



**Campaign for Fiscal Equity, Inc.**

**110 William Street, Suite 2602, New York, NY 10038  
Tel (212) 867-8455 Fax (212) 867-8460  
www.cfequity.org**

**Testimony of  
Geri D. Palast  
Executive Director  
Campaign for Fiscal Equity, Inc.**

**before  
New York State Senate Finance Committee  
and  
New York State Assembly Ways and Means Committee**

**Executive Budget – Education, 2009-2010  
Elementary and Secondary Education**

**January 28, 2008  
Albany, New York**

TESTIMONY BY GERI D. PALAST, EXECUTIVE DIRECTOR  
OF THE CAMPAIGN FOR FISCAL EQUITY (CFE)

2009-2010 Budget Testimony  
January 28, 2009

Good morning, my name is Geri Palast. I am the Executive Director of the Campaign for Fiscal Equity (CFE). Thank you for the opportunity to testify today on making the promise of our state constitution – the right to a sound basic education - a reality for all children in the state of New York.

I would especially like to thank Senator Carl Kruger, Chair of the Senate Finance Committee, and Assembly Member Herman Farrell, Jr., Chair of the Assembly Ways and Means Committee, for holding these joint hearings on the Governor's Executive Budget. Thank you also to the members of both Committees as well as the Chairs of the Senate and Assembly Education Committees, Suzi Oppenheimer and Catherine Nolan, and other members of the Senate and the Assembly who are here today.

In April 2007 after 13 years of the Campaign for Fiscal Equity litigation, the governor and the legislature enacted the State Education Budget and Reform Act of 2007-2008, an unprecedented victory for the State's 2.8 million public school students, parents and education advocates. The law addressed four main concerns raised in the litigation.

First, the law made the historic commitment to a \$7 billion increase in state school aid over four years through 2010-2011, \$5.5 billion in foundation aid, classroom operating aid. For New York City, that translates to \$3.2 billion total aid increase, \$2.35 billion in foundation aid. In addition, the State mandated that New York City provide an additional \$2.2 billion over the same period to provide constitutionally required adequate funding to ensure a sound basic education.

Second, the law instituted the use of a transparent and reliable formula based on need to ensure that the foundation aid is distributed to serve the neediest students and schools and not politicians. The law firmly committed to a four year phase-in to achieve adequate foundation aid funding: Statewide- \$1.1 billion in 2007-2008, \$1.24 billion in 2008-2009, \$1.51 billion in 2009-2010, and \$1.65 billion in 2010-2011; New York City-\$470 million in 2007-2008, \$528 million in 2008-2009, \$646 million in 2009-2010, and \$705 million in 2010-11. This commitment, along with the additional funding for expense

driven aids and other specified programs, provided the districts with the promise of predictable and reliable funding which would allow them to plan the improvements necessary to provide the constitutional standard of a sound basic education.

Third, the law provided an accountability tool, the Contract for Excellence (Contract). The Contract requires low performing districts receiving substantial increases to propose transparent plans for the Commissioner to approve. The plan must detail how the district will distribute money to the schools, which specific strategies they will invest in, what programmatic supports will be utilized and project the outcomes they will achieve with the new investments.

Fourth, the law also provided for meaningful public participation in the development, review, approval and enforcement of the Contract.

The 2009-2010 budget that will be enacted this April 2009 will be the third year of this promised payout. The State reports that it will face a budget deficit of approximately \$15 billion. The Governor states that to meet this deficit, he will take \$2.5 billion out of the classrooms this year by a combination of cutting the baseline funding from last year and flatlining foundation and other education funding. We believe this number underestimates the cuts. The Executive Budget carries the Deficit Reduction Assessment (DRA) as a net reduction of \$700 million instead of the full budget reduction of \$1.1 billion by offsetting cuts in foundation aid with increases due to expense driven aids that must be paid. CFE estimates that the effect of the \$1.1 billion DRA is to cut the current 2008-09 foundation aid baseline by \$855 million. This translates to another \$400 million taken out of the classrooms. The Executive Budget also proposes another \$200 million cut in education related programs, growing the estimated cuts to the classroom to at least \$1.3 billion. These so-called “gap-closing” initiatives include:

- Shifting 15% of the financial burden for preschool special education programs to districts:
  - Statewide FY10 impact: equates to a \$133.0 million cut
  - NYC FY10 impact: equates to a \$ 97.3 million cut
- Eliminating funding for various grant programs—e.g. Teacher Centers, Teacher Mentor program, Math-Science Initiatives;
- Eliminating additional funding for after school funding for 21st Century Community Learning Centers;

- Reducing amounts available for prior-year school aid claims;
- Eliminating funding for certain legislative programs (e.g., Workplace Literacy and Grants to Math and Science High Schools);
- Eliminating funding for Full-Day K/UPK Planning Grants;
- One of the state's proposals intends to use federal funding for selected special education-related costs that previously were supported by state funds. It is not clear from the state's proposal what the "selected special ed" costs are, or whether the assumed switch to federal funds is guaranteed. If federal funding is not secured, presumed savings may in fact be shifted to school districts;

CFE strongly disagrees with the Governor's approach. We believe that there is not only a budget deficit, but an education deficit that by law as well as economics must remain one of the state's top priorities. New York's public school children have lived with this education deficit for over 15 years as documented and acknowledged by the courts in the CFE litigation. The 2007 Education Budget and Reform Act provided the four year timeline and financial commitment to address this education deficit. While we recognize that we are in tough economic times, there must be no changes to the funding baseline set last year, 2008-2009, in the second installment of the CFE payout, and the State must take extraordinary steps to make good on this year's commitment despite the economic downturn. Any changes in the payout of the full CFE promise must only be considered as a last resort in the context of true shared sacrifice that incorporates federal stimulus funds that reduce the state budget deficit and specifically provide additional education resources, and additional deficit reduction funds resulting from a new personal income tax on the wealthiest New Yorkers. Then, and only then, should we consider a scalpel not a meat axe approach to making temporary funding adjustments for this year only based on principles of equity with a guaranteed restoration with adjustments for inflation reflecting the purchasing power of the education dollar. Despite our funding disagreements on the dollars with Governor Paterson, he has acknowledged the need to ultimately keep the full CFE promise. Unfortunately, he has proposed to add an additional four years to the payout. This is unacceptable, and will put us back where we started undermining New York's capacity to provide the constitutionally mandated sound basic education. Compliance with this constitutional mandate is a legal, economic and moral necessity. This should be the bottom-line fact in all budget decisions.

**CFE will address the following concerns and call on the Governor and the legislature to:**

- **Fully Fund the \$1.5 Billion Legislated Commitment in Foundation Aid for the Third Year of the CFE Payout**
- **Preserve the Contracts for Excellence**
- **Allow No Supplantation; Strengthen the Mandated New York City Funding of \$2.2 billion over 4 years**
- **The Education Budget Deficit Persists: New York City—A Case Study**
- **Raise Income Taxes on the Wealthiest New Yorkers**

**Fully Fund the \$1.5 Billion Legislated Commitment in Foundation Aid for the Third Year of the CFE Payout**

All of New York State's governing entities committed to a specific schedule of annual funding increases. In 2007, the legislature and the governor increased foundation aid by \$1.1 billion, 20% of the four-year \$5.5 billion commitment. In 2008 the state adopted a one-year adjustment and slowed the phase-in commitment from 22.5% to 17.5% percent—the difference was to be made up this year with a 27.5% increase. However, the executive budget proposal would reduce the statewide foundation aid increase for 2009-10 from \$1.5 billion to zero. This translates into fewer teachers, larger class sizes, less investment in strategies from middle school reform to after school programs. These are the programs that make the difference in academic achievement for our students, particularly those with the highest needs. This proposal jeopardizes the likelihood of meeting the four year commitment. As noted above, the Governor proposes stretching out that commitment to eight (8) years, which will both increase the cost of education to the state over time, and, worse still, increase the number of New York's neediest schoolchildren who are denied the quality education that will make them economically productive and able to fully participate in the benefits and responsibilities of our society. In order for the legislature to fulfill its commitment to New York's children, the full 27.5% increase must be provided. \$1.5 billion must be restored to the proposed executive budget for 2009-2010.

## **Preserve the Contracts for Excellence**

The Contract for Excellence (Contract) is the “reform” agreement between the state and low performing school districts that receive substantial foundation aid funds. It is the transparent accountability tool tied to foundation aid that prioritizes strategic investments for high needs students in the low performing schools, and that requires input and active participation by parents and the public. Contract dollars are high impact money that must be spent on research-proven strategies for increasing student achievement: smaller classes, full day pre-kindergarten, teacher and principal quality initiatives, extended time for student instruction, and restructuring high schools and middle schools, programs for English Language Learners and innovative local research-based reforms. These scarce dollars are essential to leverage other school funding to assist the most vulnerable students.

The application of the Contract is contingent on a trigger level of new foundation aid funding: 10% or \$15 million whichever is less in one year, or a 2-year increase of 20% or \$27.5 million. Further each district continuing to receive these funds must maintain the total foundation aid investment to date in allowable programs serving the predominately neediest schools and students, defined as 75% of the funds must go to 50% of the lowest performing schools and students. If, despite our objections, foundation aid increases are cut this year so that few if any Contracts are triggered, there must be a legislative requirement that those funds already invested must remain in the Contracts for the duration of the CFE payout. This is important both to ensure that the neediest are served, and so that we are able to hold districts accountable for CFE dollars and we are able to demonstrate that this new investment made a difference in children’s lives. To his credit, the Governor has proposed this maintenance of effort to ensure that the Contracts are preserved. We urge that the Legislature follow suit.

## **Allow no Supplantation; Strengthen the Mandated New York City Funding of \$2.2 billion over Four Years**

The Education Reform Act provided funding increases to raise the quality of education for all New York’s public school students. The State has provided in both statute and regulation that additional school aid provided to resolve the CFE law suit must be used to supplement not supplant local school

funding. Otherwise, state funds will simply be used to fill budget holes rather than building the school funding base. This applies to every district in the state.

There is particular relevance for New York City, both the subject of the litigation, and also specifically mandated by the State to make a local contribution of \$2.2 billion over four years to reach the funding level determined to resolve the litigation. In a preliminary analysis submitted to the State Education Department, CFE challenged New York City's 2008-2009 Contract allocations. CFE's analysis shows that New York City has already supplanted, thus undermining both the constitution and statute. The new proposed state and local cuts will further exacerbate this underfunding and undermine the state constitutional obligation.

In the face of threatened state and district budget cuts, particularly in New York City, it is critical that the State ensure that the districts provide the statutorily required school expenditure reports provided for in Education Law § 2590-r and the regulations promulgated thereunder and Education Law § 211-d and 8 NYCRR 100.13. as relates specifically to the requirement under the Contract for Excellence. These reports must detail the district's baseline spending to provide the necessary comparison data so that it is possible to document whether a district has supplemented or supplanted. The State should further require that local funding cuts that result from improper supplantation be restored with inflation adjustments reflecting the purchasing power of the education dollar. In the case of New York City, the State must clarify that the additional \$2.2 billion does not include pension and debt service, and demand compliance with the regulations requiring a full accounting of the investment of state foundation aid funds in light of the two rounds of mid-year school cuts in 2007-2008 and 2008-2009 and the proposed budget reductions for 2009-2010. This same expense reporting must be enforced for Contract districts across the state.

### **The Education Deficit Persists: New York City—A Case Study**

As noted above, the CFE court record is replete with examples of how chronic underfunding has deprived high need students (poor, minority, English language learners, students with special needs) in low performing schools of their constitutional rights. Lack of highly qualified teachers, appropriate class sizes, and the instrumentalities of learning are chief among them.

An entire cohort of students passed through New York City's public schools while the CFE lawsuit wound its way through the courts and eventually the Legislature. Let's look at the challenges the city's 1.1 million students still face to secure their constitutional right "to the opportunity for a sound basic education":

- ✓ 206,458 students in grades 3 through 8 did NOT meet the competency standards in Reading in 2007.
- ✓ 149,114 students in grades 3 through 8 did NOT meet the competency standards in Math in 2007.
- ✓ Only 52.2% of the 2003 cohort of students graduated within 4 years.
- ✓ Only 36% of the 2003 cohort of students earned a New York State Regents high school diploma – the minimum standard students need to be ready for college and the world of work.
- ✓ Only 26.2% of English Language Learners graduate within four years, compared to 61.1% of English proficient students, and over 50.5% of ELLs drop out of high school over the course of seven years.
- ✓ 432 of the city's schools, representing 435,600 students, are identified by the state as needing improvement under the No Child Left Behind legislation.

In addition, New York City has some of the state's neediest students and it continues to be under-resourced:

- ✓ 72% of the city's students live in poverty.
- ✓ 12.3% of the city's students are identified as Students with Disabilities.
- ✓ 14% of the city's students are identified as English Language Learners.
- ✓ Class sizes in New York City are the largest on every grade and course level in New York State
- ✓ 87% of 7<sup>th</sup> graders are in classes with more than the City's Contract for Excellence goal of 23 – students in other grades don't fare much better.
- ✓ 501,457 students (*i.e.*, half of the total enrollment) attend classes in 515 overcrowded schools.

It is clear that the State and City cuts being proposed at this time will hurt the New York City school system and will likely stem the academic momentum that educators, students and parents have worked

so hard to attain in recent years. The City cannot afford to repeat the mistakes of the seventies when education budget cuts were so severe that it has taken the school system decades to recover.

### **Enact a Fair Personal Income Tax (PIT)**

New York faces a deficit of approximately \$15 billion that may increase if the economy worsens. Many voices want to solve this problem by cutting programs for working families. The right solution must be based on shared sacrifice. The budget must not be balanced on the backs of working families alone. The budget must reform of New York's tax system to recapture lost revenue.

Over the last 30 years, elected-officials have cut income tax rates in half on the wealthiest New Yorkers and changed the tax code so families earning very different incomes pay the same tax rates. These changes have resulted in \$8 billion of lost state revenue per year. This places an unfair burden on the poorest New Yorkers. It's simply not fair.

More state revenue from income taxes means less reliance on local property taxes to pay for public services. PIT reform will allow the state to protect the social safety net that so many New Yorkers rely on. Restoring fairness to our PIT system would allow for a much needed investment in middle class New Yorkers and boost our economy.

Any reform should be progressive and ensure that families in New York who make substantially different incomes pay different tax rates. This was also last done in 2003 on a temporary, 3-year basis, with two new tax brackets added to the top. That increase generated \$1.5 billion.

After New York raised income taxes in 2003, the number of high-income taxpayers and their income grew exponentially. According to Joseph Stiglitz, 2001 recipient of the Nobel Memorial Prize in Economics and Peter Orszag, formerly Director of the Congressional Budget Office, currently President Obama's Director of the Office of Management and Budget, "reductions in government spending on goods and services...are likely to be more damaging to the economy in the short run than tax increases focused on higher-income families."

### **Conclusion**

New York State has come a long way in the 15 years since CFE began the litigation to establish and fund the constitutional right to a sound basic education. The Education Budget and Reform Act of 2007-2008 provided a historic solution phased in over four years that must be preserved and protected to make the right a reality in our schools and for our students. We thank the Governor and the legislature for their leadership in enacting the law. By enacting a 2009-10 budget that implements the already authorized \$1.5 billion in new foundation aid on the previously legislated timetable, and fully utilizes the Contract for Excellence, the Governor and Legislature will demonstrate their commitment to school children and academic achievement.

CFE looks forward to working closely with you to continue advancing toward the ultimate goal of providing the opportunity for a sound basic education for every child as guaranteed by the New York State Constitution.

Thank you.