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Recommended Citation

J. Yinger, 2019. "How New York State Stole \$20 Billion from School Children in New York City, Part 2," It's Elementary, July.

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It's Elementary

A Column by John Yinger (EFAP Director)

July 2019

How New York State Stole \$20 Billion from School Children in New York City, Part 2

My previous column examined New York State's failure to live up to the spirit of the 2006 *Campaign for Fiscal Equity v. New York (CFE III)* decision. This column is a follow-up to add perspective on the meaning of the calculations in my previous column along with some extended results.

The first point to make is that my previous column was a policy exercise, not a legal analysis. The *CFE III* decision placed very limited requirements on New York State and then gave up jurisdiction over the case. As a result, decisions about the appropriate changes in school aid to New York City in light of the *CFE III* decision are up to the State's elected officials. My previous column provides some information that is relevant to these State decisions.

The starting point of my policy exercise was the observation that the Court of Appeals called for, at a minimum, a \$1.93 billion increase in New York State's annual operating aid in New York City. Their language on this point is clear. The court says:¹

In this third appeal by plaintiffs Campaign for Fiscal Equity, Inc. (CFE), et al., we address the cost of providing children in New York City's public schools with a sound basic education. The State estimated this cost to include a minimum of \$1.93 billion, in 2004 dollars, in additional annual operating funds. We conclude that this estimate was a reasonable one and that the courts should defer to this estimate, appropriately updated.

Accordingly, we declare that the constitutionally required funding for the New York City School District includes additional operating funds in the amount of \$1.93 billion, adjusted with reference to the latest version of the GCEI and inflation since 2004.

¹ These quotations come from the *CFE III* opinion, which is available at: <https://law.justia.com/cases/new-york/court-of-appeals/2006/2006-08630.html> . Citations in the opinion are omitted. Note that GCEI refers to a teacher cost index.

New York State was the defendant in the *CFE* case and the question was whether New York State should provide more school aid to New York City. These quotations prove that the Court of Appeals regarded the \$1.93 billion figure, appropriately adjusted for inflation, as the constitutionally required minimum increase in the City's state school aid.

The Court of Appeals also decided, however, to avoid any involvement in the enforcement of this standard. "The legislative and executive branches of government," said the Court, "are in a far better position than the Judiciary to determine funding needs throughout the state and priorities for the allocation of the State's resources." Thus, the Court of Appeals rejected a lower court's order for a multi-year aid increase. Moreover, the Court rejected the possibility of continuing jurisdiction over the case. The *CFE III* minimum standard is still in place—but it is not going to be enforced by the courts.²

It follows that policy makers who want to meet the spirit of the *CFE III* decision should ask whether past and planned state aid programs meet this minimum standard. My previous column and the current one are directed to these policy makers.

The calculations in my previous column used the \$1.93 billion in the *CFE III* decision as the required minimum aid increase for New York City. The above quotation from this decision indicates that a more appropriate starting point is the \$1.93 billion "adjusted with reference to the latest version of the GCEI and inflation since 2004." The calculation in this column therefore use the Consumer Price Index (CPI) to adjust the \$1.93 billion for inflation. To be specific, the consumer price index was 189 in 2004 and 202 in 2006, so the inflation-adjusted *CFE III* minimum for 2006 is $(\$1.93 \text{ billion}) \times (202/189) = \2.063 billion .

It is worth pointing out that the initial response of elected officials in New York State to the *CFE III* decision was to implement a new state program that met a higher standard than the *CFE* minimum. To be specific, the Budget and Reform Act of 2007 called for a \$3.2 billion increase in state aid to New York City, to be phased in over four years.³ One way to think about this \$3.2 billion figure is that it is the annual aid increase promised to the City by the State. Under this interpretation, the shortfalls between promised and actual aid to New York City are about 50 percent larger than the shortfalls calculated below.

² According to the Court of Appeals in *New Yorkers for Students' Educational Rights v. the State of New York* (2017), "Our decision in *CFE III* terminated that litigation; no injunctive relief survives that termination." See <https://law.justia.com/cases/new-york/court-of-appeals/2017/75.html> . I am grateful to David Sciarra and Wendy Lecker for making me aware of the comments about *CFE III* in this decision.

³ The provisions of this act are summarized in Alliance for Quality Education, "Summary of Governor Spitzer's Education Funding Reform Legislation as Adopted by New York State Legislature," which is available at: http://www.ageny.org/cms_files/File/Microsoft%20Word%20-%201Summaryoffinal2007budgetdealFINALnj--be.pdf .

The gaps between the *CFE* minimum aid and actual aid appear in Table 1. The shortfall in 2017 is over \$2.6 billion, and the cumulative shortfall from 2008 to 2017 is just short of \$20 billion. About \$1.1 billion of this shortfall is due to the increase in the number of students in New York City. Because of the inflation adjustment in the *CFE* minimum, these shortfalls are somewhat higher than those in my previous column.⁴ As in my previous column, the Budget and Reform Act of 2007 resulted in aid increases that exceeded the *CFE* minimum, at least until the phase-in of the planned increases was cancelled in 2010.

Table 2 and 3 describe my calculations in detail. Table 2 lists the required data. The data sources appear in my previous column. Table 3 explains the calculations.

In conclusion, the Court of Appeals set \$1.93 billion with an inflation adjustment as the minimum increase in aid to New York City after 2006-07—and then turned the implementation of this requirement over to the State’s elected officials. After a promising start, these elected officials completely dropped the ball. Annual aid to New York City now falls over \$2.6 billion below the *CFE* standard. The Court of Appeals has made it clear that it will not intervene in the State’s budgetary process to address this shortfall. It is up to citizens and elected officials who believe in a fair education finance system to push for a school aid system that gives school children in New York City the state aid they deserve.⁵

⁴ The tables in this column also fix a few small glitches in my previous calculations.

⁵ These fairness problems are not, of course, confined to New York City. My views on funding fairness in the rest of the state can be found in previous columns, such as the one for February 2018, which is available at: https://www.maxwell.syr.edu/cpr/efap/Its_Elementary/ .

Table 1. Shortfalls in Reaching *CFE* Spending Minima for NYC
(in millions of 2016 dollars)

Year	Shortfall Based on 2006-07 Pupil Count	Shortfall Due to Increase in Pupils, 2007-2017	Total Shortfall
2017	\$2,356.373	\$254.029	\$2,610.402
2016	\$2,168.569	\$239.075	\$2,407.644
2015	\$2,714.823	\$201.581	\$2,916.404
2014	\$2,547.018	\$134.469	\$2,681.487
2013	\$2,887.704	\$99.350	\$2,987.054
2012	\$2,663.614	\$81.688	\$2,745.302
2011	\$2,026.911	\$62.585	\$2,089.496
2010	\$1,407.005	\$38.959	\$1,445.964
2009	-\$15.426	\$7.735	-\$7.691
2008	-\$146.796	\$2.556	-\$144.240
Cumulative	\$18,609.795	\$1,122.028	\$19,731.823

Shortfall = *CFE* required minimum aid increase minus actual aid above 2006-07 level. The *CFE* minimum is phased in from 2008 to 2011. In addition, the *CFE* minimum is reduced in recession years (by 10% in 2009 and 25% in 2010 and then phased back it at 5 percentage points per year). Adjustments for inflation use the CPI. The 2004 *CFE* minimum is inflated to 2006.

Table 2. Data for Shortfall Calculations

Year	Total State Aid to NYC (000,000)	Average Daily Membership, NYC	State Aid Per Pupil, NYC = (2.1)/(2.2)	CPI	CPI Adjustment for 2006 dollars	Adjustment for Phase-In	Adjustment for Recession
	(2.1)	(2.2)	(2.3)	(2.4)	(2.5)	(2.6)	(2.7)
2017	\$10,730.50	1,124,141	\$9,545.51	246	0.8382	1.00	1.00
2016	\$10,659.07	1,119,620	\$9,520.26	241	0.8523	1.00	1.00
2015	\$9,886.59	1,108,301	\$8,920.49	237	0.8523	1.00	0.95
2014	\$9,491.06	1,082,948	\$8,764.09	237	0.8670	1.00	0.90
2013	\$8,758.17	1,069,671	\$8,187.72	233	0.8783	1.00	0.85
2012	\$8,614.47	1,064,046	\$8,095.96	230	0.8938	1.00	0.80
2011	\$8,681.75	1,057,158	\$8,212.35	226	0.9266	1.00	0.75
2010	\$8,893.41	1,045,749	\$8,504.35	218	0.9395	0.75	0.90
2009	\$9,811.37	1,026,109	\$9,561.72	215	0.9352	0.50	1.00
2008	\$9,030.63	1,023,867	\$8,820.12	216	0.9712	0.25	1.00
2007	\$8,073.02	1,018,962	\$7,922.79	208	1.0000		
2006				202	1.0343		
2005				195			
2004				189			

Notes: CFE mandate of \$1,930 million in 2004 inflated to 2006 = $(202/189) * (1,930) = \$2,062.75$ million. The 2006-07 school budgets (2007 in this table) are expressed in 2006 dollars.

Table 3. Shortfall Calculations

Year	Adjusted CFE Mandate in 2006 \$s = \$2,062.75 ×(2.6)×(2.7)	Adjusted CFE Mandate Per Pupil in 2006 \$s = (3.1) /(1,018,962)	State Aid Per Pupil in 2006 \$s = (2.3)×(2.5)	State Aid Per Pupil Above CFE Mandate (in 2006 \$s) = (3.3) - \$8,565.69	Total State Aid Above CFE Mandate (Millions of 2006 \$s) = (3.4)×(2.2)	Adj. CFE Mandate with Actual Pupils (Millions of 2006 \$s) = (3.2)×(2.2)	Shortfall with 2007 Pupils (Millions of 2016 \$s) = ((3.1) - (3.5)) /(2.5)	Shortfall with Actual Pupils (Millions of 2016 \$s) = ((3.6) - (3.5)) /(2.5)
	(3.1)	(3.2)	(3.3)	(3.4)	(3.5)	(3.6)	(3.7)	(3.8)
2017	\$2,062.75	\$2,024.37	\$8,000.80	\$78.02	\$87.70	\$2,275.67	\$2,356.37	\$2,610.40
2016	\$2,062.75	\$2,024.37	\$8,114.31	\$191.53	\$214.44	\$2,266.52	\$2,168.57	\$2,407.64
2015	\$1,959.61	\$1,923.15	\$7,603.12	-\$319.67	-\$354.29	\$2,131.43	\$2,714.82	\$2,916.40
2014	\$1,856.48	\$1,821.93	\$7,598.05	-\$324.73	-\$351.67	\$1,973.05	\$2,547.02	\$2,681.49
2013	\$1,753.34	\$1,720.71	\$7,190.96	-\$731.83	-\$782.82	\$1,840.59	\$2,887.70	\$2,987.05
2012	\$1,650.20	\$1,619.49	\$7,236.21	-\$686.58	-\$730.55	\$1,723.21	\$2,663.61	\$2,745.30
2011	\$1,547.06	\$1,518.27	\$7,609.61	-\$313.18	-\$331.08	\$1,605.06	\$2,026.91	\$2,089.50
2010	\$1,392.36	\$1,366.45	\$7,990.13	\$67.35	\$70.43	\$1,428.96	\$1,407.01	\$1,445.96
2009	\$1,031.38	\$1,012.18	\$8,941.98	\$1,019.19	\$1,045.80	\$1,038.61	-\$15.43	-\$7.69
2008	\$515.69	\$506.09	\$8,565.69	\$642.90	\$658.25	\$518.17	-\$146.80	-\$144.24
Cumulative Shortfall							\$18,609.79	\$19,731.82