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ABSTRACT

This report examines the role of the standards-based reform movement in the establishment of a constitutional standard for education in New York City. Data come from testimony and research evidence collected for a recent lawsuit filed by the Campaign for Fiscal Equity, Inc., on behalf of New York City public schoolchildren. The lawsuit charges that New York State has underfunded the New York City public schools, and as a result, denied city students their constitutional right to a sound basic education. After an introduction to the trial and the issue, the report focuses on identifying the purposes of public education; defining the term "sound basic education"; determining the level of skills required (New York State argued that an 8th grade education was sufficient, while the Campaign for Fiscal Equity argued for a higher standard); making needed skills concrete through standards; developing the new Board of Regents learning standards; and providing essential tools and conditions for students to meet standards: appropriate class sizes, sufficient numbers of qualified teachers and administrators, adequate and accessible facilities, support services as necessary to provide students the opportunity to meet state educational standards, support for parent participation, and a safe, orderly environment. (SM)



CAMPAIGN FOR FISCAL EQUITY, INC.

In Evidence: Policy Reports from the CFE Trial

SETTING THE STANDARD FOR A SOUND BASIC EDUCATION

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PREFACE

On July 27, 2000, parents, students, educators, advocates, and media packed a Manhattan courtroom to hear final arguments in the landmark school funding case, *Campaign for Fiscal Equity (CFE), Inc. v. State of New York*. This historic lawsuit, which awaits judgment from Justice Leland DeGrasse of the New York State Supreme Court this fall, was first filed seven years ago on behalf of New York City public schoolchildren. It charges that New York State has, for years, underfunded the New York City public schools, and, as a result, denied 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 adults and good citizens.

The trial in this case lasted seven months and was covered extensively in both the local and national presses. 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 elsewhere in the nation. Besides its clear importance for the future of New York City's schools, *CFE v. State of New York* commands statewide attention since any reforms of the state education funding system that the Court adopts are likely to 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 as the first thorough analysis of the history of standards-based school reform and its important relationship to constitutional equity and adequacy litigation on behalf of children everywhere.

To persuade the Court of the need for a new way to fund New York City's schools so that all children are assured access to a quality education, the Campaign for Fiscal Equity, Inc., with pro bono counsel from the Manhattan-based law firm Simpson, Thacher, and Bartlett, amassed one of the most comprehensive research efforts ever compiled on a wide variety of issues in education reform. We at CFE believe that such a valuable resource should not be buried in a court records' room but should be made available to the public—to educators, policymakers, parents, scholars, and researchers—to inform future school reform efforts. To this end, this series summarizes much of the important testimony and research evidence collected for the trial. Each report in the series will take on a different aspect of education reform covered in *CFE v. State of New York*. The first report, **Setting the Standard for a Sound Basic Education** was written by Jessica Wolff, CFE's Director of Policy Development, based on transcripts and testimony in the trial. It details the role of the standards-based reform movement in the establishment of a constitutional standard for education for New York. Future reports will cover such issues as New York State's school-finance system, class size, facilities, teacher quality, and accountability.

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

**SETTING THE STANDARD FOR A SOUND
BASIC EDUCATION**

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INTRODUCTION

In 1993, the Campaign for Fiscal Equity, Inc. (CFE), a coalition of advocacy groups, school boards, and community organizations, filed suit in the State Supreme Court in Manhattan charging that New York State's system of financing schools denies students in New York City the opportunity for a sound basic education. Though the State moved to dismiss the case, the Court of Appeals upheld CFE's right to pursue a constitutional challenge to the state's education finance system.

In its 1995 decision, the Court of Appeals made clear what questions should be resolved at trial. The first task set by the Court was the elaboration of a definition of a sound basic education—the educational standard to which the state should be held. This report outlines the expert testimony and extensive research evidence presented at trial on the critical issue of the requirements for a sound basic education: what type and level of education qualifies and what students need in order to reach that standard. It summarizes arguments offered by both sides on the relationship of the constitutional standard to the state's own Regents Learning Standards and situates these arguments in the context of the nationwide discussion of standards and the standards-based reform movement.

At trial in *CFE v. State*, lawyers for the State of New York took the position that the standard for a sound basic education should be pegged quite low. The State presented testimony and evidence to support a claim that its educational responsibility extends only to providing all students with the opportunity for eighth-grade literacy. The State asserts that this level of education suffices to prepare students for the duties and responsibilities of productive citizens.

CFE, on the other hand, backed by extensive research plus testimony from state and national authorities, argued that the proper standard to which the state should be held is the 11-12th grade literacy and broad academic preparation represented by the state's own Regents Learning Standards. These standards, the result of years of careful work at the State Education Department, have been adopted as the guiding force for the education throughout the state. They express what the officials charged by the state constitution and the legislature with the responsibility for overseeing education in New York State determined to be the minimum skills the public schools should impart. These standards are not aspirational—merely goals—as the State claims, but a realistic assessment of what is needed to prepare students for the world of work they will shortly enter.

More importantly, these Learning Standards are the standard to which the state holds all its students. In order to graduate and receive a high school diploma, all New York students must show they have mastered the knowledge and skills required by the Regents Learning Standards and pass the Regents exams. CFE believes that the standard to which the state holds all students is the standard that the state must ensure all students the opportunity to reach.

IDENTIFYING THE PURPOSES OF PUBLIC EDUCATION

Developing CFE's position on the just and appropriate meaning of the constitutional standard, a "sound basic education," involved examining thousands of pages of research and education documents, as well as consulting with New York's leading education authorities and national experts. Before this process could begin, however, an equally important question first needed to be addressed, "A sound basic education for what?" Given that the state constitution requires that all children be provided an adequate education, for what purposes must it be adequate? What should students be prepared to do?

The starting point for answering this question was supplied by the Court of Appeals. Recalling the duties and responsibilities of every American citizen, the court held that a sound basic education should impart the skills necessary to "*function productively as civic participants capable of voting and serving on a jury,*" The court left further refinement of this definition for the trial.

The State confined its representation of the purposes of public education solely to voter and juror skills throughout the trial. It offered no evidence as to what basic literacy, verbal, and calculating (or other) skills might be necessary to carry out civic responsibilities. Instead, it offered expert testimony that only a very low level of skills is necessary to meet these responsibilities and that passage of the soon-to-be-eliminated Regents Competency Tests would show such a skill level.

CFE, however, argued for a broader interpretation of the purposes of public education. "Productive" civic participants, CFE reasoned, are capable of sustaining competitive employment, whether they choose to or not. In support, expert after

expert testified that the skills needed for civic participation are the very same as those needed for competitive employment.

As technological and scientific advances have increased the educational demands on the work force, these same advances have increased the demands on jurors and voters. New York trial courts now ask jurors to decide questions concerning DNA identification in criminal trials, to weigh the competing testimony of scientific experts about the effects of pollutants on groundwater or a particular drug on the human body, to sort through competing statistical analyses, and to follow a trail of fraud through complicated, computer-based financial transactions. Voters consider the claims of candidates on issues as diverse and technologically demanding as global warming, internet privacy, foreign military intervention, and what to do with New York City's garbage. Thus, the productive exercise of responsibilities such as voting and serving on a jury demand many of the same higher-level cognitive and analytic skills that are necessary to obtain and sustain competitive employment.

Testimony from the state's two most senior education officials, Carl Hayden, Chancellor of the Board of Regents, and Richard Mills, Commissioner of Education, and official documents from the State Education Department and the Regents introduced at trial offer further support for CFE's argument that a crucial purpose of public education, both historically and at present, is to prepare students to sustain competitive employment. The public notice of the new Regents testing requirements, for example, specifically stated, "[w]e are raising standards in school because the world our children live in is expecting more than ever. Getting a job that can support a family requires high school level skills in reading, writing, and math. Voting on complex issues requires that students develop the ability to think about complex issues."

Even John Murphy, the former superintendent of the Charlotte-Mecklenburg school district, who testified as an expert witness for the State, said, "a school system has a responsibility to prepare all of its children to compete in this society." Murphy agreed that to "compete in society means to get a good, productive job."

Such experts' recognition that an adequate education must prepare students for competitive employment is consistent with a national consensus among educators, business leaders, experts, political leaders, and parents reflected in the reports of various national study groups, including several national education summits. These reports explicitly link education with preparation for the work force. For example, the policy statement issued by the 1996 National Education Summit states that "the primary purpose of education is to prepare students to flourish in a democratic society *and to work successfully in a global economy*" (italics added). This policy statement was issued on behalf of the president of the United States, 44 governors, and 44 chief executive officers of major national corporations.

On this basis, CFE contends that New York's students should reasonably be able to expect to receive from their public schools an education that will prepare them to vote responsibly, to serve on jury competently, and to hold a decent job, a job through which they can derive satisfaction and support themselves and a family. Therefore, CFE has asked Justice DeGrasse to modify the Court of Appeals definition to make the implicit explicit by adding the phrase "sustain competitive employment": *A sound basic education should consist of the skills students need to sustain competitive employment and function productively as civic participants capable of voting and serving on a jury.*

DEFINING "SOUND BASIC EDUCATION"

If public education's purpose is to prepare children to vote responsibly, serve on a jury competently, and obtain and keep a decent job, the next step toward ensuring these ends is to define a sound basic education as what it takes to reach this level of competence. Exactly what level and type of student achievement are needed in order to carry out adult work and civic responsibilities, and what resources are necessary to ensure students the opportunity to reach those levels of achievement?

DETERMINING THE LEVEL OF SKILLS REQUIRED

State Argues Eighth-Grade Education Suffices

The State of New York claimed at trial that the level of education most New York City students now receive is adequate for its purposes. In support of this position, the State has shown that the New York City public schools successfully prepare the vast majority of their students to pass the Regents Competency Tests, which were, until recently, the minimum requirement for high school graduation (although college-bound students took a more challenging curriculum and had to pass the more rigorous Regents exams). Passing the RCTs requires the equivalent of eighth-grade literacy, according to the State's expert, Herbert Walberg, a University of Illinois education professor.

The State holds RCT pass rates as proof of adequacy *even though the State Education Department itself no longer considers the RCTs sufficient for high school graduation*. By spring 2003, the RCTs will have been phased out completely in favor of the Regents exams, which all students must now pass to graduate from high school.

CFE Seeks a Higher Standard

CFE talked with experts and examined research evidence to determine what level of skills should now be considered basic and necessary for meeting today's civic and work responsibilities. A tremendous amount of study has been done in recent years to define the minimum set of skills one needs to meet current civic and workplace demands; answering such questions is critical for our nation's continuing well-being. The conclusion reached increasingly, nearly unanimously, from this research is that it is no longer possible to have reasonable expectations of success with the rudiments of reading, writing, and arithmetic. Today's world demands a significantly greater level of skills from its denizens, and tomorrow's is likely to demand even more.

As New York comes to use and depend on computers and the internet, as the city inextricably becomes part of the global economy, the average citizen, too, must be able to participate competently. Ballot decisions, jury cases, and employment alike commonly deal in these matters and thus all demand a broader, deeper set of skills.

Experts Agree Basic Skills No Longer So Basic

There is a consensus among educators, policy makers (including the principal New York State education officials), experts, and business leaders that the minimum skills necessary to function productively as a civic participants are those skills that are commonly referred to as "higher-level" skills. Using terms like "higher," "high," or even "world-class" distinguishes these skills from those considered minimally acceptable to meet workplace and civic demands of an earlier era.

Robert Schwartz, the head of Achieve, Inc., the organization established by the second National Education Summit to promote standards-based reform, explained

at trial that the United States' need for "world-class" standards does not mean we need standards that are the "best in the world"; in the context of the standards-based reform movement, it means we need knowledge and skills at the level of students in other nations with which the United States competes economically. There is general accord that the demands of the modern workplace and the demands placed on voters and jurors have raised the minimum level of literacy, verbal, and calculating skills that is considered basic.

Among the compelling documents introduced at trial on the need for these higher-level skills was the 1999 final report of the Task Force on the City University of New York (CUNY). This report, from a group of business, education, and political leaders convened by Mayor Rudolph Guiliani to study certain issues facing CUNY, summarized the educational demands of New York City's current economy. It confirms that jobs that pay well and offer the opportunity for advancement in New York City are in areas such as finance, insurance, medical services, communications, and advanced technology. It makes clear that the minimum skills now necessary for productive civic participation in New York City of a higher level than ever before.

Bell Atlantic's chief financial officer, Frederick Salerno, who testified in the CFE trial, provided an example of this shift. As technology has changed and the telecommunications industry has diversified, educational demands on employees have grown. More jobs now involve higher-level cognitive and analytic skills. As a result, many jobs traditionally filled by high school graduates have now become appealing to college grads. This has increased both the quantity and quality of the competition for such jobs.¹

¹Mayor's Advisory Task Force on the City University of New York. "The City University of New York: An Institution Adrift," June 1999.

Another expert witness at trial lent further support for the need for higher-level skills. Dr. Henry Levin, a well-respected professor of education and economics from Teachers College Columbia University who has written extensively on educational requirements for employment, testified that people who enter the workforce without higher-level cognitive and analytic skills have an extremely limited future. The menial jobs available to them – serving fast food, digging ditches, cleaning –

are essentially entry-level jobs for those who have the skills to learn and to master some of the more generic skills for holding a job and for being a good employee. . . . Those who are reasonably educated will move on to higher-level positions, better paying positions. But those who do not have these skills are going to be stuck in these dead-end jobs that are not careers at all.

In recognition of changing workplace demands around the country, courts from Washington State to Massachusetts, are establishing students' need for cognitive skills beyond nineteenth-century standards. As the New Hampshire Supreme Court put it, "Given the complexities of our society today, the State's constitutional duty extends beyond mere reading, writing, and arithmetic. It also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas."²

² *Claremont Sch. Dist. V. Governor*, 635 A.2d 1375, 1381 (N.H. 1993)

MAKING NEEDED SKILLS CONCRETE THROUGH STANDARDS

To establish the constitutional standard of education, it is not enough merely to talk about the need for “higher-level” cognitive and analytical skills. Such a standard has to be made concrete so that it will be possible to determine whether a given public school system is providing an opportunity for its students to obtain a sound basic education. For example, what level of math skills is today sufficiently “basic” to prepare students to function effectively as civic participants – is it arithmetic, algebra, calculus, or something more? What level of literacy skills is needed – is it comprehension, the ability to draw inference, critical analysis, or something more? In New York State these questions about necessary basic skills have already been answered.

Minimum Necessary Skills Detailed in Regents Learning Standards

The Board of Regents and the State Education Department addressed these questions through a decade-long effort to develop new education standards for the state’s schools. The standards, ultimately released as the Regents Learning Standards, are based on extensive research and investigation and reflect a statewide and national consensus for “higher-level” standards. They have been embraced by the state’s political leaders— including Governor George Pataki, who has championed New York’s “rigorous standards for student achievement.”³

³ Governor George E. Pataki. State of the State Address, “The Future Begins in New York,” January 5, 2000.

New York Standards Reflect National Consensus on Basic Skills

New York did not develop its Learning Standards in isolation but as part of a larger national movement to improve student performance by creating and adopting statewide standards. Sparked by widespread concern from parents, schools, higher education, business, and elected officials at every level that Americans were falling behind in their attainment of the level of education needed for today's and tomorrow's worlds, politicians, school officials, and other educators called for the development of standards, a set of guiding frameworks setting forth what students at each grade level should know and be able to do.

The national standards-based reform movement began at the 1989 National Education Summit, convened by President Bush and the National Governors Association led by then-Arkansas-governor Clinton. Subsequent summits, held in 1996 and 1999, have supported continuing standards development and implementation. Standards have now been adopted in 48 states, and New York has been recognized as a national leader in the quality and rigor of its standards.

Providing all students with a solid foundation of academic knowledge and skills is the core concept of the standards movement. Standards especially benefit at-risk students; as former Education Commissioner Thomas Sobol testified, one of the ways to improve their performance is to clarify what their learning outcomes ought to be and to provide the support necessary for success.

DEVELOPING THE NEW REGENTS LEARNING STANDARDS

The Board of Regents' first step toward creating standards for New York State was adopting the 1984 "Regents Action Plan." This set of regulations and other initiatives increased the number of credits needed for students to graduate from high school, expanded the student testing program, and strengthened teacher certification requirements. The Regents Action Plan came in response to the cry of alarm about the condition of the nation's schools contained in the 1983 report, "A Nation at Risk," from the office of the U.S. Secretary of Education, and other newly issued education reports.⁴

The Regents agreed that New York's statewide education system had also experienced "an inextricable slide into mediocrity," as then-Commissioner Thomas Sobol put it. At this time, the minimal statewide graduation requirement was passing a series of Regents Competency Tests (RCTs), which led to the award of a "local" diploma. Students who completed Regents-level courses and passed Regents exams were awarded "Regents" diplomas. However, only 38 percent of the state's students were being exposed to the rich Regents curriculum and the rigor of a Regents examination. The vast majority was graduating from the public schools having experienced a low-standards curriculum and having taken the low-standards RCT as an exit exam.

⁴ National Commission on Excellence in Education. *A Nation at Risk: the Imperative for Educational Reform*. Washington, D.C.: U.S. Department of Education, 1983.

In fact, the RCTs do not test basic literacy, calculating, and verbal skills, as Deputy Education Commissioner James Kadamus testified at trial. Nor were they meant to be used as an exit exam. According to former State Education Commissioner Sobol, the original purpose of the RCTs was to identify students in most need of remediation; the tests "were never intended to be a measure of what a sound basic education ought to be." Moreover, passing the RCTs did not ensure that high school graduates were prepared for the world of work. As Commissioner Mills put it:

[T]he math Regents competency test is only arithmetic; and while some people may think that's enough, you can't get into an apprenticeship program without algebra; you certainly can't do college level work; you can't understand technology; you can't even deal with the daily newspaper without something more than arithmetic. So it is not minimal – it is not minimally acceptable.

After several years of implementing the Regents Action Plan, in order to improve further the quality of the education provided by New York State's public schools, the Commissioner and the Regents determined that the state needed to set clear and explicit statewide standards. In addition, the state needed to provide support to local school districts, to let them achieve the standards in their own way, as measured by statewide examinations, and then eventually to hold them accountable for meeting the standards.

The next important step in the development of statewide standards in New York State was the adoption of "A New Compact for Learning" in 1991. The New Compact, a remarkable document addressed to all constituencies of the public schools, directly spoke to the deficiencies in public education:

For all of our schools' successes, our failures are staggering. One of four students does not graduate from high school – and the economy no longer provides for such unskilled labor. . . . Many of those who do graduate from high school lack the skill and knowledge to function effectively in a sophisticated society.⁵

As part of the Regents' effort to address these problems, the New Compact committed the Regents to develop a specific set of goals and desired learning outcomes that detailed the skills and knowledge students should acquire during their elementary and secondary education.

To do this, the Commissioner convened seven different curriculum committees, one for each key area of the school curriculum. The members of these committees included teachers, principals, experts in the disciplines from higher education, and also people from public life – from the professions, the unions, business, and industry. The Commissioner appointed an overarching Council on Curriculum and Assessment to oversee and coordinate the work of the separate committees. Dr. Linda Darling-Hammond, a nationally recognized education researcher⁶ who testified at trial on behalf of CFE, chaired the Council on Curriculum and Assessment.

The curriculum committees' drafting process was public and inclusive, involving review and input by teachers, parents, business leaders, and other citizens statewide. Throughout this process, Commissioner Sobol and the State Education

⁵ A New Compact for Learning: Improving Public Elementary, Middle, and Secondary Education Results in the 1990s. University of the State of New York/State Education Department, November 1991.

⁶ Dr. Darling-Hammond is currently the Charles E. Ducommun Professor of Education at Stanford University. She has also been the Executive Director of the National Commission on Teaching and America's Future and the president of the American Education Research Association.

Department staff were guided by the latest reports from the federal government. These included the 1991 Secretary's Commission on Achieving Necessary Skills (SCANS) report from the U.S. Department of Labor, *What Work Requires of Schools*, which detailed the higher level of skills needed by American workers to be competitive.⁷ In addition, Sobol and his staff exchanged information with their counterparts in other states, as well as with the University of Pittsburgh-based New Standards Project, a national coalition of 17 states and seven urban school districts researching and developing performance standards and assessments. New York efforts were adjusted and revised based on problems and successes in the development of standards nationwide.

Shortly after Commissioner Mills assumed office in 1995, he instructed the State Education Department staff to review and simplify the drafts of the standards, which were then known as "curriculum frameworks." Following Commissioner Mills's suggestion, the Regents then adopted the standards for each of the seven curriculum areas individually as they were completed and then readopted the entire set of standards as a whole in 1997.

Ultimately, the Regents adopted learning standards in seven areas of study: English Language Arts; Social Studies; Mathematics, Science, and Technology; the Arts; Languages Other than English; Career Development and Occupational Studies; and Health, Physical Education, and Home Economics. In each subject area, four or five basic standards are spelled out. Each standard is then applied at three levels (elementary, intermediate, and commencement) through the development of specific

⁷ Secretary's Commission on Achieving Necessary Skills. *What Work Requires of Schools*. Washington, DC: SCANS, U.S. Department of Labor, 1991.

subpoints and examples of successful student performances that demonstrate mastery of the standard.⁸

The Learning Standards were adopted as one part of an integrated, comprehensive statewide system of reforms that included three elements:

[S]etting high learning standards for all students and revising the assessment system to measure student progress in reaching those standards; building the capacity of schools to support student learning at high levels; and developing an institutional accountability system with public reporting on how well students and schools are doing.⁹

New Graduation Requirements Complement Learning Standards

After adopting the Learning Standards, and after over nine months of public forums and discussions with thousands of New Yorkers, the Regents also increased course requirements and developed a new assessment system. The Regents' new graduation requirements changed the two-track diploma system that offered students the option of obtaining either the local diploma or the Regents diploma. By spring 2003, the end of a phase-out period, the local diploma and the RCTs will be eliminated entirely. Under the new requirements, students will graduate only if they pass five state-administered Regents examinations, or approved alternatives, including four core subject areas (English, mathematics, social studies, and science); students who pass eight Regents examinations and complete extra core credits will receive an "advanced" designation on the Regents diploma.

⁸ Details about the Regents Learning Standards and samples of specific standards can be found at the State Education Department's website: <http://www.emsc.nysed.gov>.

⁹ New York State Education Department. Update on New York State's Overall Strategy for Raising Standards, April 14, 1997.

Tests in earlier grades have been aligned with the standards to ensure that students are learning the basic skills that will prepare them for Regents study in high school. The Regents have determined that all children must meet these higher learning standards, and they have taken the position that, if given appropriate teaching and support, all children are capable of doing so.

Experts Equate Learning Standards with Minimum Necessary Skills

Despite exhaustive evidence of the extensive research carried out by the Regents and State Education Department in their effort to create a set of standards that reflects what educational basics students must have, at the CFE trial the State argued that the Regents Learning Standards are “aspirational goals.” It claimed, in other words, that these standards represent ideals rather than expectations and that they go beyond what should be considered adequate. To refute this contention, CFE asked leading national experts to study the issue. Several testified at trial on the strong relationship between specific skills developed by the Learning Standards and those needed to be a competent voter and juror.

For the CFE trial, Linda Darling-Hammond analyzed the particular skills that a voter would need to understand a document such as the charter-revision issue on the November 3, 1999 ballot in New York City. She testified that a voter would first need to have “content knowledge about how city government operates.” In addition, she said that a voter would need analytic reading skills, the ability to support his or her ideas with evidence, a complex level of vocabulary and “a reasoning process of understanding evidence and applying it to a conclusion.” Darling-Hammond concluded that someone reading at the level required to pass the RCTs would have a difficult time understanding the charter revision proposal but

student who had mastered the skills required by the Regents Learning Standards would very likely understand the text on the November ballot.

Dr. Richard Jaeger, a psychometrician and professor at the University of North Carolina, Greensboro, also testified for CFE. He concluded that in order to comprehend ballot propositions on subjects like budget issues, voters need analytic, synthesizing, and evaluative skills that are not measured by the RCT assessments but are measured by the Regents English examinations.

Henry Levin has studied the specific types of skills that those entering the labor force will need in order to obtain and sustain competitive employment in the contemporary economy. He testified that the kinds of reasoning, communication, problem-solving, decision-making, informational, and other skills that are needed in the contemporary workplace are specifically incorporated into the Regents Learning Standards.

Darling-Hammond has also researched the issue of how courts and juries deal with social science and scientific evidence. For the CFE trial, she reviewed typical jury instructions used in the State of New York, charges taken from actual recent civil trials in the State of New York, and evidence submitted in a complex product liability case. She described the types of skills a juror would need to comprehend and apply a basic concept like the "preponderance of evidence" in terms of being able to "understand how to weigh the evidence, how to decide what the preponderance of the evidence might mean, what kind of testimony is credible, and how to use the evidence in drawing an opinion."

The types of skills needed to undertake this complex reasoning process are specifically cultivated by the Regents Learning Standards, according to Darling-Hammond:

You will find specific references to weighing, learning to weigh and evaluate evidence and its credibility, to draw conclusions from evidence and inferences in the social studies standards, in the English language standards, and even to some degree around deductive reasoning in the mathematics standards.

Darling-Hammond further testified that the particular deductive skills needed to “reason logically from a number of presumptions and synthesize those pieces of evidence and then weigh and balance them around these issues of burden of proof as well as preponderance of evidence” are developed by the math and science standards. She also explained how skills such as the ability to analyze statistical tables and graphs, understand economic concepts such as opportunity costs, and comprehend scientific studies are developed by the math, science, and social studies standards. As Darling-Hammond’s testimony established, the types of cognitive skills imparted by the Learning Standards are precisely the types of skills that citizens need to perform adequately as jurors.

Based on her extensive analysis of all of the jury documents, the Regents Competency Tests, and the Learning Standards, Darling-Hammond concluded that there is “a high probability” that students who have mastered the Learning Standards “would be able to perform all of the kinds of analyses and interpretations that we have examined in these cases and that are widely required in others.” On the other hand, a student whose skills are at the level of the RCT exams “will not necessarily have acquired many of the skills that are necessary to be an effective

juror," and a student who drops out of school without receiving a diploma would be "very unlikely [to] have the set of skills" needed to be a juror.

For its part, the State introduced testimony from Dr. Christine Rossell, a political science professor from Boston University, and Dr. Herbert Walberg, an education professor from the University of Illinois in Chicago, who relied on various polls showing that most voters obtain their information from television or radio news and make up their minds on how to vote for candidates and propositions before they enter the polling booth. The implicit argument seemed to be that television and radio news are not difficult to understand, that voters do not need to exercise any critical judgment or analysis in absorbing the news they get from these sources, and that they exercise no judgment once they enter the polling booth. The implied premise is that it is acceptable in a democracy for citizens to be incapable of comprehending the basic information they are asked to evaluate on the ballot and to rely instead on second-hand information and opinions they glean from the mass media.

Walberg also ran a computerized "Readability Analysis" and concluded from it that to pass the RCTs required only a beginning-of-eighth-grade reading ability. He concluded that this reading level was the same or higher than what was needed to understand the particular voter and juror materials he analyzed. Furthermore, Walberg testified that if an individual juror could not understand all the material presented in a trial, talking with other members of the jury could make up for it. Clearly, however, this is not an appropriate description of how a jury should function. In fact, it illustrates precisely why the public education system must strive to provide a sound basic education to all students: every juror should be able to understand the evidence, and one juror should not need to depend on the explanations and interpretations of other jurors for basic information.

The State offered no testimony to contradict the evidence described above demonstrating a statewide consensus that the skills set forth in Regents Learning Standards are the minimum skills necessary to serve as a productive civic participant. Nor did the State present testimony from any New York educator or any New York public official that differs with the position of the Regents and the Commissioner that the Learning Standards set the appropriate minimum level of skills that New York State students need in order to obtain a sound basic education.

PROVIDING ESSENTIAL TOOLS AND CONDITIONS FOR STUDENTS
TO MEET STANDARDS

Clearly the State Education Department carefully researched and crafted the Regents Learning Standards to ensure the state's students would attain the minimum skills needed to become responsible productive citizens. Its confidence in the ability of students to meet these standards, given the needed resources, is expressed in its mandating that everyone meet the standards and related requirements in order to graduate from high school.

With the standards providing a strong foundation for a sound basic education, we now come to the question of what resources are necessary to ensure access to all students to success with standards. As was brought to light at trial, a wide consensus exists among the state's educators, public officials, and both the State's and CFE's experts about what resources and conditions for learning are necessary to provide an opportunity for a sound basic education.

According to this consensus, to ensure the opportunity for a sound basic education, the following education essentials must be provided by all of the public schools of this state:

- Sufficient numbers of qualified teachers, principals, and other personnel who are provided appropriate training and professional supports.
- Appropriate class sizes.

- Adequate and accessible facilities.
- Suitable curricula encompassing the knowledge and skills necessary to meet state educational standards.
- Supplementary instructional services as necessary to provide the opportunity to meet state educational standards for students with extraordinary needs, such as those who are at risk of academic failure because of concentrated poverty or who have disabilities or are English language learners.
- Support services as necessary to provide students the opportunity to meet state educational standards.
- A safe, orderly environment.
- Support for parental involvement.

Three experts testifying for CFE, former Education Commissioner Thomas Sobol, Linda Darling-Hammond, and Henry Levin, specifically endorsed these essential elements of a sound basic education. Each of the individual elements was also endorsed by numerous witnesses (including the State's experts) and is supported by substantial documentary evidence as well. Significantly, the State did not offer any expert opinion or other evidence at trial to support an alternative idea of the elements necessary to provide the opportunity to obtain a sound basic education.

CONCLUSION

Very soon, Justice Leland DeGrasse will render a decision in this far-reaching, many-faceted case. On his decision rests the definition of a sound basic education for the children of New York State—what opportunity for education they can expect from their schools, from their state, from their society.

At trial in this case, CFE presented a vast amount of evidence and testimony from numerous leading New York and national education experts. All verify that the Regents Learning Standards represent the minimum necessary skills for students today and that all students need the opportunity to meet these standards.

The State, for its part, adopted some tough positions: that the old standards represented by the now-repudiated RCTs are high enough for some students; that a public education that does not equip its recipients for a decent job is good enough for some students; and that meeting the current Learning Standards and graduation requirements is an aspirational goal or more than enough for some students.

On behalf of New York City's schoolchildren and all the children of New York State, CFE has, as this report describes, asked the Court instead to take the position that all children deserve, are capable of, and are entitled to the constitutional guarantee of a sound basic education that has real meaning for their futures. CFE has further asked the Court to place on the state the responsibility to ensure access for all to success with those standards the state requires each child to reach.

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