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The CFE Case

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It's Elementary

A Monthly Column by EFAP Director John Yinger
November 2004

The CFE Case

The dictionary on my desk, Webster's New World Dictionary, Second College Edition, gives two definitions for "elementary." The first is "of first principles, rudiments, or fundamentals"; the second is "of or having to do with the formal instruction of children in basic subjects." This monthly column represents my attempt to put these two definitions together, that is, to comment on fundamental issues involved in public school education. The column is written to be accessible to a wide audience; technical studies of education are available elsewhere on the EFAP website and, of course, in many other places.

This month's column is the first in a series on the important lawsuit Campaign for Fiscal Equity v. New York. The first stage of this lawsuit was brought in 1993 by the Campaign for Fiscal Equity (CFE), a nonprofit organization, on behalf of children in the New York City public schools. In 1995, the highest court in New York State, the Court of Appeals, ruled that CFE had the right to challenge New York State's education finance system on the grounds that it violates the education clause of the New York State Constitution.

This decision led to another round of litigation. CFE argued that the schools in New York City did not meet the state constitution's requirement of a "sound, basic education" for all students. In 2001, the trial court in New York City ruled in favor of CFE and called for revisions in the state education finance system. This ruling was appealed and eventually upheld by the Court of Appeals in June, 2003. This is big news: In 2003, the New York State education finance system was found to be in violation of the state constitution.

In making its decision, the Court of Appeals emphasized evidence on the poor performance of students in City schools. It said, for example,

Among third graders, 35 to 40 percent [of City students] scored below the SRP [standard reference point], while Statewide about 90 percent scored above. The evidence showed that at

the third grade level—when children are expected to have learned to read—a score at the SRP means a child is barely literate, and hence that over a third of City schoolchildren were functionally illiterate.

The Court of Appeals called for a new state education finance that would give students in New York City access to a “meaningful high school education, one which prepares them to function productively as civic participants.” Moreover, the Court criticized the current state aid system because it does not consider “the needs of City students,” and it explicitly rejected “the premise that children come to the New York City schools ineducable, unfit to learn” because of “socioeconomic disadvantage.” Finally, the Court called for the State to implement an accountability system to ensure that the finance reforms implemented by the state have the desired effects.

The Court gave the New York State government until the end of July, 2004 to come up with a new education finance system that provides “the funding level necessary to provide City students with the opportunity for a sound basic education.” The State’s elected officials could not agree on a reform plan, however, and they did not meet this deadline. As a result, the case was remanded to the trial court. The judge in the case then appointed three “referees” to gather evidence from the parties in the case and other interested parties and then to make recommendations concerning steps that would bring the State into compliance with the state constitution.

The failure of the state’s elected officials to pass an education finance reform plan not only hands the reform decision back to the court system, but also implies that school districts other than New York City will be left out of the reforms. The CFE case was brought on behalf of schoolchildren in the City, not on behalf of children in other needy districts, such as Buffalo, Rochester, and Syracuse. Even if the courts impose reforms that benefit New York City, therefore, other needy districts will have to turn to the State’s elected officials, or bring a lawsuit of their own, to obtain more help from the State.

The official parties in this case are CFE and the State of New York, as represented by Governor Pataki. Because of their close interest in the case, the City of New York and the New York State Board of Regents, which has oversight over the State’s education policy and is partially independent, were also allowed to testify before the referees. Moreover, the referees invited

other interested parties to apply for “friend-of-the court” status. William Duncombe, associate director of EFAP, and I applied for, and were granted this status, and we submitted a friend-of-the-court brief on September 17, 2004. This brief is posted elsewhere on the EFAP web page. We were also granted permission to submit a second brief (dated November 4; also posted) in response to some of the comments made about our work by the parties in the case.

The report and recommendations by the referees are due at the end of November, 2004, so they have not yet been delivered as I write this column. Once they have been delivered, the trial judge will issue orders concerning the state’s finance and accountability system. These orders will probably require the state to increase the aid it gives to New York City by several billion dollars and to make various changes in the state’s educational accountability program. These orders will undoubtedly be appealed. Thus, we are a long way from knowing how this case will turn out.

A detailed history of this case, including all the key court documents and friend-of-the-court briefs, can be found on the CFE website: <http://www.cfequity.org/>.

In the next few columns, I will discuss three key issues in this case: What is the right adequacy standard and how much would it cost to meet this standard in a typical district? How much more would it cost to meet this adequacy standard in New York City than in a typical district because the City has such a high concentration of disadvantaged students? What is the best kind of accountability system to make certain that any extra funds given to New York City, or any other district, are spent in an appropriate manner