



CAMPAIGN FOR FISCAL EQUITY, INC.

**In Evidence:  
Policy Reports from the CFE Trial**

**SPECIAL REPORT:  
THE TRIAL COURT'S DECISION**

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## PREFACE

On January 10, 2001, Justice Leland DeGrasse of the New York State Supreme Court issued an unambiguous decision in the landmark school-funding case, *Campaign for Fiscal Equity (CFE), Inc. v. State of New York*, handing a major victory to CFE and millions of public school children in New York City and around the state. Justice DeGrasse declared the current state school funding system unconstitutional and ordered the legislature to replace it with a new costs-based system that ensures that every school district in the state has sufficient resources to provide the opportunity for a sound basic education to all its students.

CFE's historic lawsuit was first filed eight years ago. It charged that the state, for years, has underfunded the New York City public schools, and, as a result, denies city students their constitutional right to a sound basic education—an education that should provide them with the knowledge and skills needed to become productive citizens. The trial in this case lasted seven months. It brought together testimony from top education experts from New York and around the country, evidence from cutting-edge research on the entire range of relevant education issues, as well as exhaustive legal research on similar cases nationwide.

The trial and decision were covered extensively in both local and national presses. Besides its clear importance for the future of New York City's schools, *CFE v. State* commands statewide attention since any reforms of the state education funding system that the legislature adopts will benefit students throughout the state who are currently being denied the opportunity for a sound basic education. The case has also generated substantial national attention because of its thorough analysis of the core elements for an adequate education and their relationship to standards-based school reform.

Justice DeGrasse's comprehensive, insightful decision runs over 180 pages long. It covers many topics in detail. This report, a special volume of the **In Evidence** series, summarizes the major areas of the decision; it also includes a table of contents to the complete decision. For access to the entire text of the decision, please visit the CFE website at [www.cfequity.org](http://www.cfequity.org).

Michael A. Rebell  
Executive Director and Counsel

## INTRODUCTION

After months of deliberation, Justice Leland DeGrasse of the New York State Supreme Court issued a landmark decision in the case *Campaign for Fiscal Equity, Inc. v. the State of New York* that should dramatically change the way the state funds public education. His ruling invalidates the current system by which New York State distributes school aid on the grounds that it deprives students of the sound basic education that they are guaranteed by the state constitution. Justice DeGrasse has given the state until September 15, 2001, to devise a new cost-based system that accounts for student need and ensures every school in the state has sufficient resources to provide its students the opportunity for an education that will prepare them to be productive citizens.

Justice DeGrasse's historic ruling grew out of an unlikely quest that began nearly eight years ago. Back in 1992, Robert Jackson, a public school parent and community school board member, finally fed up with years of school-budget cuts, sought out his school board's lawyer, Michael A. Rebell. Jackson told Rebell that he wanted to sue New York State for fair funding for the city's schools. Rebell, who had been litigating major education law reform cases for years, cautioned Jackson that the Court of Appeals, the state's highest court, had rejected a major challenge to the state aid formula ten years earlier, the case of *Levittown v. Nyquist*, and that it might be difficult to overcome that precedent. But Jackson was persistent, and the idea went forward.

Jackson, Rebell, and some other key education activists brought together a coalition of advocacy groups, parent organizations, and community school boards as the Campaign for Fiscal Equity, Inc. (CFE). In 1993, after thoroughly

reviewing recent litigations in other states and developing new legal theories based on that analysis, CFE went to court, filing a lawsuit against New York State on behalf of New York City schoolchildren and charging that the state unfairly shortchanged the city's schools. Though the State moved to dismiss the case, in 1995 the New York State Court of Appeals distinguished its prior ruling and upheld CFE's right to pursue a constitutional challenge to the state's education finance system.

In *CFE v. State*, CFE argued that, for years, New York State has underfunded the public schools in New York City and other high-need areas around the state. As a result, CFE charged, students were denied their constitutional right to a sound basic education—an education that should provide them with the knowledge and skills needed to function productively as citizens and to sustain competitive employment. The suit further charged that the system violated federal antidiscrimination laws because it had "an adverse and disparate impact" on minority students.

The Court of Appeals set out the issues to be addressed in the trial. The first task was the elaboration of the definition of a "sound basic education" - the educational standard to which the state should be held. The next was to prove that schools lacked the resources to provide all students with the opportunity for a sound basic education and that the state education finance system was to blame.

CFE established that the present funding system does not deliver resources adequate to meet students' needs because it is not set up to do this; the

system has no mechanism at all to assess need. Despite being a complex collection of nearly 50 disparate formulas and grants purporting to relate to spending, the system no longer distributes education aid on any rational basis. Instead, it serves primarily to support a long-standing political deal that each year allocates to New York City and other parts of the state a set percentage of any increase in state education aid, no matter the actual needs or costs of educating students.

Over the years, the state education aid distribution system has evolved into an overcomplicated hodgepodge of formulas, grants, and adjustments—mostly vestiges of past proposals designed for political gains. Only a very few state education department and legislative insiders understand the system. It certainly is not comprehensible to the average citizen. For this reason, there is no accountability for whether and how it works.

To make matters worse, the crucial annual decisions about how much to budget for state education aid and how much aid to allocate for New York City are, as has long been understood, made in a private deal by "three men in a room." In other words, the governor and legislative leaders negotiate the budget based on political rather than educational needs.

Justice DeGrasse's well-reasoned decision, which is summarized in this report, declared the state education finance system unconstitutional and also found that it disproportionately harmed minority students. To remedy these wrongs, DeGrasse ordered the state legislature to reform the current system promptly. With an eye to avoiding the political wrangling and delays that have

hampered similar efforts in other states, DeGrasse warned that the court would intervene if the governor and legislature did not quickly and effectively implement the needed reforms.

Justice DeGrasse's decision defines a sound basic education in terms of the foundational skills students need to become productive citizens capable of civic engagement and sustaining competitive employment. It requires the state to create a fair, new funding system that assesses the actual costs of an adequate education, takes local costs into account, can be understood by the general public, requires stable funding for effective educational planning, and includes a system of accountability to measure its own efficacy. It names seven essential resources, including sufficient numbers of qualified school personnel, appropriate class sizes, additional resources for at-risk students, and adequate and accessible facilities, that the state must fund at minimum.

Justice DeGrasse's remedy restores the necessary link between need--that is, the costs associated with providing an adequate education to all New York's students--and the resources devoted to meeting that need. This link has for too long been absent from the way New York State funds public education. In addition to reestablishing the connection between needs and resources, DeGrasse has required the state to implement an accountability plan to ensure that all allocated funds are spent effectively to create the opportunity for all students to meet the constitutional standard for education.

## RULING IN *CFE v. STATE* SHOWS NEW YORK THE ROUTE TO REFORM

A timely reminder from another landmark education decision, *Brown v. Board of Education*, prefaces the ruling in the case of *Campaign for Fiscal Equity, Inc. (CFE) v. the State of New York* by Justice Leland DeGrasse of the New York State Supreme Court. “[E]ducation,” it begins, “is perhaps the most important function of state and local governments.” Justice DeGrasse’s own historic ruling addresses what he calls an especially difficult aspect of this governmental responsibility, “how to devise a method of funding public schools that assures students at least a minimally adequate education” (p. 2).<sup>1</sup> His well-reasoned decision creates a much-needed plan to help New York State tackle this crucial task.

### *An Overview of the Case*

In *CFE v. State*, the plaintiffs, CFE, claimed that the state has failed to fund its schools adequately to ensure students the sound basic education guaranteed them by the Education Article of the New York State Constitution (NY Const article 11, § 1). CFE further claimed that the state’s funding system has “an adverse and disparate impact” on minority students, who make up 73% of the state’s minority students and 84% of the city’s public school enrollment, which violates Title VI of the Civil Rights Act of 1964 942 USC § 2000d; 34 CFE § 100.3[b] [1], [2]).

The defendants, New York State and Governor George Pataki, disputed these claims and argued that the state provides more than enough funds to afford all students a sound basic education. They argued that, if New York City’s students lack sufficient resources, it is as a result of the city’s own failure to fund its schools adequately and the New York City Board of Education’s inability to

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<sup>1</sup> Page numbers refer to the official text version distributed by the trial court on Jan. 10, 2001, and may differ from versions of the decision available online.

manage its resources properly. The State further argued that there is no discrimination in the way the state distributes education aid.

The Court of Appeals made clear, in its 1995 decision, exactly what questions had to be resolved at trial. The first task set by the court was to define a sound basic education—the educational standard to which the state should be held. Second, the trial needed to determine whether all students were currently being provided the opportunity to reach that basic level of education. Finally, if they were not, the trial court was required to determine whether there was a causal link between this failure and the state funding system. Both parties to the suit presented extensive evidence and testimony to support their arguments on these three issues.

Justice DeGrasse summarizes his findings in *CFE v. State* as follows:

The court holds that the education provided New York City students is so deficient that it falls below the constitutional floor set by the Education Article of the New York State Constitution. The court also finds that the State's actions are a substantial cause of this constitutional violation.

With respect to plaintiffs' claim under Title VI's implementing regulations, the court finds that the State school funding system has an adverse and disparate impact on minority public school children and that this disparate impact is not adequately justified by any reason related to education. (p. 3)

What follows will explore the reasoning behind the ruling, as well as the evidence and testimony that Justice DeGrasse found persuasive. It will also set out the important details of the decision.

## EVALUATING THE EDUCATION ARTICLE CLAIM

### *Defining a Sound Basic Education*

To guide the trial court's the evaluation of the Education Article claim—that students were being denied a “sound basic education”—the Court of Appeals provided a preliminary, or template, definition of the constitutional standard for education. This definition, that children should be “provided the opportunity to acquire the basic literacy, calculating and verbal skills necessary to enable them to eventually function productively as civic participants capable of voting and serving on a jury,” was then to be reconsidered and fully evaluated based on the evidence adduced at trial.

After reviewing extensive evidence on the skills students need to function productively in the manner outlined by the Court of Appeals, Justice DeGrasse determined that a sound basic education, “instills the skills students need to become productive citizens” (p. 17). Productive citizenship, he explains, means “more than just being qualified to vote or serve as a juror, but to do so capably and knowledgeably. It connotes civic engagement” (p. 18). He rejects the State's argument that passing the Regents Competency Tests, which require only eighth-grade-level reading and writing and sixth-grade-level math, suffices to demonstrate that a student has mastered the needed skills.

Justice DeGrasse determined that the public schools should impart the fundamental intellectual tools needed by today's voters and jurors. These include the higher level thinking skills needed “to evaluate complex issues, such as campaign finance reform, tax policy, and global warming” and “the verbal, reasoning, math, science, and socialization skills” necessary to decide complex

matters and “determine questions of fact concerning [for example] DNA evidence, statistical analyses, and convoluted financial fraud” (p. 19).

Beyond this, Justice DeGrasse finds that the Court of Appeals’ notion of productive citizenship also includes schools’ duty to give students the skills they need to obtain productive employment. Persuaded by expert testimony that preparing students for employment has been a longstanding purpose of public education and by numerous similar findings in other states, DeGrasse goes on to explore what level of employment, and therefore what level of skills, this would imply. Weighing evidence and testimony about both the economic needs of the state and the needs of high school graduates, DeGrasse concludes that the foundational skills for sustained competitive employment are high-level academic skills that include computer skills and a solid grounding in math and science (pp. 23-24).

The skills Justice DeGrasse calls for embody the essence of the Regents Learning Standards, the standards to which all New York students are held. In fact, he specifically points to the Regents English Language Arts Standard 1 (which calls for students to “collect data, facts, and ideas; discover relationships, concepts, and generalizations; and use knowledge generated from oral, written, and electronically produced texts. . . . [and to] use oral and written language to acquire, interpret, apply, and transmit information”<sup>2</sup>) as an example of the type of high level skills the constitution requires. However, DeGrasse stops short of using the standards themselves to define a sound basic education, reasoning that this would give a state agency the authority to define a constitutional right and would fail to “give due deference to the State Constitution and the courts’ final authority . . . ” (p. 17). The Regents Learning Standards comprise the skills

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<sup>2</sup> New York State Education Department, Learning Standards for English Language Arts, rev. ed., March 1996.

today's students need, whereas the constitutional standard must be timeless. The definition of a sound basic education must be able to evolve as the needs and demands of our society change.

Having thus defined the sound basic education that the state must afford to all students, Justice DeGrasse turns his attention to his evaluation of whether the opportunity for such an education is being provided to New York City's public school students. He begins with the important finding, based on the evidence and testimony presented, that all children, even those put at risk of academic failure by poverty, race, ethnicity, and immigration status, can learn. "Demography is not destiny," he writes. "The amount of melanin in a student's skin, the home country of her antecedents, the amount of money in the family bank account, are not the inexorable determinants of academic success" (p. 34). All children, he concludes, "are capable of seizing the opportunity for a sound basic education if they are given sufficient resources" (p. 34).

### *Measuring a Sound Basic Education Through Inputs and Outputs*

To assess whether the city's students are indeed receiving a sound basic education, Justice DeGrasse, as directed by the Court of Appeals, evaluates both inputs—the resources available to the schools, and outputs—student achievement measures like test scores and graduation rates. He examines them over multiple years, persuaded by trial evidence that "education is cumulative," and that a student's performance any given year reflects not just his or her education that year, but the preceding years in school as well.

### *Inputs*

Justice DeGrasse considers the adequacy of each of the types of resources enumerated by the Court of Appeals: (1) qualified personnel, (2) facilities, and (3) instrumentalities of learning. What follows are his conclusions.

### *Teacher Quality Is Inadequate*

Justice DeGrasse concludes from the evidence and testimony presented at trial by both CFE and the State that teacher quality directly affects student achievement. Having evaluated the evidence put forth to measure teacher quality—teacher certification statistics, teachers’ scores on certification exams, and the quality of teachers’ undergraduate education, and so on— he further concludes that the quality of New York public school teachers as a whole is inadequate. DeGrasse takes pains to point out, however, that “there are many excellent and dedicated teachers employed in New York City public schools—many of whom foster learning under extremely adverse conditions. It is not hyperbolic to describe some . . . as heroes” (p. 36)

DeGrasse specifically cites State Education Department (SED) and other statistics on teacher qualifications compiled for CFE by Dr. Hamilton Lankford. These show, for example, the much higher number of uncertified teachers in New York City (14%) compared with the rest of the state (3%), and the tendency for uncertified teachers to be concentrated in the lowest performing schools; New York City teachers’ much higher failure on certification exams as compared with teachers in the rest of the state (e.g., for New York City teachers employed in 1997-1998 the first-time failure rate on the required basic knowledge tests was 31.1% versus 4.7% in the rest of the state); and New York City’s greater percentage of teachers from less competitive colleges, with less experience, and less education. DeGrasse further cites the inadequacy of the professional development, or in-service teacher training, available to build the capacity of a teaching force that is underprepared for the challenges of a New York City classroom.

As to why New York City's teachers are so much less qualified than elsewhere in the state, as measured by objective indicators, DeGrasse concludes from the evidence and testimony presented at trial that the city is not able to be competitive in the labor market. New York City competes for teachers with neighboring counties but is at a competitive disadvantage "because New York City school teachers make substantially less and generally labor under more difficult working conditions than their suburban counterparts" (p. 50).

Justice DeGrasse quotes figures from SED and New York City Board of Education (BOE) officials that cited a range of salary differentials between New York City and the suburbs as between 20% and 36%, depending on experience level and suburbs compared. DeGrasse also cites as persuasive BOE evidence and testimony that salary difference is the most common reason qualified teachers choose to teach in the suburbs over the city. In addition, a study of Texas school data by Dr. Ronald Ferguson demonstrates a clear relationship between student performance and teachers' salaries.

DeGrasse is not convinced by the State's argument that the BOE's problem attracting qualified teachers results from weak recruitment efforts. He finds that the BOE's recruitment practices are adequate. "The problem is not BOE's sales pitch, but its product," DeGrasse writes.

#### *Other Inadequacies Impede Delivery of Adequate Curricula*

DeGrasse finds that the BOE's curricula are adequate for providing a sound basic education. He adds, however, that inadequate teaching and school facilities "have hampered the delivery of the curricula" (p. 56). Beyond this, he notes that the ever-shrinking investment in arts and physical education over the last two decades has made the delivery of a core curriculum even harder. While not, strictly speaking, part of a sound basic education, these subjects are

important supporting players, especially for at-risk students, DeGrasse writes. He cites evidence that arts and physical education foster self-confidence, help attendance, and improve socialization skills.

### *School Facilities Are Inadequate*

On the matter of the Court of Appeals' second "input," Justice DeGrasse concludes from trial evidence and testimony that New York City's school facilities are not adequate to afford students the opportunity for a sound basic education. He further specifically finds that there is a "causal link" between poor facilities and student performance.

DeGrasse was persuaded by numerous SED and BOE documents that have, for years, attested to the deplorable condition of the city's schools and, for just as long, requested, but not received, funding adequate to repair and upgrade these facilities. In 1988, the state legislature found many schools "overcrowded, unsafe, unhealthy, and unusable," and concluded that the "physical deterioration of the schools is a serious impediment to teaching and learning." School buildings, most of which were build over 50 years ago, often have leaky roofs, crumbling facades, little climate control, few science labs, faulty plumbing, inadequate classroom space, to name but a few of the many problems.<sup>3</sup> Moderate to severe overcrowding in many community school districts exacerbates the facilities problem, increasing wear and tear, impeding repairs, and forcing the conversion of specialized spaces, like gymnasiums, art rooms, and science labs, into classroom space.

For Justice DeGrasse, credible evidence based on the "experience and intuition of knowledgeable educators" demonstrates that the poor physical conditions of schools affect student outcomes. Students' educational

opportunities and achievement suffer from the lack of adequate labs, computers, and the like, as well as from the message about the value of school sent by such adverse environmental conditions as crumbling plaster, broken plumbing, and peeling paint.

### *Overcrowding Hinders Student Achievement*

DeGrasse finds persuasive evidence at trial that overcrowding hinders student achievement. Overcrowding in the New York public schools has become severe over the last 15 years. Within a few years, enrollment may reach an all-time high. Overcrowding forces schools to create classroom space wherever they can—in libraries, gyms, and science labs, as mentioned above, which deprives students of these facilities, but also in cramped, windowless, or noisy spaces like offices, hallways, and storage rooms. Some schools are forced to use trailers, which are isolated from the rest of the school and usurp playground space. Other measures taken by schools to deal with overcrowding include reducing the length of the school day and creating so many lunch shifts that some children must eat mid-morning or late afternoon and go hungry for the rest of the day.

But the worst effect of overcrowding, DeGrasse finds, is large class sizes. The evidence from the federal government, SED, and BOE is clear, he writes, that smaller classes improve student achievement, particularly for at-risk students. Students get more of the teacher's time and attention; teachers spend less time on administrative work; discipline problems are diminished. He emphasizes the significance of the Tennessee Student Teacher Achievement Ratio (STAR) project, an extensive controlled experiment on class size, which shows "a significant causal relationship between reducing class size and improving student achievement" (p. 80). Experts recommend classes of no more than 20 students.

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<sup>3</sup> New York School Construction Auth. Act L 1988, ch 738 §1.

Average city class sizes range from around 25 children, in kindergarten, to 29 in eighth grade. Many students are in much larger classes. New York City class sizes have averaged 3 or 4 more students per classroom than statewide for over 20 years. Such large class sizes, DeGrasse concludes on the basis of the evidence and testimony presented, have a negative impact on student performance.

### *Instrumentalities of Learning Are Insufficient*

The third input the Court of Appeals required examined for adequacy was “instrumentalities of learning.” Justice DeGrasse weighed the evidence on the adequacy of such items and concludes that the New York City school system (1) currently has adequate textbooks but lacks a structural funding mechanism to assure it in the future; (2) lacks adequate library books; and (3) lacks adequate instructional technology, as well as teacher training in the use of technology.

### *Outputs*

The Court of Appeals also directed an examination of outputs, or student achievement data. It stated that performance levels on standardized tests are helpful, although they should also be used cautiously. Accordingly, Justice DeGrasse evaluated evidence concerning graduation and drop-out rates, as well as the results of K-12 statewide and citywide standardized examinations.

### *Graduation and Dropout Rates*

Graduation rates in New York City have remained relatively steady since the late 1980s. Approximately 50% of the students entering ninth grade can expect to graduate four years later. After seven years, at age 21, 70% can expect to have graduated, though 10% will have received a GED rather than a regular high school diploma. DeGrasse concludes from evidence at trial that GED

“requirements are too minimal to assure that a student has been prepared for the duties of productive citizenship” (p. 94).

Historically, 48% of the entering ninth graders received a local diploma. For this diploma, students needed only to pass the Regents Competency Tests (RCTs). These tests require an eighth grade reading level and sixth grade math level, according to testimony at trial. Only the remainder of the students, about 12%, received a Regents diploma, the only diploma that DeGrasse judges will demonstrate that students have received a sound basic education.

Though the State claimed that the high passage rate for the RCTs indicated that New York City students were receiving a sound basic education, Justice DeGrasse rejects this argument. “The RCTs do not test the basic literacy, calculating and verbal skills that should be imparted to all high school graduates” (p. 95), he writes.

The State further argued that it is required only to provide the opportunity for a sound basic education, that it has done this, and that students’ inability to take advantage of this opportunity results from “socioeconomic deficits” they suffer. DeGrasse responds,

The court agrees that the State must only provide the opportunity for a sound basic education, but this opportunity must be placed within reach of all students. The court rejects the argument that the State is excused from its constitutional obligations when public school students present with socioeconomic deficits. (p. 98)

### *Standardized Testing*

Justice DeGrasse finds evidence that the New York City public schools are not providing the required level of education. He finds a pattern of low

performance on all state- and city-administered standardized tests. Between 1990 and 1998, when the state used a test called the Degrees of Reading power, nearly all school districts outside of New York City were able to achieve the state mandate that at least 90% of their students scored at or above a very low “state reference point.” The city could not. In 1998-9, the SED adopted more rigorous tests, aligned with the state’s learning standards. On every test at each level, fewer than half of the city’s students scored in levels three or four, the higher levels that show that students are on track to meet the Regents standards.

DeGrasse concludes from all the output data that city students are not receiving a minimally adequate education. He calls this evidence “overwhelming” when combined with the evidence of inadequate resources already discussed. He clearly describes the enormity of the wrong that has been committed: “The majority of the City’s public school students leave high school unprepared for more than low-paying work, unprepared for college, and unprepared for the duties place upon them by a democratic society. The schools have broken their covenant with students, and with society (p. 105).” DeGrasse then turns to the question of causation, to determine whether schools’ failure is a result of the state’s actions.

## ESTABLISHING A CAUSAL LINK BETWEEN FUNDING AND FAILURE

The Court of Appeals made plain to Justice DeGrasse that to prove its case CFE had to “establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City school children.”<sup>4</sup> Accordingly, DeGrasse weighed the evidence from the State that resources do not affect student achievement against evidence from CFE that resources do matter. He further examined the question of who is responsible for inadequate resources, given that the public schools are funded jointly by the state, city, and federal government.

### *Money Matters*

On the question of whether there is a causal link between funding and educational opportunity, Justice DeGrasse finds that increased educational resources, if well spent, can have a “significant and lasting effect” on student achievement (p. 117).

He is not persuaded by the testimony of the State’s experts, David Armor and Eric Hanushek. Both took a position opposing that of the SED and the Board of Regents, arguing that increased spending cannot be shown to result in improved student outcomes. DeGrasse rejects David Armor’s testimony that students’ socioeconomic status, rather than educational resources, plays a determining role in their achievement. The premise that “at risk students’ educational potential is immutably shaped by their backgrounds, “ DeGrasse writes, is not supported by the evidence at trial (p. 111). He finds fault with Eric

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<sup>4</sup> *CFE v. State* 86 NY2d at 318.

Hanushek's analyses of state and city data to study the effect of resources on student achievement, characterizing them as incomplete.

Rather, Justice DeGrasse finds that the evidence supports the position that money matters and that there is a causal link between funding and educational opportunity. More resources can supply more effective teachers and administrators, smaller class sizes, and better school facilities, all of which, evidence demonstrated, boost student achievement. More resources can permit an "expanded platform" of programs for the at-risk students that make up much of New York City's public school population. Programs such as pre-Kindergarten, after school, and summer school have been shown to promote better student outcomes. More resources can also provide wide access to literacy programs that have been proven effective for the lucky few students who now receive them.

DeGrasse finds that the city public schools will need additional resources in order to come into compliance with the state constitution. He leaves the choice of the precise spending measures to the state legislature. As examples of the types of additional funding that are needed, he lists additional funding for teachers' salaries and professional development; additional monies to remedy the disrepair and overcrowding of the city's school facilities; extra funds to provide an expanded platform for at-risk children, including universal pre-K, summer school, and literacy programs.

### *New York City's Role in School Funding*

Moving on to the question of who is responsible for providing adequate funding, Justice DeGrasse discounts the State's arguments that New York City is to blame for the funding shortfall in its schools. DeGrasse rejects the State's claim that the BOE has adequate funds but mismanages them. He finds that the trial

produced little evidence of waste or corruption at the BOE. He also dismisses the argument that city schools' funding shortfalls result from the city's failure to fund them adequately. He finds that New York City citizens, in fact, have a higher than average tax burden and that the city's ability to fund education at a higher level to be limited by its diversified tax base, whose revenues fluctuate with the economy, by the high costs for other municipal services that must be financed from the same budget as the schools, and by the city's high debt burden. Nevertheless, DeGrasse concludes that it may be necessary for the legislature to enact a maintenance of effort law in order to ensure that the city maintain an appropriate level of funding for its schools.

*The State Is Responsible for Adequate Education Funding*

Whether or not the above are factors contributing to the public schools' current dismal situation, Justice DeGrasse says, the ultimate responsibility for ensuring all students a sound basic education rests with the state. "The State Constitution reposes responsibility to provide a sound basic education with the State, and if the State's subdivisions [e.g., the city or the BOE] act to impede the delivery of a sound basic education it is the State's responsibility under the constitution to remove such impediments" (p. 124).

The state, for example, prescribes the system by which the city public schools are governed. It also prescribes the method by which they are funded. The state has designated New York City as a "dependent" school district, lacking the power to levy taxes for its own funding and instead relying on the municipal government and citywide taxes for its school budget. The authority and the means to effect changes in the way the city runs and funds its schools belong to the state, therefore Justice DeGrasse finds the state's attempts to shift responsibility to the city to be without merit.

More importantly, DeGrasse finds that the state aid distribution system itself is a “substantial cause” of the public schools’ present crisis. The present system, an arbitrary, overcomplicated collection of formulas that almost nobody fully understands, no longer distributes aid on any rational basis.

Justice DeGrasse concludes,

The State’s school aid distribution system has for over a decade prevented the New York City public school system from receiving sufficient funds to provide its students with a sound basic education. . . . The evidence demonstrates that the State aid distribution system is unnecessarily complex and opaque. . . . However, more important than the formulas’ and grants’ needless complexity is their malleability in practice. (p. 128)

That is, evidence at trial demonstrated that the formulas are “worked backwards” each year so that they conform to budget agreements made privately among the governor and legislative leaders (the notorious process known as “three men in a room”). This, DeGrasse notes, is not in itself unconstitutional. However, “the fact that the State’s school funding mechanism has *failed for more than a decade to align funding with need*—and thus failed to provide a sound basic education to New York City’s school children—that runs afoul of the Education Article (p. 129; emphasis added).” In other words, because the system for allocation and distributing state education aid has no means for determining or accounting for the actual costs or needs of students in any given school district, it has been unable to provide sufficient resources to afford all students the opportunity for a minimally adequate education.

## EVALUATING THE TITLE VI CLAIM

After examining the evidence and testimony, Justice DeGrasse also found for CFE on its second claim, that the state funding system violates the implementing regulations for Title VI of the Civil Rights Act of 1964 (42 USC § 2000d), giving CFE the first such substantive holding in the nation. That is, it violates the rights of New York City minority students to equal educational opportunity. Title VI provides that

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

CFE did not claim intentional discrimination, rather it claimed, under the U.S. Department of Education's Title VI implementing regulations, that the state's funding system has an adverse and disparate impact on minority students. CFE bases that claim on the following evidence: (1) 73% of the state's minority public school students are enrolled in New York City's public schools; (2) minority students make up approximately 84% of New York City's public school enrollment; and (3) New York City receives less funding per capita, on average, than districts in the rest of the state.

Agreeing that disparate impact can be established in this way, Justice DeGrasse turns to evaluate the State's rationale for the discriminatory effects of its funding distribution system. He is not persuaded by any of the State's four justifications.

(1) The State argued that the funding formula equalizes wealth and New York City, as a relatively wealthy district, gets less aid. DeGrasse concludes that though wealth equalization is a worthy goal, the state's assessment of New York City's wealth omits two key factors. It penalizes New York City children because the city has a much higher level of student need than its relative wealth predicts; furthermore, the state's calculation of wealth does not account for regional costs and the city has the highest costs in the state. (2) The State argued that New York City loses funding because it is allocated according to districts' average attendance rather than enrollment, in order to encourage attendance and discourage enrollment inflation. DeGrasse finds that the choice to base school funding on attendance is "unnecessarily punitive" to the city, and "perverse" since at-risk students who have greater truancy rates need more, not fewer, educational services (p. 175). (3) The State argues that transportation and building aid, which is provided more generously to districts upstate, should be omitted from the Title VI analysis. Justice DeGrasse finds no justification for the adverse effect of these formulas on city children. (4) The State argues that the formulas take student need into account. DeGrasse finds that the state funding system does not sufficiently take into account the needs of New York City's students and, in fact, the city receives less aid than other high need districts. Because the State does not have legitimate justification for the adverse and disparate impact of the funding system, DeGrasse holds it in violation of the Title VI regulations.

## CONCLUSION: THE REMEDIAL ORDER

Having found the State in violation of the Education Article of the state constitution as well as of Title VI, Justice DeGrasse orders reforms of school financing and governance to redress these constitutional and regulatory violations. In prescribing his remedy, he is sensitive to the failures of courts in other states that, on the one hand, have tried to micromanage such reforms, and on the other hand, have not give the state sufficient guidelines to ensure prompt compliance. DeGrasse leaves to the legislature, and the expertise of the SED, the Regents, and the BOE, the work of designing the details of a new system and undertaking any other structural reforms that may be necessary. He gives an implementation deadline of September 15, 2001.

Justice DeGrasse restates the constitutional requirements for a sound basic education as comprising “the foundational skills that students need to become productive citizens capable of civic engagement and sustaining competitive employment” (p. 179). A sound basic education requires that, at a minimum, the State guarantee New York City students the following resources:

1. Sufficient numbers of qualified teachers, principals and other personnel.
2. Appropriate class sizes.
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum.
4. Sufficient and up-to-date books, supplies, libraries, educational technology and laboratories.
5. Suitable curricula, including an expanded platform of programs to help at risk students by giving them “more time on task.”

6. Adequate resources for students with extraordinary needs.
7. A safe orderly environment.

Importantly, Justice DeGrasse orders the legislature to begin its overhaul of the funding formula with a costing-out study and sets certain basic parameters for the design of the new system.

In the course of reforming the school finance system, a threshold task that must be performed by defendants is ascertaining, to the extent possible, the actual costs of providing a sound basic education in districts around the State. Once this is done, reforms to the current system of financing school funding should address the shortcomings of the current system, by, inter alia:

1. Ensuring that every school district has the resources necessary for providing the opportunity for a sound basic education.
2. Taking into account variations in local costs.
3. Providing sustained and stable funding in order to promote long-term planning by schools and school districts.
4. Providing as much transparency as possible so that the public may understand how the State distributes School aid.
5. Ensuring a system of accountability to measure whether the reforms implemented by the legislature actually provide the opportunity for a sound basic education and remedy the disparate impact of the current finance system.

Finally, DeGrasse directs the State “to examine the effects of racial isolation on many of the City’s school children” and its impact on student achievement.

Though Justice DeGrasse leaves reform specifics to the legislature, he retains jurisdiction over the matters at issue in the case:

the court’s deference to the coordinate branches of State government is contingent on these branches taking effective and timely action to address the problems set forth in this opinion. The parlous state of the City’s schools demands no less. The court will not hesitate to intervene if it finds that the legislative and/or

executive branches fail to devise and implement necessary reform.  
(180)

The court will retain jurisdiction over this matter for as long as necessary to ensure that the constitutional and statutory/regulatory violations set forth herein have been corrected.

### *Conclusion*

Justice DeGrasse's decision is a profound statement of the purposes of public education in contemporary democratic society. It is an indictment of the state's acceptance of inequitable and ineffective funding for the past 20 years. It stands as a statement of faith that all students can learn and a blueprint for ensuring that they all do.

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