

At the Supreme Court of the State of New York, County of New York, at the Courthouse, Room 521, IAS Part 25, 60 Centre Street, on the ____ day of March, 2005.

PRESENT:

Honorable Leland DeGrasse,
Justice of the Supreme Court

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CAMPAIGN FOR FISCAL EQUITY, INC., et al.,	:
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Plaintiffs,	:
	:
v.	:
	:
THE STATE OF NEW YORK, GEORGE PATAKI,	:
as Governor of the State of New York and	:
ANDREW S. ERISTOFF, ¹ as Commissioner of	:
Taxation and Finance of the State of New York,	:
	:
Defendants.	:
	:
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ORDER

Index No.: 111070/93

The Court of Appeals having remitted to the clerk of this Court pursuant to CPLR 5524(b) a copy of its order dated June 26, 2003 determining an appeal taken to it from a decision and order of the Appellate Division, First Department, dated June 25, 2002, in this action, together with the record on appeal, and this Court, by order dated August 3, 2004, having appointed John D. Feerick, E. Leo Milonas and William C. Thompson, Esqs., as referees, pursuant to CPLR 4311 and 4312(1), to hear and report, and to make recommendations, respecting certain matters set forth in this Court's said Order of August 3, 2004, and the referees, as directed therein, having issued their report and

¹Successor to named defendant Donald Dunn, former Acting Commissioner.

recommendations dated November 30, 2004 (the “referees’ report”), and plaintiffs having moved this Court by notice of motion dated December 13, 2004, for an order pursuant to CPLR 4403 confirming the referees’ report and directing entry of an order requiring defendants to take all actions recommended by said report; and defendants (The State of New York, The Governor, and The State Tax Commissioner; herein “defendants”) having cross-moved by notice dated December 30, 2004, for an order confirming in part, modifying in part and rejecting in part the referees’ report;

AND current Commissioner of Taxation and Finance Andrew S. Eristoff having succeeded named defendant Donald Dunn, former Acting Commissioner of Taxation and Finance;

AND plaintiffs having further moved by notice of motion dated December 13, 2004, for an order finding defendants in civil contempt of an order of the Court of Appeals dated June 26, 2003, and defendants having opposed said motion by an opposition thereto dated December 30, 2004 with attachments from the record;

AND this Court having consolidated plaintiffs’ said motion and defendants’ said cross-motion respecting the referees’ report, as well as the said contempt motion, and the three motions having come on to be heard before the Court on January 12, 2005, and the Court having heard argument with respect thereto, on behalf of plaintiffs from Joseph F. Wayland, Esq., and Michael A. Rebell, Esq., and on behalf of defendants from Richard Rifkin, Deputy Attorney General, and Bruce B. McHale, Assistant Attorney General; and the Court having further heard argument on

behalf of the City of New York (herein the “City”) as amicus curiae, by its Corporation Counsel, Michael A. Cardozo, Esq.;

NOW, upon reading and reviewing the referees’ report and the record of proceedings before the referees as filed by them with the Clerk of this Court, and the affidavits and exhibits submitted by the parties with respect to the said motions and in support thereof, in opposition thereto, and in reply, all as stipulated by the parties, as well as the submissions of the City and the New York State Board of Regents (“Regents”) as amicus curiae, and all other submissions by amici curiae, and having heard argument as aforesaid, and due deliberation having been had thereon, and the Court having rendered its opinion dated February 14, 2005 with respect to all three motions as so consolidated, heard and presented; it is hereby

ORDERED, that Andrew S. Eristoff as Commissioner of Taxation and Finance is hereby substituted as a named defendant for Donald Dunn, former Acting Commissioner of Taxation and Finance;

ORDERED, that plaintiffs’ contempt motion does not lie and is hereby denied; and it is further

ORDERED, that plaintiffs’ motion to confirm the referees’ report is granted to the extent indicated in subparagraphs (a) through (g) of this paragraph of this Order, to wit:

- (a) Not later than 90 days from the date of entry of this Order, defendants shall take all steps necessary to implement an operational funding plan that will provide the New York City School District (the “New York City District”), at a minimum, the following additional operations funding (in each instance, measured in 2004-2005 dollars) over current funding levels.²

<u>Year</u>	<u>Additional Funding</u> ³	<u>Total Funding</u> ⁴
Year 1 (7/1/05-6/30/06):	\$1.41 billion	\$14.03 billion
Year 2 (7/1/06-6/30/07):	\$2.82 billion	\$15.44 billion
Year 3 (7/1/07-6/30/08):	\$4.22 billion	\$16.84 billion
Year 4 (7/1/08-6/30/09):	\$5.63 billion	\$18.25 billion

- (b) Not later than July 1, 2008, and every four years thereafter, defendants shall undertake studies to determine the costs of providing the opportunity for a sound basic education to all public school students in New York City. These costing-out studies should be designed and supervised by the Regents, with input from defendants. They should incorporate both the “successful school district” costing-out methodology and the “professional judgment panels” costing-out methodology, as described in the referees’ report, provided, however, that if the Regents, with the consent of defendants, determine that alternative methodologies, or modified versions of the professional judgment panels or successful school district

²“Operations,” as used in this Order, shall mean all school expenditures excluding those for transportation costs, capital facilities and debt service.

³Additional funding amounts will need, in each year after the first year, to be adjusted for inflationary increases and to reflect any changes in school enrollment, as described in the referees’ report, fn. 3, p. 4. As indicated in referees’ report ¶ 42 at p. 24, the referees have already adjusted the amounts described in the chart to reflect such changes to October 2004.

⁴Incorporates the \$12.62 billion currently spent by the New York City District for its operations.

methodologies are more appropriate, such alternative or modified methodologies, may be utilized.

- (c) The results of these quadrennial costing-out studies should be used to determine the annual amounts of operations funding required to be provided to the New York City District in years after Year 4, to ensure that there is no gap between the funding necessary to provide every student the opportunity for a sound basic education and the amounts actually being spent. These operations funding studies should continue into the future until such time as such studies are no longer needed to assure that all New York City public school students receive the opportunity for a sound basic education.
- (d) Not later than 90 days from the date of entry of this Order, defendants shall take all steps necessary to implement a capital funding plan, in order to provide the New York City District not less than the following minimum funding amounts for capital improvements (in each instance, measured in 2004-2005 dollars):

Year 1 (7/1/05-6/30/06):	\$1.836 billion
Year 2 (7/1/06-6/30/07):	\$1.836 billion
Year 3 (7/1/07-6/30/08):	\$1.836 billion
Year 4 (7/1/08-6/30/09):	\$1.836 billion
<u>Year 5 (7/1/09-6/30/10):</u>	<u>\$1.835 billion</u>
Total	\$9.179 billion⁵

These amounts will need, in each year after the first year, to be adjusted for inflationary increases in the actual cost of acquiring sites and constructing capital facilities in New York City, as set forth in referees' report footnote 5.

⁵These amounts are intended to be in addition to the funds needed on an on-going basis to maintain the New York City District's school facilities in good repair, in accordance with referees' report footnote 4.

- (e) Not later than July 1, 2009 and every five years thereafter, defendants shall undertake a facilities study, to be completed substantially in accordance with the methodology followed in developing the BRICKS program described in the referees' report. This facilities study should be supervised by the State Education Department. The results of this facilities study should then be used to determine the annual additional funding, if any, required to be provided to the New York City District in years after Year 5, to ensure that every public school student in the New York City District has available facilities sufficient to provide the opportunity for a sound basic education. These capital improvement funding studies should continue into the future until such time as such studies are no longer needed to assure that all New York City public school students receive the opportunity for a sound basic education.
- (f) Not later than 90 days from the date of this Order, defendants shall take steps necessary to enhance the current system of educational accountability by requiring the New York City Department of Education ("DOE") to develop a comprehensive sound basic education plan that would set forth, in a detailed manner, the precise management reforms and instructional initiatives that DOE will undertake, especially in the priority areas identified by the Court of Appeals, to improve student achievement. The plan should ensure that every school in the City's public school system will have the capacity to provide all of its students the opportunity for a sound basic education. It should be coordinated with the four-year phase-in of the additional operational funding required by this order and should also contain procedures for verifying the adequacy of the funds that are made available to each such school and to the public school system at large.

(g) Defendants shall take steps necessary to ensure that the DOE shall issue an annual comprehensive Sound Basic Education Report (“SBE Report”) that will provide all stakeholders with the information necessary to measure the performance of DOE, the City’s schools, and the City’s students. The SBE Report shall track the additional funding resulting from this Order and measure student performance and other benchmarks. The SBE Report will consolidate current plans and reports that DOE must submit separately into a single, accessible document. It shall also include assessments of whether DOE’s programmatic benchmarks are being achieved; and it is further

ORDERED, that the manner in which the funding burdens respecting the City’s public schools are to be distributed between the State and the City is a matter for the Legislature desiring to enact good laws; and it is further

ORDERED, that defendants’ said cross-motion under CPLR 4403 is denied to the extent that defendants seek an order rejecting the referee’s report.

ENTER:

J.S.C.