.

⁵⁴See New York Civil Liberties Union v. State, 4 N.Y.3d 175, 182 (2005) (a claim under the Education Article requires that a district-wide failure be pleaded).

Plaintiffs also assert that, "[f]or Poughkeepsie class sizes for the common branch category (i.e., self-contained classes in Grades 1-6; Grade 8 English, Math, Science, and Social Studies; Grade 10 English, Math, Science, and Social Studies) grew from an average of 20 students in 2006-07 to the current high of 25 students in 2012-13." PPF 730. This statement is simply inaccurate. In fact, in 2006-07, the average class size for Poughkeepsie grades 1 through 6 and grades 8 and 10 English, Math, Science, and Social Studies was 21.6. In 2012-13, the average was 22.6. JSUF App. D pp. 2, 8. Further, plaintiffs' assertion that Poughkeepsie's "third and fourth grade classes exceed 30 students..." (PPTM p. 22)⁵⁵ contradicts the district's 2013-14 reported class sizes for those grades, which were 25 and 23.4, respectively. JSUF App. D p. 1. As noted above, in 2014-15, Poughkeepsie's enrollment remained flat and there was no evidence presented about any layoffs in 2014-15.

Finally, plaintiffs' assertion that "[m]ost of the classrooms in Utica exceed 30 students..." (PPF 800) is supported neither by the cited testimony (T. 460) nor Utica's own reported class sizes. In fact, none of the most recently reported class sizes in Utica are as high as 30 and most are not

⁵⁵The testimony of Poughkeepsie's Superintendent was actually that, in third and fourth grade, Poughkeepsie has 30 students in "several" third and fourth grade classrooms and 31 students in two such classrooms. T. 148.

even close to that number. JSUF App. D pp. 9-10. That there may be some "first grade classes and second grade classes with 30 or high [sic] students..." (PPFF ¶797) does not establish that the class sizes in the district are excessive. According to the most recently reported data, the average first and second grade class sizes in Utica were 27.7 and 25.7, respectively. JSUF App. D p. 9.⁵⁶

8. Plaintiffs have failed to establish inadequate instrumentalities of learning.

In CFE II, the court identified the final input for a sound basic education -- instrumentalities of learning -- to include classroom supplies, textbooks, libraries, and computers. In affirming the trial court's finding that the library books in New York City schools were inadequate in quality, the Court of Appeals noted that the unrebutted testimony indicated that the books were old and not integrated with contemporary curricula. In affirming the trial court's finding as to the inadequacy of the computers in the New York City schools, the Court of Appeals noted that City schools not only had about half as many computers per student as all other New York schools, but also

⁵⁶As demonstrated above, the plaintiff districts produced no data to contradict the most recent class size reports that they submitted to SED. District personnel simply gave their vague understanding that an unspecified number of classes in certain grades purportedly exceed a certain number of students.

had aging equipment that, in some cases, could not support presently available software.⁵⁷ 100 N.Y.2d at 913-14.

Here, plaintiffs' post-trial memorandum contains no assertion that the plaintiff districts' classroom supplies or computers are inadequate and defendant's experts have demonstrated that these instrumentalities of learning are sufficient to provide the opportunity for a sound basic education (DPFF ¶¶110-11, 120-21, 131-32, 141-42, 151-52, 161-62, 171-72, 182-83).

(a) Technology

Although plaintiffs' proposed findings of fact contain some allegations about the adequacy of the technology in Kingston (PPFF ¶542), Mount Vernon (PPFF ¶¶581, 583), Newburgh (PPFF ¶¶620-21), and Poughkeepsie (PPFF ¶¶744-48, 752-54),⁵⁸ none of these allegations satisfy plaintiffs' burden of proving that

⁵⁷The textbook supplies were found to be adequate and the evidence on classroom supplies inconclusive. 100 N.Y.2d at 913.

⁵⁸At paragraph 709 of their proposed findings of fact, plaintiffs assert that the library at the Port Jervis Middle School lacks technology necessary to support current academic programs. Defendant does not interpret this as a complaint about the adequacy of technology in the Port Jervis District since Port Jervis has approximately 1,000 computers, five computer labs, and seven laptop carts and Alphasmarts and CPS systems, and projectors fill many classrooms (T. 2180; D.X. JJJJ p. 3); all of its classrooms have Smart Boards (T. 2176-77, 2817); technology is integrated into all subject areas at the high school (T. 2182; D.X. JJJJ p. 4); a wireless network was recently installed at the high school (T. 2177); and, according to Dr. Uebbing, from a technology standpoint, Port Jervis is where a modern district should be (T. 2817). Also, Port Jervis is slated to receive approximately \$3.1 million under the Smart Schools Bond Act (see footnote 59). DPFF ¶¶44-45.

these districts lack adequate technology to provide the opportunity for a sound basic education.

Kingston's sole allegation concerning the adequacy of its technology is its statement that 25 percent of its classes in the middle schools and nearly 75 percent of its elementary school classrooms lack Smart Boards. PPF 542. However, the State submits that Smart Boards in 75 percent of a district's middle school classes and 25 percent of its elementary school classrooms is more than adequate. Moreover, each classroom in Kingston has a computer, each school has at least one computer lab (the middle schools each have two and the high school has three), and every core class has technology for projection. T. 1156-58. In addition, Kingston is slated to receive approximately \$5.3 million, specifically for the purchase of new technology equipment and infrastructure, under the Smart Schools Bond Act.⁵⁹ DPFF ¶¶44-45.

Plaintiffs' assertion that Mount Vernon's computers "are outdated by ten years" (PPF 581) (emphasis added) is inaccurate. In the cited testimony (T. 2263-64), Mount Vernon's

⁵⁹The 2014-15 enacted State budget contained a general obligation bond program known as the Smart Schools Bond Act. That act, which was subject to the approval of the voters in the 2014 general election and obtained such voter approval, provides that the State will borrow \$2 billion and distribute those funds to school districts throughout the State to be used for a wide variety of purposes. These purposes include the purchase of computers, computer hardware, and technology infrastructure as well as the expansion of classroom space for pre-kindergarten programs, security upgrades, and construction of classroom space to replace temporary classroom units. DPFF ¶44.

Superintendent indicated that, "the state of technology until about a year ago was really quite dreadful.... So we had classroom instructional equipment that approached ten years in age.... I believe there is substantial achievement made in the last year. (emphasis added). While plaintiffs also cite to Dr. Uebbing's first report (C.X. 7),⁶⁰ based upon "massive technology

⁶⁰In support of their assertion that Mount Vernon's computers are outdated by ten years, plaintiffs cite to C.X. 7 p. 11. However, C.X. 7 p. 11 contains no discussion of technology. Unfortunately, this is not an isolated incident as plaintiffs' proposed findings of fact is replete with incorrect citations to both the trial transcript and exhibits (see, e.g., PPF 204, 215, 436, 444, 452, 460, 468, 476, 484, 491, 538, 551, 560, 564, 568, 569, 570, 581, 586, 588, 589, 590, 591, 596, 613, 634, 745, 749, 750, 909, 971, 973, 1006); citations to several hundred page exhibits with no page references (see, e.g., PPF 98, 164, 199, 204, 217, 238, 501, 651, 716, 730, 836, 869, 872-77, 880, 883, 885-88, 897-908, 916-26, 936-47, 956-67, 974-85, 993-1004, 1012-23, 1032-45, 1048-51); citations to report card data that is not in the record (PPF 434, 442, 450, 458, 466, 474, 482, 489, 611); and mischaracterizations of the information contained in the record (see, e.g., PPF 23 (inaccurately stating that P.X. 112 indicates that, if a district is providing the opportunity for a "sound basic education", a vast preponderance of students should be scoring at level three or higher on assessments (see page 85)); PPF 98 (inaccurately stating that P.X. 3 reflects that Jamestown's 2014-15 enrollment was 4,911 (see footnote 40)); PPF 164 (inaccurately stating that Poughkeepsie's 2013-14 report card lists an enrollment of 4,382 (see footnote 17)); PPF 214 (stating that Niagara Falls had a 2009-10 projected budget gap of \$3,321,268 when that figure represented the 2010-11 projected gap reflected in P.X. 69 and there was no evidence presented about a 2009-10 budget gap); PPF 258-59 (inaccurately stating that P.X. 107 and 108 indicate that the 2004-05 and 2005-06 Regents State Aid Proposals were designed to "provide the opportunity for a sound basic education" (see pages 20-22)); PPF 436, 444, 452, 460, 468, 476, 491 (referring to 2013-14 estimated general education instructional expenses as actual expenses (see footnote 12)); PPF 606 (inaccurately stating that Newburgh's Superintendent testified that he will have to eliminate social workers and bilingual special education teachers in 2015-16 (see footnote 32)); PPF 836 (inaccurately stating that P.X. 7 indicates that a district with an 80 percent graduation rate is providing a "sound basic education" (see pages 86-87)).

purchases" by Mount Vernon, Dr. Uebbing removed any criticism of Mount Vernon's technology from his second report (C.X. 8). T. 2752. Those "massive technology purchases" included 2,698 computers and 88 interactive white boards. D.X. ZZZZ p. 1; T. 2351-52. Further, under the 2014-15 budget, 75 percent of all workstations have been updated and replaced, 300 administrative stations have been upgraded, all classrooms and libraries have at least one upgraded computer, all schools received at least one new cart of laptops, and 40 percent of classrooms have Smart Boards. D.X. AAAAA p. 24; T. 2387-88. Finally, Mount Vernon is slated to receive approximately \$7.9 million, specifically for the purchase of new technology equipment and infrastructure, under the Smart Schools Bond Act. D.P.F.F. ¶¶44-45.

Plaintiffs state that, "[i]n Newburgh, many of the classrooms or schools lack access or have only very limited access to computers, Smartboards, or internet access." P.P.F.F. ¶620. However, Newburgh's Superintendent testified that, "some schools... have a Smart Board in every room, where in other school buildings there's zero. Some schools have laptops, others don't." T. 2080. Thus, it seems that Newburgh has chosen to unevenly distribute some of its technology resources -- but the resources are adequate. In Newburgh, the high school has three computer labs and at least three portable carts, each

with 20 to 25 laptops, in each building. T. 2106-07. Each middle school has a computer lab. T. 2129.⁶¹ Moreover, Newburgh is slated to receive approximately \$12.8 million, specifically for the purchase of new technology equipment and infrastructure, pursuant to the Smart Schools Bond Act. DPFF ¶¶44-45.

That there is no evidence of any current lack of technology in Poughkeepsie is demonstrated by plaintiffs' references to 2012 School Quality Review Reports referred to in Dr. Wozniak's report. PPFF ¶¶752, 754. In fact, at the time of trial, Poughkeepsie had Smart Boards in over 60 percent of its classes. T. 122. Poughkeepsie will be receiving even more Smart Boards as part of its current capital project. T. 545-47. Poughkeepsie has two computers for every 25 students with at least one computer lab in each elementary school, two computer centers in the middle school, and two computer labs as well as computer carts in the high school. T. 224-25, 231-32, 299. In addition, Poughkeepsie will be receiving approximately \$5.7 million, specifically for the purchase of new technology equipment and infrastructure, under the Smart Schools Bond Act.

⁶¹In its 2012-15 technology plan, Newburgh stated that it is "well-situated to sustain its leadership role in the delivery of technology enriched education to its community." D.X. EEEE p. 3.

(b) Textbooks and Library Books

There is also no evidence in the record to support the assertion that the plaintiff districts lack adequate textbooks and library books. PPTM p. 22. The only allegations contained in plaintiffs' proposed findings of fact that even address the adequacy of textbooks or library books are the assertions that: Niagara Falls High School cannot purchase enough text books for students to bring home⁶³ and the Niagara Falls High School library "has inadequate books..."⁶⁴ (PPFF ¶678); the library at the Port Jervis Middle School is "lacking in the books... necessary to support current academic programs..." (PPFF ¶709); and "[l]ibrary books throughout Poughkeepsie are outdated, with

⁶²Utica, Jamestown, and Niagara Falls are slated to receive approximately \$9.6, \$4.9 and \$8.8 million, respectively, under the Smart Schools Bond Act. DPFF ¶¶44-45.

⁶³While this allegation seems to suggest that there are no subjects in which Niagara Falls High School has enough textbooks for students to take home, the testimony was actually that a "majority" of the departments only have classroom sets of text books. T. 1719-20. In accordance with the plaintiff districts' usual practice of offering only vague and conclusory assertions as to the alleged inadequacies of their resources, there was no testimony as to which subjects or grades did not have enough books for students to bring home.

⁶⁴In support of their assertion that the Niagara Falls High School library "has inadequate books...", plaintiffs rely on the testimony of the Niagara Falls principal that "I think for a library for a school of our size we don't have as many resources or books on the shelves." T. 1719.

some books dating as earlier [sic] as the 1970's and 1980's...", and Dr. Wozniak stated that textbooks are outdated at Poughkeepsie Middle School and its library media center has "inadequate resources" (PPFF ¶¶751, 753). Such vague conclusory assertions do not establish that Niagara Falls, Port Jervis, or Poughkeepsie has inadequate textbooks or library books to provide their students with the opportunity for a sound basic education. Not surprisingly, there was no evidence presented about the specific number, age, or quality of the text books or library books in any of these districts. Moreover, the ST-3's that these districts submitted to SED demonstrate that they have received generous amounts of State textbook aid over past three years (see P.X. 4, 34, 38, 2013-14 ST-3's, Schedule A3, page 16, line 86, code A3260) and expended substantial sums on text books during the same period (see P.X. 4, 34, 38, 2013-14 ST-3's, Schedule A4b, page 29, line 177, code A2110.48). Finally, having visited every school in the plaintiff districts, the State's experts have opined that the plaintiff districts have adequate textbooks and libraries. DPFF ¶¶108, 110, 118, 120, 128, 131, 138, 141, 148, 151, 161, 168, 171, 182.

(c) Reductions in Programs

Plaintiffs provide a list of programs that some of the plaintiff districts have had to reduce or eliminate.⁶⁵ While these programs were undoubtedly beneficial, plaintiffs have failed to establish that any of them are necessary to provide the opportunity for a sound basic education and nothing in the CFE decisions suggests that they are.

⁶⁵For example, plaintiffs complain about Newburgh's elimination of the violence prevention and safe room programs (PPTM pp. 23-24, 26; PPF 639-40, 822); Niagara Falls' elimination of its parenting teen program (PPTM p. 26; PPF 672); reductions in Kingston's credit recovery program (PPTM pp. 26-27; PPF 548); Newburgh's elimination of its high school business courses (PPTM p. 23; PPF 624); Kingston's elimination of its primary mental health care project (PPF 547); Utica's elimination of its young scholar program (PPF 820); reductions in extended day programs in Jamestown, Newburgh, Niagara Falls, and Poughkeepsie (PPTM p. 24; PPF 520, 635, 656, 766, 819); reductions in summer programs in Jamestown, Niagara Falls, Utica, and Poughkeepsie (PPTM p. 24; PPF 521, 656-58, 767, 819); Poughkeepsie's inability to offer full day kindergarten (PPTM p. 24; PPF 771); Kingston, Newburgh, Niagara Falls, Mount Vernon, and Port Jervis' inability to offer pre-kindergarten to all students (PPTM pp. 24-25; PPF 146, 552-53, 597, 634, 651, 680); Kingston and Mount Vernon's inability to provide full day pre-kindergarten (PPTM p. 23; PPF 552, 597); Kingston's inability to fully implement the integrated co-teaching model (PPF 550); and Mount Vernon's inability to offer foreign languages in its elementary schools (PPF 589). As to Mount Vernon's inability to offer foreign languages in its elementary schools, plaintiffs complain that foreign languages are offered in neighboring districts as early as second grade. PPF 589. However, the issue in this case is whether the plaintiff districts have adequate resources to provide their students with the opportunity for a sound basic education, not whether the plaintiff districts' resources are equal to those of other districts. See Board of Education, Levittown Union Free School District v. Nyquist, 57 N.Y.2d 27, 47-48 (1982) (unevenness of educational opportunity does not render school financing system constitutionally infirm unless it can be shown that the system's funding inequities resulted in the deprivation of a sound basic education).

As to pre-kindergarten, it should be noted that the plaintiff districts were slated to receive the following amounts in Universal Pre-Kindergarten State aid in 2014-15:

Jamestown: \$1,007,167

Poughkeepsie: \$791,635

Niagara Falls: \$1,889,424

Utica: \$2,086,659

Newburgh: 2,848,529

Port Jervis: \$303,208

Kingston: \$784,745

Mount Vernon: \$1,738,856

(P.X. 20; T. 4077-80). It should also be noted that the Statewide Universal Pre-Kindergarten Grant is a program that provides, on a competitive basis, funding for pre-kindergarten programs for the period from July 1, 2014 to June 30, 2015, in addition to the funds that each district receives as part of its universal pre-kindergarten state aid. On August 18, 2014, Niagara Falls was awarded a Statewide Universal Pre-Kindergarten Grant in the amount of \$289,131. On August 18, 2014, Newburgh was awarded a Statewide Universal Pre-Kindergarten Grant in the amount of \$2,859,484.⁶⁶ Jamestown, Kingston, Mount Vernon, Port

⁶⁶Thanks to the Statewide Universal Pre-Kindergarten Grant, in 2014-15, Newburgh increased its pre-kindergarten program from half day to full day and expanded the program to provide additional seats for more students. T. 1976-81.

Jervis, and Utica did not apply for the Statewide Universal Pre-Kindergarten Grant. DPFF ¶¶55-58.⁶⁷

As to extended day programs, it should be noted that the Extended Learning Time Grant is a program that provides, on a competitive basis, funding for school districts to extend the school day, week, or year by 25 percent for the period including July 1, 2014 to June 30, 2016. On June 23, 2014, Utica was awarded a \$4,104,000 Extended Learning Time Grant, as well as a \$10,000 planning grant. On October 22, 2014, Utica withdrew its Extended Learning Time Grant application. T. 509-10, 595-96, 608-09, 4088-92; P.X. 23. After having applied for a \$6 million Extended Learning Time Grant, on March 13, 2014, Kingston withdrew its application. Niagara Falls, Jamestown, Mount Vernon, Port Jervis, and Poughkeepsie did not apply for the Extended Learning Time Grant. DPFF ¶¶46-49.

Finally, while plaintiffs complain about reductions in music in Mount Vernon and Jamestown (PPTM p. 23; PPF ¶¶511, 584); art in Mount Vernon, Jamestown, and Utica (PPTM p. 23; PPF ¶¶511, 584, 813); foreign languages in Newburgh (PPTM p. 23; PPF ¶623), physical education in Utica (PPTM p. 23; PPF ¶¶811-12); and extracurricular activities in Mount Vernon, Poughkeepsie, and Port Jervis (PPTM p. 23; PPF ¶¶584, 697,

⁶⁷It should be noted that pre-kindergarten, although it may be a beneficial program, is neither necessary to provide the opportunity for a sound basic education under CFE nor a mandated service under the Education Law.

760), the plaintiff districts have failed to establish that these programs, in their present forms, are inadequate to provide the opportunity for a sound basic education.

B. Plaintiffs failed to meet their burden of establishing that any deficiencies in outputs in the plaintiff districts are the result of inadequate funding.

1. Some of plaintiffs' statements concerning the outputs in the plaintiff districts require clarification.

The Court of Appeals has warned that allegations of deficient educational outputs "should be used cautiously as "there are a myriad of factors which have a causal bearing on test results." CFE I, 86 N.Y.2d at 317. See also Paynter v. State of New York, 100 N.Y.2d 434, 441 (2003) ("The causes of academic failure may be manifold, including such factors as the lack of family supports and health care. But if the State truly puts adequate resources into the classroom, it satisfies its constitutional promise under the Education Article, even though student performance remains substandard.").

While the test results and graduation rates for the students in the plaintiff districts are fully set forth in the district report cards (P.X. 1, 2, 3, 45, 50, 56, 74, 79), the State does take issue with the plaintiffs' efforts to mischaracterize how those outputs should be considered when

evaluating whether the students in the plaintiff districts are receiving the opportunity for a sound basic education.

First, plaintiffs inaccurately assert that SED has stated that, "if a district is providing the opportunity for a sound basic education, the vast preponderance of students should be scoring at a level 3 or higher on whatever test is being used for defining academic outcomes. (P.X. 112, p. 3...)." PPF 23 (emphasis added).⁶⁸ In fact, the term "sound basic education" does not appear in P.X. 112. Rather, what the section of the document referred to by the plaintiffs actually says is:

[i]f a district is providing the opportunity for an adequate education, it would seem that the vast majority of its students should be capable of achieving the Regents standards. This means, on whatever tests one uses for defining academic outcomes, the vast preponderance of students should be scoring at the equivalent of level 3 or level 4.

P.X. 112 p. 3 (emphasis added).⁶⁹ As demonstrated in Point I, SED's definition of an adequate education is a higher standard than the opportunity for a sound basic education enunciated by

⁶⁸In their post-trial memorandum, plaintiffs refer to a purported "80% baseline established by the State to provide a sound basic education...." PPTM p. 28 (emphasis added).

⁶⁹Elsewhere, in discussing the adequacy of the outputs in the plaintiff districts, plaintiffs make reference to the State's definition of an "adequate education", i.e., one in which 80 percent of the students in the district are scoring at level 3 or 4 on State examinations, and state that the plaintiff districts are "fall[ing] wildly short of this standard". PPTM p. 1; PPF ¶¶833-34.

the Court of Appeals in CFE.⁷⁰ Thus, if a district does not have 80 percent of its students scoring at level 3 or 4 on State examinations, that does not mean that the district is failing to provide the opportunity for a sound basic education.⁷¹ It simply means that the district is not included among the "successful schools" used to calculate the "foundation amount" for purposes of the Foundation Aid formula. T. 4120-21, 4126-27, 4142-43; DPFF ¶16.

Second, plaintiffs twice assert that "[t]he State has indicated that it deems a district with an 80% graduation rate to be providing its students with a sound basic education." (emphasis added). The first time that this quote appears (PPFF ¶25), plaintiffs provide no citation to the record. The second time (PPFF ¶836), plaintiffs cite to P.X. 7, the several hundred page statewide report cards for 2006-07 through 2013-14, with no page reference. In fact, while the State report card does provide that an 80 percent graduation rate is the State standard (see, e.g., P.X. 7, 2012-13 report card pp. 50-51, 2011-12

⁷⁰In any event, the contours of a sound basic education as required by the Constitution are determined by the judiciary, not by SED. See CFE II, 100 N.Y.2d at 907 ("[M]any of the more detailed standards established by the Board of Regents and Commissioner of Education 'exceed notions of a minimally adequate or sound basic education,'... so to enshrine the Learning Standards would be to cede to a state agency the power to define a constitutional right.").

⁷¹As previously noted, there are only a select number of districts in the State that are achieving the Board of Regents' standard. T. 4127.

accountability report p. 2, 2010-11 accountability and overview report p. 14), nowhere in the several hundred page statewide report cards for 2006-07 through 2013-14 (P.X. 7) does it indicate that a district with an 80% graduation rate is providing its students with a "sound basic education". The Court of Appeals has never equated an 80 percent graduation rate with a sound basic education. Rather, as stated above, the standard for the opportunity for a sound basic education enunciated by the Court of Appeals in CFE II is the "opportunity for a meaningful high school education, one which prepares [children] to function productively as civic participants."⁷² 100 N.Y.2d at 908.

Third, to the extent that plaintiffs compare the plaintiff districts' grades three through eight English language arts ("ELA") and math assessments for 2010-11 and 2011-12 to 2012-13 and 2013-14 (PPFF ¶¶893-96, 912-15, 930-35, 950-55, 970-73, 987-92, 1008-11, 1028-31), it should be noted that, unlike prior years, beginning in 2012-13, proficiency in grades three through eight ELA and math was based on the Common Core, an entirely new

⁷²In CFE II, the court stated, "[c]oncerning the first output, school completion, the proof revealed that of those New York City ninth graders who do not transfer to another school system, only 50% graduate in four years, and 30% do not graduate or receive a general equivalency degree (GED) by the age of 21, when they cease to be eligible for free public education. This rate of school completion compares unfavorably with both state and national figures, and the trial court considered it symptomatic of 'system breakdown'...." 100 N.Y.2d at 914.

program that requires a different set of knowledge and skills. As a result, there was an expected decline in the performance of third through eighth grade students on the New York State ELA and math assessments as students and teachers adjusted to the new Common Core requirements. DPFF ¶¶40-43.

Fourth, to the extent that plaintiffs compare 2010-11 and/or 2011-12 graduation rates to those for 2012-13 and/or 2013-14 (PPTM p. 28), it should be noted that the 2010-11 and 2011-12 graduation rates are as of August and those for 2012-13 and 2013-14 are as of June. JSUF App. F. p. 1; T. 2397-2400. It is common for additional students to graduate in August (T. 956-57, 1152, 2940-41), which will, of course, increase the graduation rates.⁷³

2. Plaintiffs have failed to establish causation.

In order to prevail, plaintiffs must establish "a causal link between the present funding system and any proven failure to provide a sound basic education...." CFE II, 100 N.Y.2d at 919. Plaintiffs have failed to meet their burden of establishing that any deficiencies in outputs in the plaintiff districts are the result of inadequate funding.

⁷³It should also be noted that plaintiffs' proposed findings of fact contain several errors in the reported test results. See, e.g., PPF ¶¶989, 992, 1044, 1045. Most notably, plaintiffs state that, in 2013-14, 89 percent of the third through eighth graders with disabilities in Utica scored at level one on the math assessment. PPF ¶1045. In fact, that percentage was 80. P.X. 2, 2013-14 report card, 3-8 math assessments.

First, plaintiffs rely on the conclusory testimony of their school district officials to demonstrate that student outputs are the result of inadequate resources. It is hardly surprising that an administrator responds "yes" when he is asked whether his district needs additional resources. However, the conclusory assertions of the officials of the plaintiff districts -- without evidentiary support of a causal link -- do not meet plaintiffs' burden of establishing causation.

Plaintiffs' experts on the issue of causation are similarly of limited to no value. As noted above, Drs. Wozniak, Uebbing, and Fraser did not evaluate the quality of the teaching or leadership in the plaintiff districts. Since it is undisputed that teachers are the most important input (T. 172-73, 754, 1407, 1555, 2195, 2355, 2427, 2742-42, 3170-71) and that effective leadership is vital to student success (T. 906, 1409-10, 1996, 2430, 2746-47), these experts are not in a position to render a reliable opinion without having evaluated these two crucial inputs.⁷⁴ Moreover, as shown above, plaintiffs' experts

⁷⁴The plaintiffs' experts' failure to consider the quality of the teaching and leadership in the plaintiff districts is further demonstrated by the fact that Drs. Wozniak and Uebbing did not consider either the Diagnostic Tool for School and District Effectiveness ("DTSDE") reports (in which SED and/or the district evaluates, among other things, teacher and school leader practices (DPFF ¶¶35-36)) or the District Comprehensive Improvement Plans and School Comprehensive Education Plans (which contain the district's plans based on the recommendations contained in the DTSDE's (DPFF ¶37)) in rendering their opinions. T. 1245-50, 1379-81, 2548-49, 2552-53, 2844-46.

did not personally evaluate the other resources in the plaintiff districts; they simply relied on what the district officials told them.

Accordingly, plaintiffs have failed to meet their burden of establishing that any deficiencies in outputs in the plaintiff districts are the result of inadequate funding.⁷⁵ Conversely, while it has no obligation to disprove a casual link, the State presented substantial evidence that the outputs in the plaintiff districts are not the result of inadequate funding, but, rather, are caused by other factors.

First, while both sides' experts testified about a strong correlation between poverty and poor academic achievement (PPFF ¶¶54-55, 58-60; C.X. 60 pp. 2; C.X. 62 pp. 7, 9; T. 1445, 2409-10, 2726-27), the testimony of Drs. Eric Hanushek and David Armor demonstrates that the relationship between increases in

⁷⁵As noted in Point I, defendant's experts did acknowledge that additional funding to the plaintiff districts, if spent wisely, could result in improved outputs. However, there is no record support for plaintiffs' assertions that any of the State's experts "acknowledged [that] the State's failure to provide adequate funding is a cause of unacceptable outputs in the Districts..."; that any of the State's witnesses "conceded... that the lack of State funding is a cause of the lack of resources and the poor student outcomes..."; or that any of the State's witnesses conceded 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...." PPTM pp. 38, 40. No such concessions have been made by the State or any of its witnesses. Of course, merely acknowledging that increases in funding could result in some improvement in outcomes is in no way a concession that the plaintiff districts lack adequate resources to provide the opportunity for a sound basic education.

school funding and student achievement is, at best, extremely small.⁷⁶

New York currently spends more per pupil than any other State in the Nation and substantially increased education spending between 2000 and 2011. DPFF ¶¶206-09, 219, 237. If, as plaintiffs posit, more funding would meaningfully improve student outcomes, New York should be experiencing increasing student achievement and some of the highest outcomes in the Nation. However, that is not the case. DPFF ¶210-12, 219. Thus, even without adjusting for individual student characteristics, the relationship between spending and achievement is small. DPFF ¶¶205, 214, 218-19, 221, 230-31.

The longitudinal regression analyses performed by Drs. Armor and Hanushek further demonstrate that, when individual student characteristics, such as poverty, English language proficiency, and special education, are taken into consideration, the actual effect that increased spending would have on student performance remains small. DPFF ¶¶211, 215-18, 233. By contrast, those regression analyses reveal that more than 80 percent of the variation in student performance occurs within schools and districts, not between schools and districts, and non-funding factors have a much more sizable impact on

⁷⁶Laurence Spring acknowledged that, in his report (C.X. 24), he cited no data, analysis, or research showing that increased resources generated by increased spending would ameliorate the negative correlation between poverty and achievement. T. 2512-13.

student achievement than does spending.⁷⁷ DPF 211, 215, 236, 239-41; C.X. 62 pp. 8-9. Thus, the testimony of Drs. Armor and Hanushek establish that substantial increases in funding would not result in meaningful increases in student achievement in the plaintiff districts.⁷⁸

⁷⁷A significant portion of plaintiffs' post-trial submissions is devoted to a discussion of the underperformance of the economically disadvantaged students, minority students, students with disabilities, and English language learners, as compared to the general populations of the plaintiff districts, in terms of graduation, dropout, and suspension rates as well as the grades three through eight ELA and math assessments. PPTM pp. 29-31, 34-37, 42; PPF 869, 872-77, 880, 883, 885-86, 897-908, 916-26, 936-47, 956-67, 974-85, 993-1004, 1012-23, 1032-45. However, the statewide report cards demonstrate that these populations of students generally lag behind the general population in ELA, math, and science assessments; Regents examinations; and graduation rates across the State -- not merely in the plaintiff districts. See, e.g., P.X. 7, 2013-14 State report card, 3-8 ELA and math assessments and graduation and dropout rates, 2012-13 state report card pp. 8-21, 28-39, 50-51. The State submits that plaintiffs have failed to prove a causal link between these outcomes and the present funding available to the plaintiff districts.

⁷⁸Plaintiffs inaccurately assert that Drs. Armor and Hanushek "simply rehashed" the testimony rejected by the courts in CFE. PPTM p. 39. In fact, the Court of Appeals did not discuss the trial court's evaluation of the testimony of Drs. Armor or Hanushek. The primary criticism leveled at Dr. Armor by the trial court was that his analysis relied upon one year's worth of student data. Campaign for Fiscal Equity v. State, 187 Misc.2d 1, 71 (Sup. Ct. N.Y. Co. 2001). In the present case, Dr. Armor's opinion was grounded on his analysis of several categories of New York individual student, school, and school district data for three school years. See C.X. 60 pp. 2, 4, 8, 9, 19; T. 4710-4711. Moreover, Dr. Armor testified that the data that he used in this case is very different in kind and more comprehensive than the data that he utilized in CFE and that he was able to make quite a few improvements to his study. T. 4647, 4695. The CFE trial court's criticism of Dr. Hanushek's studies regarding students' receipt of Regents' diplomas and his use of computers per pupil as a resource measure (187 Misc.2d at 75) have no applicability here, as they were not part of Dr. Hanushek's testimony in the instant case. See, generally, C.X. 60.

Second, the State's education experts have established that the outputs in the plaintiff districts are not the result of inadequate funding, but derive from internal factors with respect to, among other things, the teaching and leadership decisions made locally by the plaintiff districts.⁷⁹ DPPF ¶¶188, 190, 192, 194, 196, 198, 200, 203. Such shortcomings are not surprising given the lack of stability in leadership that many of the plaintiff districts have experienced until recently.

Over the past 12 years, Poughkeepsie has had four superintendents, four high school principals, and five middle school principals. DPPF ¶189. Moreover, Poughkeepsie has advised SED that the district's former Superintendent had failed to oversee the implementation of the 2012-13 Annual Professional Performance Review evaluations despite repeated assurances to the Board of Education that he was doing so, and that there was an utter lack of oversight by the former Superintendent and former Assistant Superintendent for Curriculum and Instruction

⁷⁹The State acknowledges that it "remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights.... " CFE II, 100 N.Y.2d at 922. Specific underperforming schools within the plaintiff districts are subject to the State's school receivership law passed in 2015 (L. 2015 Ch. 56 §2 Pt. EE Subpart H), which will allow for new decision making powers by school leaders and possibly result in the appointment of outside receivers for the subject schools, allowing for changes in school operating rules and allocation of resources. While not a remedy sought by plaintiffs in the present case, such receivership status remains an option for underperforming schools in the State.

as well as gross negligence during the 2012-13 school year.

DPFF ¶¶77, 189.

Over the past twelve years, Utica has had four superintendents and a large turnover of principals. In the past two years, there have been seven changes in the principalships of the 13 Utica schools. DPFF ¶191. In the five year period between 2008-09 and 2012-13, every Niagara Falls school building witnessed a change in principals and two of the buildings were assigned three different principals. In 2012-13, nine of the 11 Niagara Falls schools had a new principal. DPFF ¶197. Between 2010 and 2013, there were numerous changes in school leadership in Newburgh, including the termination of the high school principal. DPFF ¶199. Since 2010-11, Mount Vernon has had four Superintendents. Over the past twelve years, there have been four principal changes at Longfellow Middle School and five at Mount Vernon High School.⁸⁰ Since August 2013, new principals have been appointed in an elementary school and two middle schools. DPFF ¶204. As conceded by Dr. Uebbing, such significant leadership turnover "would certainly not support improvement." T. 2747.

⁸⁰Dr. Uebbing was told by the Mount Vernon High School Principal that "he was one in a string." T. 2747.

The opinions of the State's education experts, that the outputs in the plaintiff districts are not the result of inadequate funding, is further confirmed by the fact that some schools in the plaintiff districts have significantly outperformed other schools within the district. C.X. 28 pp. 65, 67; C.X. 40 pp. 9, 44, 80; C.X. 53 pp. 7-9; C.X. 56 p. 9; C.X. 58 pp. 11-12; C.X. 64 pp. 54, 75, 90; D.X. ZZZ; D.X. K-1; T. 941-42, 1982, 1985-88, 1993-94, 2366-67, 2384-87, 2651-52, 2709-11, 2713, 3375, 3764, 3774-75. If the plaintiff districts lacked adequate resources, one would expect all of the schools within the district to perform poorly. In fact, many of the better performing schools appeared to have more effective leadership. C.X. 28 pp. 60-61, 66-67; C.X. 40 pp. 9, 140; C.X. 53 pp. 7-9, 71; C.X. 56 p. 9, 147; C.X. 58 pp. 11-12; C.X. 64 pp. 6, 54, 75, 90, 108; D.X. DDDD; T. 1994, 3775.

Third, the State has recently implemented programs to help school districts improve the quality of the education that they offer. For example, SED has recently implemented a new accountability system, to help under performing districts improve, known as the Diagnostic Tool for School and District Effectiveness ("DTSDE"). DPFF ¶30.

Under the DTSDE system, a school that performs in the bottom ten percent of the State is designated as a focus school and one that performs in the bottom five percent is designated as a priority school. A district that has at least one priority or focus school is designated as a focus district. Every focus district that has Title I schools receives school improvement grant funds. Each focus district is subject to an annual review by a team, from either SED or the district itself, which prepares a DTSDE report that evaluates, among other things, district leadership and capacity, school leader practices and decisions, curriculum development and support, and teacher practices and support. The DTSDE report provides the district's strengths and areas of improvement followed by the review team's recommendations. An underperforming school that does not qualify for designation as a focus or priority school can be identified as a local assistance plan school. DPF 32-36.

After the district receives a DTSDE for the district as a whole, it prepares a district comprehensive improvement plan ("DCIP"). After the district receives a DTSDE for an individual school, it prepares a school comprehensive education plan ("SCEP"). The DCIP and SCEP are the district's plans for the district and the individual schools based on the recommendations

contained in the DTSDE's. The districts' DCIP's and SCEP's are supported by resources that SED will provide to the districts, including professional development. SED will then assess the progress of the districts and determine whether the district or any of its schools can be removed from their accountability status or whether they may need more intrusive interventions. DPFF ¶¶37-38.

Jamestown, Poughkeepsie, Utica, Newburgh, Kingston, and Mount Vernon are currently designated as focus districts. P.X. 29, 30, 31, 46, 75, and 80 are DTSDE's, DCIP's, and SCEP's for these six districts. Although Port Jervis and Niagara Falls are in good standing, they have local assistance plan schools. P.X. 48 and 57 are local assistance plans for Port Jervis and Niagara Falls. DPFF ¶¶33-34, 39. A review of the DTSDE's, DCIP's, and SCEP's for Poughkeepsie, Utica, Jamestown, Kingston, Newburgh, and Mount Vernon and the local assistance plans for Port Jervis and Niagara Falls demonstrates that the areas that need improvement have been identified and the districts have plans in

place to remedy their shortcomings.⁸¹ In addition, six of the plaintiff districts have new Superintendents who have made leadership changes and/or instituted initiatives to make teaching more effective and improve student performance. DPFF ¶¶189, 193, 195, 199, 201-02, 204. If the plaintiff districts faithfully implement their plans for improvement, their outputs

⁸¹Many of the issues noted in the DTSDE reports relate to shortcomings in teacher and leader effectiveness similar to those identified by the State's experts. For example, in the 2014-15 Kingston DTSDE, it was noted that there was no strategic district plan with targeted improvements for raising student achievement, a lack of analysis and use of data to address weaknesses in instruction and learning, and a failure to implement consistent instructional practices. P.X. 46, Kingston DTSDE dated February 18, 2014 pp. 7, 9, 11. In the 2014-15 Jamestown DTSDE, it was noted that data was not used in all schools to inform instructional decisions and set student and school goals and that not all teachers consistently provided students with rigorous learning opportunities. P.X. 31, Jamestown DTSDE dated April 25, 2014 pp. 10, 14. In the 2014-15 Newburgh DTSDE, it was noted that the district had not communicated consistent expectations regarding the use of data to inform instruction and that data was not analyzed at the building, classroom, or student level to identify areas of need. P.X. 75, Newburgh DTSDE dated May 20, 2014 p. 10. In the 2014-15 Utica DTSDE, it was noted that the district's expectations were inconsistently reflected in teacher practices across schools, that school leaders and teachers were not all held accountable for the quality of their instructional practices or the creation of goals for students, and that there was a lack of consistent approaches in the planning and monitoring of instructional practices across all schools. P.X. 30, Utica DTSDE dated March 28, 2014 pp. 7, 11-12. In the 2014-15 Poughkeepsie DTSDE, it was noted that there was a need to use data to drive instructional improvement and student learning as a priority and that teacher use of data as a means to measure student progress was inconsistent. P.X. 29, Poughkeepsie DTSDE dated February 18, 2014 pp. 8-9. In the 2014-15 Mount Vernon DTSDE, it was noted that school leaders did not always give timely and actionable feedback to teachers after classroom observations, there was a disconnect between the district's aspirations and school practices, and instruction was not consistently data driven. P.X. 80, Mount Vernon DTSDE dated May 21, 2014 pp. 7, 9.

can improve with their existing resources.⁸² DPFF ¶¶189, 191-95, 197-99, 202, 204.

Finally, plaintiffs' assertion that the disappointing outputs in the plaintiff districts are the result of inadequate funding is belied by the fact that the districts have failed to avail themselves of numerous opportunities to apply for, receive, or use millions of dollars in additional state and federal grant monies. DPFF ¶¶47-49, 54, 58, 60-61, 63-64, 68-75.

Point III

THE COURT SHOULD DENY PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF

The third amended complaint seeks a judgment declaring that the State has failed to meet its obligations under the Education Article of the State Constitution (Article XI §1) and "[p]ermanently enjoining [the State] to create and maintain a State education aid system and funding levels that comply with the requirements of the Education Article...." Third Amended

⁸²Kingston has already "made remarkable strides in increasing student achievement...." DPFF ¶195. Since Timothy Maines became Superintendent of Jamestown, the graduation rate has improved. T. 957. Poughkeepsie made notable increases in student achievement on the July 2014 Regents examinations. DPFF ¶189.

Complaint pp. 82-83.⁸³ Nonetheless, in their post-trial memorandum, plaintiffs request, for the first time, a judgment "[d]irecting 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..." and directing the State to begin doing so "in equal annual installments commencing in the 2016-17 school year and achieving full state Foundation Aid by the 2019-20 school year...." PPTM p. 46.⁸⁴

As will be shown below, even if the court should find in favor of the plaintiffs, they would not be entitled to the

⁸³The third amended complaint requests injunctive relief in favor of the students in the plaintiff districts as well as all public school districts in the State. However, in their post-trial memorandum, plaintiffs limit their request for injunctive relief to the plaintiff districts. PPTM p. 46. Of course, this court cannot grant injunctive relief in favor of students in any district other than the plaintiff districts. See CFE II, 100 N.Y.2d at 928 (rejecting the provision of the trial court's judgment that the remedy for an Education Article violation be statewide since "the case presented to us, and consequently the remedy, is limited to the adequacy of education financing for the New York City public schools..."); New York State Association of Small City School Districts, Inc. v. State of New York, 42 A.D.3d 648, 652 (3d Dept. 2007) (to state a claim under the Education Article, plaintiff must allege harm caused by a district-wide failure to each particular district on which plaintiffs base their claim).

⁸⁴Plaintiffs' request that the court direct the State to implement the Foundation Aid formula as originally enacted is based on their premise that 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." PPTM p. 45. As demonstrated in Point I, this premise is incorrect.

injunctive relief requested in their post-trial memorandum or to any injunctive relief for that matter.

A. Plaintiffs are not entitled to the injunctive relief requested in their post-trial memorandum.

- 1. Plaintiffs are not entitled to an injunction requiring the State to enact appropriations fully phasing in the Foundation Aid formula as originally enacted in 2007.**

It is well established that discretionary budget decisions of the Legislature are not subject to judicial intervention. The power to allocate fiscal resources rests squarely with the Executive and the Legislature and the court lacks the authority to direct the State to enact or adopt a particular budget or budgetary measure. Under separation of powers principles, budgetary issues are the prerogative of the elected branches and the court cannot intervene and substitute its judgment for that of the Legislature or the Executive. See Board of Education, Levittown Union Free School District v. Nyquist, 57 N.Y.2d 27, 38-39 (1982) ("The determination of the amounts, sources, and objectives of expenditures of public moneys for educational purposes, especially at the State level, presents issues of enormous practical and political complexity, and resolution appropriately is largely left to the interplay of the interests and forces directly involved... in the areas of legislative and executive activity."); Campaign for Fiscal Equity, Inc. v. State of New York, 29 A.D.3d 175, 185 (1st Dept. 2006) ("[W]ithout the

ability or the authority to review the entire state budget, 'it is untenable that the judicial process... should interfere and reorder priorities, allocate the limited resources available, and in effect direct how the vast [city and state] enterprise[s] should conduct [their] affairs'". (citing Jones v. Beame, 45 N.Y.2d 402, 407 (1978)).

The First Department has recently reaffirmed that courts are without power to direct the Legislature to appropriate or pay any amount:

There is no provision in the Constitution or statute that enables a court to impose on the legislature any dollar figure, no matter how calculated, since the judiciary, as a coequal branch of government, simply cannot constitutionally tell the legislature to appropriate or pay any amount of money for any specific purpose.... [A]ny mandate to pay those sums would encroach upon the budgeting powers of the Legislature and thus would violate the Separation of Powers Doctrine.

Larabee v. Governor of the State of New York, 121 A.D.3d 162, 170 (1st Dept. 2014) (citing Maron v. Silver, 14 N.Y.3d 230, 261 (2010)).

Indeed, in CFE II, no dollar amount or cost schedule was dictated by the court, since it did not have "the authority, nor the ability, nor the will, to micromanage education financing." 100 N.Y.2d at 925. Instead, certain educational criteria were determined by the court as being within the definition of a sound basic education and discretion was left to the Legislature

to provide funding for those services. Id. at 930 (directing the State to ascertain the actual cost of providing a sound basic education in New York City). In CFE III, the court again refused to order the implementation of a specific budget. 8 N.Y.3d at 27.

Therefore, even if this court should find in favor of the plaintiffs in one or more of the plaintiff districts, they cannot obtain the extraordinary relief of a judgment directing the State to pay amounts contemplated by legislation enacted nine years ago and in excess of what has been appropriated in the most recent budget. Rather, should it find in favor of any of the plaintiffs, this court should follow binding precedent and defer to the current political branches to craft an appropriate remedy tailored specifically to any district or districts found to currently lack adequate resources.

2. Plaintiffs are not entitled to injunctive relief requested for the first time in their post-trial memorandum.

Plaintiffs' request that the court direct the State to implement the Foundation Aid formula as originally enacted should be also denied since, as noted above, it is not contained in the third amended complaint. Indeed, the first time that the State received any notice that the plaintiffs would be

requesting such relief was in their post-trial memorandum.⁸⁵ To grant such extraordinary relief with no notice to the State would be patently unfair and highly prejudicial to the taxpayers of New York State. Cf. Worrell v. Lopez, 309 A.D.2d 928, 929 (2d Dept. 2003) (Supreme Court erred in granting preliminary injunctive relief to the plaintiff which was not requested in his motion).

B. Plaintiffs are not entitled to any injunctive relief since there has been no showing that the plaintiffs will suffer irreparable harm absent the requested injunction.

The Court of Appeals has explicitly held that school districts and school boards do not have the capacity to assert constitutional challenges against the State. See City of New York v. State of New York, 86 N.Y.2d 286, 291 (1995). See also New York State Association of Small City School Districts, Inc. v. State of New York, 42 A.D.3d 648, 650 (3d Dept. 2007) (dismissing claims by school districts and school board members for lack of capacity and standing).

Accordingly, in order to be able to obtain a permanent injunction, the individual plaintiffs must be able to demonstrate that they will suffer irreparable harm absent the

⁸⁵At page 26 of their pre-trial memorandum, plaintiffs stated that "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."

injunction. As stated by the Appellate Division, Second Department, "[a] permanent injunction is a drastic remedy which may be granted only where the plaintiff demonstrates that it will suffer irreparable harm absent the injunction." Icy Splash Food & Beverage, Inc. v. Henckel, 14 A.D.3d 595, 596 (2d Dept. 2005) (citing Kane v. Walsh, 295 N.Y. 198, 205-06 (1946)).

However, not a scintilla of evidence was offered at trial to establish that any plaintiff would suffer irreparable harm absent an injunction. In fact, not one plaintiff even testified at trial and not once was any of the plaintiffs' names mentioned by a single plaintiffs' witness.⁸⁶

Since there has been no showing that the plaintiffs will suffer irreparable harm absent the requested injunction, the court should deny the request for injunctive relief.

CONCLUSION

The evidence has established that the plaintiff districts have adequate resources to provide the opportunity for a sound basic education, including an adequate number of sufficiently qualified teachers; school facilities and classrooms which

⁸⁶Paragraphs 9 and 10 of the complaint dated October 30, 2008, the amended complaint dated March 18, 2009, the second amended complaint dated March 24, 2009, and the third amended complaint dated June 2, 2011 allege that the nominal plaintiffs are parents of students in the plaintiff districts. However, there has been no allegation, let alone proof, as to what grades the nominal plaintiffs' children were in at the time of the filings of the various pleadings. Indeed, there was no proof presented at trial that any of the nominal plaintiffs still have children in the plaintiff districts.

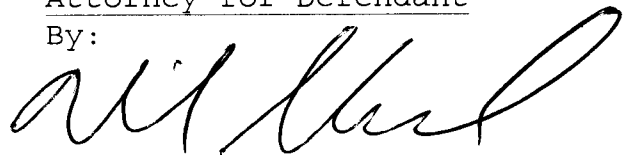
provide enough light, space, heat, and air to permit children to learn; and adequate instrumentalities of learning such as classroom supplies, textbooks, libraries, and computers to provide their students with the opportunity for a sound basic education. Thus, the proof has shown that the inputs are constitutionally adequate, mandating the dismissal of plaintiffs' Education Article challenge. Further, plaintiffs were unable to meet their burden of establishing that any proven deficiencies in outputs in their districts are the result of inadequate funding. Therefore, the third amended complaint should be dismissed.

Dated: Albany, New York
January 25, 2016

Yours, etc.,

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