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It's Elementary

A Monthly Column by EFAP Director John Yinger

January 2007

The CFE Decision: A Cautionary Tale about the Use of Numbers

On October 19, 2006, the New York Court of Appeals ruled that New York's education finance system did not support the constitutionally mandated level of education in New York City and required the state to ensure that NYC receives at least \$1.93 billion more annual operating revenue (in 2004 dollars). This column examines the source of this \$1.93 billion figure. This is a cautionary tale about how sloppy—if not irresponsible—calculations can become certified during court proceedings and then enshrined in a decision by a state's highest court.

During the course of the CFE lawsuit, Governor Pataki appointed the “The New York Commission on Education Reform,” also known as the Zarb Commission after its chair, Frank G. Zarb. The Zarb commission asked Standard and Poor's (S&P) to prepare a report on the cost of raising student performance in New York City.¹

The S&P report used the so-called “successful schools” method. The report identified school districts that met various student performance targets and then determined how much these districts spent per pupil. This column focuses on one feature of these calculations, namely, S&P's adjustment to account for the extra costs of educating disadvantaged students.²

¹ Standard and Poor's, *Resource Adequacy Study for the New York State Commission on Education Reform*, New York: Standard and Poor's School Evaluation Services, March 2004 (available at <http://www.spses.com>).

² The \$1.93 billion figure also depends on two other serious flaws, namely, the use of an inaccurate index of teacher wages and the assumption that successful schools must be inefficient if they spend more than average. These flaws are not considered in this column.

The weights used by S&P were 1.35 for a student from a poor family and 1.20 for a student with limited English proficiency. The weight of 1.35 indicates that it costs 35 percent more to bring a student from a poor family up to the same standard as a non-poor student. The S&P report says that it “uses weightings drawn from a review of the research literature concerning the coefficients that education agencies use in practice” (p. 20).

This statement in the text is accompanied by a footnote with 37 citations. These citations include consultants’ reports prepared for other states, professional articles that present descriptive information on state aid formulas, and professional articles that estimate pupil weights using statistical procedures. The S&P report provides no insight into the way it evaluated these disparate sources of information. S&P does not explain why the weights used by education agencies are appropriate in the first place, how they combined the widely differing weights used by different states, or why the weights used by other states are appropriate for New York. The report also does not explain why the academic cost estimates that are included on their list of citations, which uniformly estimate higher weights than those selected by S&P, are simply ignored.

These weights are a central element in the derivation of the \$1.93 billion figure. In other words, the S&P report concludes on the basis of these weights (and some other assumptions) that it would cost \$1.93 billion to bring New York City up to the student performance standards set by the New York Board of Regents.

Although the S&P report “does not recommend the adoption of one particular weighting,” it also does not provide calculations with any other pupil weights. The Zarb Commission report recognized that state aid should reflect a “basic cost amount based on district need measured by property wealth” (p. 31).³ However, this report did not question the pupil weights in the S&P report or examine any cost estimates with alternative weights.

The weights in the S&P report were not the only ones available. The New York State Education Department recommended a weight of 1.80 for each student from a poor family in NYC. The special

³ The New York State Commission on Education Reform, *Ensuring Children an Opportunity for a Sound Basic Education: Final Report*, Albany, NY: The New York State Commission on Education Reform, March 2004 (available at <http://www.state.ny.us/pdfs/finalreportweb.pdf>).

masters appointed by the trial court reviewed all the evidence concerning weights and recommended that that the weight for a student from a poor family should be at least 1.50. Academic studies of New York estimated weights of at least 2.00 for poor children and for children with limited English proficiency.⁴ All of these weights lead to cost estimates far above \$1.93 billion.

Nevertheless, when the Court of Appeals issued its final opinion in the CFE case in October 2006, it accepted the S&P weights—and their cost implications—and rejected these alternatives. According to this opinion:⁵

The S&P weightings for children with special needs also have record support. While S&P did not recommend any particular weighting over another, the coefficients that S&P applied were drawn from an extensive review of relevant research. Indeed the pertinent footnote to S&P's Resource Adequacy Study cites no fewer than 37 articles, reports and other scholarly works. The S&P calculations—applying a ... 1.35 [weighting] for economically disadvantaged students, and 1.2 for students with limited English proficiency, and reaching the conclusion that the spending gap for the New York City school district is \$1.93 billion -- were reasonable.

Although we recognize that legitimate arguments can be made for raising the coefficient for economically disadvantaged students to 1.5, we do not believe that the figure of 1.35 lacks grounding in prudent reason (pp. 19-20).

According to the Court of Appeals, therefore, the State could satisfy the “prudent reason” standard by

--accepting weights that were “explained” through a list of citations, without any discussion of the information in those citations or of how it was used to determine the weights;

--accepting pupil weights that were explicitly offered not as recommendations but simply as illustrations, without any consideration of the source of the weights or of alternatives

⁴ Three academic articles by William Duncombe and me (one joint with Anna Lukemeyer) were on the list of citations in the S&P report. These articles estimated weights for disadvantaged students in New York that were three to four times as large as the ones used by S&P.

⁵ This opinion can be found at <http://www.nycourts.gov/courts/appeals/decisions/nov06/136opn06.pdf>.

--rejecting weights that were obtained by the State Education Department, through a careful review by court-appointed referees, or by scholars.

In my opinion, this is not “prudent reason” but is instead feeble rationalization for the lowest possible cost estimate. As Chief Judge Kaye said in her dissent from the Court of Appeals decision,

Because the Standard & Poor's weighting of 1.35 for low-income students was not focused on the specific circumstances of New York City schools, its use to determine the actual cost of providing a sound basic education to economically disadvantaged New York City students was irrational (p. 11).

I couldn't agree more.