

MEMO FROM THE EPP EXECUTIVE DIRECTOR

CFE Remedy Scenarios

Unless there is some unforeseen legal event, a Campaign for Fiscal Equity remedy is on the horizon. This is not the time for battle fatigue and certainly not for hopelessness. The 2001 Supreme Court decision was a victory that is being delayed by legal maneuvering, but it is not being nullified.

After 13 years of litigation, a light is now visible at the end of the tunnel. This fall, the Appellate Court will hear the Governor's latest appeal. Since this court's rulings have never been favorable (remember the infamous decision that all that students needed was an eighth grade education), CFE may have to go to the state's highest court, the Court of Appeals, to get the lower court's ruling reversed. The legal skirmishes might be over by the spring of 2006.

There are two possible scenarios that come to mind as to the timeline for achieving an agreement on adequate funding for New York City school children:

Election Year If indeed, the court wrangling ends in the spring of 2006, the Governor and the Legislature could be faced with having to comply with the court order of 2001 and the Referees' recommendations of 2004 or risk defying the courts. Every state legislator would be up for election, which might lead to extreme upstate-downstate and suburban-city posturing. The upshot might be more pressure on the Governor to make every part of the state happy, so every legislator could claim to be "bringing home the bacon." Upstate and suburban legislators may want a settlement under a sympathetic, lame-duck Governor, rather than a new Governor. Under this "win-win" scenario, Governor Pataki would enter national politics as an education reformer.

The downsides? The Governor was given unprecedented power to shape the state budget in a ruling by the Court of Appeals in 2004. He could very well propose a pseudo-CFE remedy that the courts would ultimately reject. But by the time that the courts take this action, he would be in his last months of a lame-duck administration or out of office. Another possibility is that upstate-downstate and suburban-city fights could get so polarized that legislative leaders would find it easier to once again violate the CFE court order.

New Governor If 2006 turns out to be a fiasco, then the scenario becomes an echo of New Jersey's experience. Governor Jim Florio came into office having to find the court-ordered funds for high needs districts, and the blow-back from angry taxpayers made him a one-term Governor. If NYS Attorney General Elliott Spitzer becomes the Governor, the parallels with Florio may not apply. As a partner for seven years in the state's defense against the lawsuit, he is familiar with CFE. Few know of his personal convictions about school funding adequacy or even about education, but he could set a new tone of compromise and compliance with court orders. The Senate, lacking an ally in the Governor's office, may be less resistant to agreeing to a CFE remedy, so long as there is some benefit to their upstate and suburban districts.

The downsides? Plenty. At this time, Spitzer looks like the frontrunner, but a lot can happen in a year. If he is the next Governor, his positions on education could come as a shock.

So far, most of the comments made by visitors to his web site have been about onerous school property taxes. Another factor is that the dynamics in the Legislature will change. During Republican administrations, the Democratic Assembly Speaker gains leverage as the “odd man out.” During Democratic administrations the Republican Senate Leader gains leverage. The greatest uncertainty will be the economy in 2007, and the share of the state budget going to Medicaid. U. S. Senator Schumer recently stated that he is working to force states to take on a higher proportion of Medicaid costs because cities and counties are finding it difficult to cope with this program’s increases. If this effort succeeds, state resources will be stretched very thinly.

Beyond these two timelines, there is a slim chance that that a remedy might come sooner. Last fall there were rumors that the Mayor and the United Federation of Teachers were discussing points of unity around CFE in conjunction with the next teacher contract. Obviously, these talks broke down because there’s no contract or any sign that the city and the union are working together to secure funding for a CFE remedy. Any big advance on the education funding front in Albany takes both mules pulling the same wagon in the same direction, if not exactly in tandem.

The “When” May Not Be As Important as the “What” The CFE remedy may come in a year, two years, or three. The urgent matter at hand, however, is to reestablish the consensus that existed among government officials, education advocates, parents, civic groups, and union representatives when Justice DeGrasse issued his ruling in 2001. Most people who read the decision agreed with its conclusions. This general unanimity has dissipated.

Some have characterized this as the usual stage when there is a “piling on” of demands. This is not quite accurate. We have the strange dynamic where most of the advocates and parent leaders are remaining focused on the three remedies outlined in the 2001 court decision — well prepared teachers, smaller class sizes, and a reduction of overcrowding — while the Mayor, the Chancellor, and the City Council Education Committee Chair have generated long laundry lists. The tension between supporters of the short list and the supporters of the long list manifests itself most often in discussions about how to ensure “accountability.”

EPP never likes to enter into discussions about “accountability,” because the term has too many different meanings. Instead we have focused on the need to establish workable definitions and standards. For example, there are many ways of defining “class size,” and “overcrowding,” some of which do not result in fewer children in a class or fewer students in a school. (In the fall, EPP will be preparing a report on these issues.)

Clear standards emerge when there is a commitment to securing a goal. These commitments have not been made. Instead, the remedy process as defined by the court-appointed Referees as well as the legislation drafted by CFE is open-ended. Both the Referees and CFE have tried to avoid the charge that the lawsuit will result in the micromanagement of the school system by the courts. This open-ended remedy process has strengthened the hand of education officials and the Mayor in that there is a recognition that they are, obviously, in charge of the school system. But an open-ended process comes at a cost . It is very difficult to marshal support from parents and advocates for an open-ended process when the goals of a CFE remedy have become diffuse.

This standoff can be ended and needs to be. At this point in the litigation -- with an open-ended process supported by the Referees and all parties appearing before the court -- it is unrealistic to hope for a court order that will specify exact remedies. Nor will a perfect accountability system help much if education officials do not define their objectives. On the other hand, city officials need to recognize that they should craft a clearer set of commitments to the public and to Albany lawmakers as to how CFE funds will be used. Clarity will help rebuild broad support for a CFE remedy.