SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CAMPAIGN FOR FISCAL EQUITY, INC., AMINISHA BLACK, KUZALIAWA BLACK, INNOCENCIA BERGES-TAVERAS, BIENVENNIDO TAVERAS, TANIA TAVERAS, JOANNE DEJESUS, ERYCKA DEJESUS, ROBERT JACKSON, SUMAYA JACKSON, ASMANHAN JACKSON, HEATHER LEWIS, ALINA LEWIS, SHAYNA LEWIS, JOSHUA LEWIS, LILLIAN PAIGE, SHERRON PAIGE, COURTNEY PAIGE, VERNICE STEVENS, RICHARD WASHINGTON, MARIA VEGA, JIMMY VEGA, DOROTHY YOUNG, and BLAKE YOUNG, Plaintiffs, - against – THE STATE OF NEW YORK, GEORGE E. PATAKI, as Governor of the State of New York, and MICHAEL H. URBACH, as Tax Commissioner of the State of New York, Defendants.	Index No. 111070-93 Justice Leland DeGrasse

BRIEF OF *AMICUS CURIAE* CITIZENS BUDGET COMMISSION

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EXECUTIVE SUMMARY

The Citizens Budget Commission is a nonpartisan, nonprofit civic organization devoted to influencing constructive change in the finances and services of New York City and New York State government. It has earned a reputation for independence and research-based expertise. Following the June 26, 2003 decision by the New York State Court of Appeals that the State had failed to meet its constitutional obligation to provide the children of New York City a "sound basic education," the Commission decided that there is no more important issue confronting the State. Accordingly, the Commission has undertaken research into the issues related to achieving successful reform of the public school system in New York.

The Commission's research and this brief do not address directly the question, "What is the cost of a sound basic education?" That is an important matter for the Court to decide. The plaintiffs and defendants have alternative answers, and the Citizens Budget Commission does not have the educational expertise to resolve this issue. But this is not the only question the Special Masters must help the Court answer.

Justice DeGrasse has determined that the State is required to provide a sound basic education for all public school students in the City of New York, and also that the State has failed to carry out this mandate. The Masters and the Court must now determine the remedy for this failure of duty.

While there is considerable debate about how much money is required, there is agreement that the remedy will require the expenditure of significant additional public money on public education. The Commission's concern is somewhat different: whatever sums are ultimately required, money alone will not provide a sound basic education. The mandate imposed upon the State of New York by its Constitution will not be carried out unless the money is well and wisely spent. Public education will not be improved to the standard set by the Court of Appeals unless the new money—and the old money, too—are raised and spent in a different manner than they have been in the past.

Accordingly, this brief addresses four questions that confront the Court as it seeks to design a remedy consistent with the finding that the State must provide students in New York City a sound basic education. Each of the questions relates to ways in which providing a sound basic education requires doing things differently from how they are now done.

QUESTION #1: WHAT IS THE CORRECT MIX OF STATE VERSUS LOCAL REVENUES WITH WHICH TO FUND THE ADDED SPENDING NEEDED TO PROVIDE A SOUND BASIC EDUCATION?

ANSWER - All additional resources necessary to ensure that New York's students receive a sound basic education should be provided through statewide revenues.

1. ***Statewide funding is more consistent than local funding with principles of public finance.*** The "public benefits" of education are not confined to a local district and are spread among residents of the entire state.
2. ***Increased state funding is consistent with long run national trends that recognize the merits of greater state funding.*** Nationally, the state share of education funding has grown from less than 17 percent in 1930 to nearly 50 percent in 2002.
3. ***New York State currently lags most other states in its state share of funding.*** The national median state share of non-federal primary and secondary education funding is 57 percent, but New York provides only 48 percent of its schools' non-federal revenue.
4. ***Larger state shares of funding contribute to less inequity in spending among districts in a state.*** The variation in per pupil spending measures inequity among districts and is negatively correlated with the state share of funding. New York ranks 24th among the states in disparity among districts.
5. ***New York currently has high local taxes, but relatively low or average state taxes, compared to other states.*** New Yorkers pay 171 percent of the national average in local taxes. This is primarily because of State policies that include local Medicaid funding requirements and the below average share of state funding for education. Adding to the already high local tax burden is likely to force cuts for necessary services other than education or force tax increases that harm the City's economic viability.

QUESTION #2: WHAT MECHANISMS OF ACCOUNTABILITY ARE NECESSARY TO ENSURE THAT ADDITIONAL FUNDS ARE USED IN WAYS ESSENTIAL FOR A SOUND BASIC EDUCATION?

ANSWER - Accountability requires planning before funds are provided, reporting on the uses and consequences of the money, and meaningful sanctions of responsible officials if funds are not used effectively. The Zarb Commission has recommended an accountability strategy that goes far towards achieving these objectives, and it should be adopted with some important improvements.

These improvements relate to the following issues:

1. Education plans prepared by schools and districts should apply to all resources made available to the school, not just incremental funds.
2. Reports using EduStat and other required information should make clear to the public the extent to which schools are achieving the standards of a sound basic education.

3. Indicators of school performance based on student achievement should reflect both the value added by schools as measured by change in achievement over time as well as by comparison to absolute standards.
4. School performance should be judged with measures of efficiency as well as effectiveness.
5. The sanctions imposed on consistently weak schools should be preceded by positive interventions intended to support management teams facing difficulties, and successful management teams should be rewarded.

QUESTION #3: HOW CAN THE CITY BEST PROVIDE THE CLASSROOM SPACE NECESSARY FOR A SOUND BASIC EDUCATION?

ANSWER - The classroom space requirements for a sound basic education can be met in a timely, efficient and effective manner through a combination of two measures - redistricting of existing schools and operating existing schools on a year-round schedule. Much of the delay and expense associated with new construction can be avoided.

The expanded capacity from year-round education and rezoning is more than sufficient to accommodate the expansion needs identified by the CFE. The capacity available from year-round education and full use of capacity through rezoning (space for 1,268,574 students) exceeds the total capacity required to meet the needs for alleviating current crowding, accommodating smaller class size, and expanding pre-kindergarten enrollment (space for an estimated 1,225,145 students).

QUESTION #4: WHAT CHANGES IN THE COMPENSATION AND DEPLOYMENT OF TEACHERS ARE NECESSARY TO PROVIDE A SOUND BASIC EDUCATION?

ANSWER – Changes are necessary to overcome four obstacles to effective education embedded in current policies:

Problem #1 - Lack of performance incentives. The pay structure has given more emphasis to graduate training and teacher experience than is justified by their contribution to teacher performance.

Recommendation #1 - Restructure the pay schedule to make a larger share of compensation conditioned on job performance and to de-emphasize longevity and graduate educational credits. The elements of this compensation structure should include providing increments for teachers meeting widely recognized professional development milestones such as National Board Certification, rewarding teachers for taking on additional responsibilities or achieving certain goals, and rewarding schools or other work groups whose students have educational gains above those that could normally be expected.

Problem #2 - Selected teacher shortages. In the 1999-2000 school year, about 43 percent of teacher job titles were deemed in shortage, and about 40 percent of the schools had serious recruiting problems.

Recommendation #2: Use financial incentives to overcome shortages. Differentials in the range of 20 to 25 percent ought to be offered to teachers qualified for and serving in specific titles that are suitably deemed in a shortage condition and who also agree to work in those schools facing the greatest difficulty securing qualified teachers.

Problem #3 - Limits on the use of teachers' time for instructional activities. About one-third of available teacher time is used to cover classes while colleagues are on preparation periods, administrative duties, sabbaticals, serving as union representatives or have other non-instructional assignments.

Recommendation #3 - Increase teacher time spent on classroom instruction. Four specific measures are:

- Reduce combined preparation and administrative periods for junior high and high school teachers from 10 to five per week.
- Reduce preparation periods for elementary school teachers from five to three per week.
- Eliminate sabbatical leaves for travel and study.
- Eliminate subsidized time for union activities.

Problem #4 - Insufficient managerial authority in the deployment of teachers. The use of seniority as the dominant criterion for determining staff assignments limits a principal's ability to staff classes and programs based on individual performance and capacities.

Recommendation #4 - Enhance principals' managerial discretion. In addition to using performance pay to provide incentives for teachers to follow a principal's leadership, principals' discretion regarding which teachers may transfer to their school could be enhanced by allowing principals to select teachers for given posts from among multiple candidates with the most seniority.

Introduction and Overview

The Citizens Budget Commission is a nonpartisan, nonprofit civic organization devoted to influencing constructive change in the finances and services of New York City and New York State government. The Commission has monitored the finances and operations of New York City since 1932 and New York State since 1984. It has earned a reputation for independence and research-based expertise. Regardless of who is in power, the Commission sticks to its three fundamental beliefs: that the interests of the citizenry at large, rather than narrow interests, should be served; that it is wrong to waste precious public resources, whether they are financial or human; and that it is important to focus on the well-being of future New Yorkers, perhaps the most underrepresented interest of all.

Following the June 26, 2003 decision by the New York State Court of Appeals that the State had failed to meet its constitutional obligation to provide the children of New York City a "sound basic education," the Commission decided that there is no more important issue confronting the State. Accordingly, the Commission has undertaken research into the issues related to achieving successful reform of the public school system in New York. This research is supported by the Commission's own resources, Trustee donations, and philanthropic support including a significant grant from the Andrew Mellon Foundation.

This brief is submitted at a time when the Commission is still conducting its research. The questions addressed in this brief are those relevant to the Court's deliberations and on which the Commission has reached preliminary conclusions. Additional issues, including the most appropriate sources from which additional State revenues should be raised, are still being examined; the Commission would be eager, if appropriate, to share this information with the Court at a later date. The Commission plans to release a complete report in November 2004 and to organize a conference of major stakeholders in early December 2004.

The Commission's research and this brief do not address directly the question, "What is the cost of a sound basic education?" That is an important matter for the Court to decide. The plaintiffs and defendants have alternative answers, and the Citizens Budget Commission does not have the educational expertise to resolve this issue. But this is not the only question the Masters must help the Court answer.

The Court of Appeals has determined that the State is required to provide a sound basic education for all public school students in the City of New York, and also found that the State has failed to carry out this mandate. The Masters and the Court must now determine the remedy for this failure of duty.

While there is considerable debate about how much money is required, there is agreement that the remedy will require the expenditure of significant additional public money on public education. The Commission's concern is somewhat different: whatever sums are ultimately required, money alone will not provide a sound basic education. The mandate imposed upon the State of New York by its Constitution will not be carried out

unless the money is well and wisely spent. Public education will not be improved to the standard set by the Court of Appeals unless the new money—and the old money, too—are raised and spent in a different manner than they have been in the past.

Accordingly, this brief addresses four questions that confront the Court as it seeks to design a remedy consistent with the finding that the State must provide students in New York City a sound basic education. Each of the questions relates to ways in which providing a sound basic education requires doing things differently from how they are now done. The questions are:

1. **What is the correct mix of State versus local revenues with which to fund the added spending needed to provide a sound basic education?**

2. **What mechanisms of accountability are necessary to ensure that additional funds are used in ways essential for a sound basic education?**

3. **How can the City best provide the classroom space necessary for a sound basic education?**

4. **What changes in the compensation and deployment of teachers are necessary to provide a sound basic education?**

QUESTION #1

WHAT IS THE CORRECT MIX OF STATE VERSUS LOCAL REVENUES WITH WHICH TO FUND THE ADDED SPENDING NEEDED TO PROVIDE A SOUND BASIC EDUCATION?

ANSWER - All additional resources necessary to ensure that New York's students receive a sound basic education should be provided through statewide revenues.

There is wide agreement that providing a sound basic education to New York's children will require significant new resources. The State and the Campaign for Fiscal Equity estimate that additional education spending for this purpose should range from $2.5 billion to $8.4 billion, respectively.

In its decision, the Court noted that it was within the State's power to force New York City to raise its taxes and to spend more on education. Both the Governor's and the CFE's plans include requirements for additional local spending. Under the Governor's plan the local mandate is $1.5 billion of total of $4.7 billion for New York City; in the CFE's plan it is $1.6 billion of $6.1 billion.

However, such local mandates should not be a part of a court-approved remedy. All funding for additional spending should come from State revenues for the following five reasons.

1. ***Statewide funding is more consistent than local funding with principles of public finance.*** The "public benefits" of education are not confined to a local district and are spread among residents of the entire state.

Economists make a distinction between private benefits enjoyed by individual consumers and "public" benefits enjoyed by the broader population when a good or service is made available by government. To the extent benefits are private and can be restricted to the individual purchaser, the payment should come from private purchases. To the extent the benefits cannot be restricted to specific consumers, the payments must come from a collective purchase (usually a tax levied by government), because such a service is not likely to be paid for fully by an individual consumer. Thus society can rely on private purchases for items like motion picture viewing, but must rely on taxes to support services such as defense, parks, and inspections for air pollution.

The issue becomes more complex in practice because some services, including education, involve a combination of public and private benefits. Individuals benefit from learning to read and acquiring other skills that are part of a basic education, but all members of society also benefit from a better functioning citizenry and a more productive labor force. In such situations, economists argue that the cost should be borne through a mix of private payments and public subsidy. Americans follow this model with respect to public higher

education, which is financed in part by public subsidies, but which also generally requires some tuition payment by the individual beneficiary. In contrast, public elementary and secondary education has, since the mid-nineteenth century, been financed entirely through public subsidies. This commitment, embodied in the philosophy of "free" schools that came to prominence as part of a broader reform movement, has come to prevail in American society. Public subsidies typically cover the full cost of elementary and secondary education for those choosing to use the public school system.[1] This practice, which economists might judge to be an inefficient over-investment in education, is justified politically by a societal commitment to equal educational opportunities and the social mobility associated with it.

In deciding which level of government should finance a service, economists look to the geographic scope of the public benefits produced. For example, defense is to be paid for by the federal government because it benefits everyone in the country. Similarly, national parks such as the Grand Canyon, which are preserved as part of a national heritage and are visited by a national constituency, are to be maintained by federal taxes.[2] In contrast, a small park used primarily by individuals and families in a specific city is to be financed by local taxes. Similarly, street cleaning services organized by localities for the benefit of their residents should be paid for by taxes raised by those jurisdictions.

In contemporary society, the geographic scope of the public benefits from elementary and secondary education is broad. Americans are highly mobile, and the benefits of a mobile and productive labor force are national in scope. Similarly, the benefits of an informed electorate capable of making wise electoral choices are national in scope. These facts would suggest (at least from an economist's perspective) a large role for the federal government in financing elementary and secondary education. However, this is not the case. As shown in Table 1A, federal funds account for less than 8 percent of public school revenues.

Historical factors account for the divergence between current practice and economic logic in the financing of public schools. When public schools were established in the middle and late 1800s, the national government had limited taxing power and its role was restricted by prevailing interpretations of the constitution.[3] The federal government began making grants to states to support vocational education in the early 1900s, but generally avoided funding public schools until landmark legislation in 1965. The program passed that year, in particular Title I of the Elementary and Secondary Education Act, provided federal funds to states to help support services to disadvantaged students. This initiative expanded and by 1980 federal funding grew to reach nearly 10 percent of public school revenues. Since then other funds have grown more rapidly and the federal role has dropped to less than 8 percent. However, additional strings have been attached to the federal funds with the No Child Left Behind Act of 2001 (NCLB) mandating national testing and accountability standards.

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[1] Those opting for private schools pay the full cost privately (or through philanthropy) and receive little or no public subsidy. The mixed funding suggested by economic theory applies to neither type of elementary and secondary education.

[2] Many parks charge user fees to reflect that some of the benefits are greater for individual users of the parks.

[3] The federal government was not authorized to levy an income tax until ratification of the 16th amendment to the constitution in 1913.

Table 1A

Revenues for Public Elementary and Secondary Schools in the United States, by Source of Funds, School Years 1919-20 to 2001-02

(percent distribution)

School Year	Local*	State	Federal
1919-20	83.2 %	16.5 %	0.3 %
1929-30	82.7	16.9	0.4
1939-40	68.0	30.3	1.8
1949-50	57.3	39.8	2.9
1959-60	56.5	39.1	4.4
1969-70	52.1	39.9	8.0
1979-80	43.4	46.8	9.8
1989-90	46.8	47.1	6.1
1995-96	45.9	47.5	6.6
1996-97	45.4	48.0	6.6
1997-98	44.8	48.4	6.8
1998-99	44.2	48.7	7.1
1999-00	43.2	49.5	7.3
2000-01	43.0	49.9	7.1
2001-02	42.8	49.4	7.8

Source: U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2002* , <http://nces.ed.gov/programs/digest/d02_tf.asp> (June 19, 2004).

* Includes a relatively small amount from nongovernmental private sources (gifts and tuition and transportation fees from patrons). These sources accounted for 2.4 percent of total revenues in 1999-2000.

Note: Beginning in 1980-81, revenues for state education agencies are excluded. Beginning in 1988-89, data reflect new survey collection procedures and may not be entirely comparable with figures for earlier years. Detail may not sum to totals due to rounding.

In the absence of a large federal role, the major decision about public school funding is the division of responsibility between a state and its local jurisdictions. The states have almost uniformly created local school districts, typically with elected boards, to run schools, and these units have also typically been empowered to levy property taxes to support the schools. The economic logic of the public benefits of elementary and secondary education suggests that the bulk of the non-federal funding should come from state government rather than local taxes, even when local boards govern the schools on behalf of the state.

2. Increased state funding is consistent with long run national trends that recognize the merits of greater state funding.

States are increasingly recognizing the merits of more reliance on statewide funding. In the early part of the twentieth century more than 83 percent of school revenues came from local tax sources. However, as shown in Table 1a, the states' role in funding public schools has grown considerably over the past 75 years. The state share of all school revenues grew from less than 17 percent in 1930 to nearly 40 percent in 1950, remained at about that level

for the next 20 years, then rose in the 1970s to reach about 47 percent. Since 1980 the state share has increased slowly but steadily to approach 50 percent at the beginning of the 21st century.

The leading motivation for an increased state share of funding is greater equity in the resources available to students. Because of historic reliance on local property taxes to fund schools, it was easier to raise money in districts with more wealth than those with less wealth. In a rich district a lower tax rate can yield more money than a higher tax rate in a poorer district. To overcome this inequitable pattern, states have generally sought to make funds available to districts through formulas aimed at "equalization," through which proportionally more aid is given to poorer districts. These state efforts are imperfect, due both to limited resource commitments and to political incentives to continue to favor wealthier districts.

3. New York State currently lags most other states in its state share of funding.

In New York, the State provides 48 percent of non-federal revenues used for public primary and secondary education, compared to a national median of 57 percent. This places New York 36th in a ranking of the 50 states by state-sourced revenue for schools. (See Table 1B).

The state/local division of responsibility is highly variable. The state share of non-federal public school revenues ranges from more than 99 percent in Hawaii (where the state operates the schools) to less than one-third in Nevada.

4. Larger state shares of funding contribute to less inequity in spending among districts in a state.

The "disparity index" in Table 1B reflects the variation in per pupil spending among districts in a state. It is the ratio of the standard deviation in per pupil spending to the mean level of per pupil spending: higher ratios indicate wider disparities in spending among districts.[4] New York ranks 24th among the states in the degree of disparity. There is a statistically significant negative correlation between the degree of disparity and the share of spending provided by the state, suggesting some benefit in terms of equity from the increased share of spending. However, the correlation is far from perfect (about 0.1 versus 1.0), indicating that state equalization programs are not always well designed and other factors play a role in determining the disparities among districts.

[4] The per pupil amounts are based on counts of pupils that are "weighted" to take into account the greater resources required by pupils who are poor and/or in need of special education. The weights used in these figures are established by *Education Week* and differ from those used by the New York State Department of Education.

Table 1B
Non-federal Revenues for Public Elementary and Secondary Schools by Source and State, 1999-2000

State	State Share	Local Share	Index of Disparity * (2001)
Hawaii	**99.4%**	**0.6%**	0.0
New Mexico	85.3	14.7	17.1
Vermont	80.3	19.7	19.5
North Carolina	74.8	25.2	8.6
Alabama	72.3	27.7	8.7
Alaska	72.0	28.0	34.7
Delaware	71.9	28.1	7.7
Washington	71.1	28.9	11.9
Michigan	71.0	29.0	12.5
West Virginia	69.2	30.8	6.3
Kentucky	69.1	30.9	8.8
Oklahoma	68.9	31.1	13.9
Kansas	68.5	31.5	15.7
Mississippi	67.7	32.3	10.8
Idaho	67.5	32.5	15.8
Arkansas	67.5	32.5	11.0
California	66.8	33.2	11.0
Utah	65.7	34.3	13.9
Minnesota	65.2	34.8	13.6
Oregon	63.1	36.9	10.6
South Carolina	60.2	39.8	10.2
New Hampshire	59.8	40.2	17.0
Wisconsin	58.1	41.9	9.1
Wyoming	57.7	42.3	15.7
Louisiana	57.3	42.7	8.8
Iowa	57.1	42.9	8.2
Indiana	56.9	43.1	10.5
Florida	56.2	43.8	5.7
Montana	53.4	46.6	19.1
Georgia	52.2	47.8	12.3
Tennessee	52.0	48.0	9.8
Arizona	50.3	49.7	17.5
Maine	49.6	50.4	12.6
Texas	49.6	50.4	13.7
North Dakota	49.1	50.9	16.4
New York	**48.0**	**52.0**	**12.3**
Ohio	47.0	53.0	13.4
Massachusetts	46.9	53.1	16.8
Virginia	46.0	54.0	11.7
Colorado	45.9	54.1	11.2
Rhode Island	44.5	55.5	9.7
New Jersey	43.7	56.3	14.5
Connecticut	43.1	56.9	12.5
Maryland	42.8	57.2	8.5
Missouri	42.0	58.0	14.7
Nebraska	41.8	58.2	14.0
Pennsylvania	41.2	58.8	12.8
South Dakota	40.8	59.2	16.5
Illinois	34.2	65.8	14.1
Nevada	31.9	68.1	10.6
U.S. Total	**54.8%**	**45.2%**	**NA**
Median	**57.0**	**42.8**	**12.4**

Sources: U.S. Department of Education, National Center for Education Statistics, Digest of Education Statistics, 2002, <http://nces.ed.gov/programs/digest/d02_tf.asp> (June 19, 2004); Education Week on the Web, Quality Counts 2004, <http://www.edweek.org/sreports/qc04/> (June 19, 2004).

* The Index of disparity is a coefficient of variation. The value is calculated by dividing the standard deviation of adjusted spending per pupil by the state's average spending per pupil. Figures adjusted to reflect regional cost differences and weighted for student needs.

5. ***New York currently has high local taxes, but relatively low or average state taxes, compared to other states.***

Relative to economic resources, state-level taxes in New York State are slightly less burdensome than the average of the 50 states. In fiscal year 2000, New Yorkers paid $68 for every $1,000 in personal income, 98 percent of the national average. This placed New York State 29th nationally in its state-level tax burden. (See Table 1C).

However, local government taxes in New York State are far more burdensome than elsewhere in the country. New York State residents pay their local governments, including school districts, $73 for every $1,000 of personal income, fully 171 percent of the national average. The high local tax burden pushes the combined state and local tax burden of New Yorkers to the highest in the nation, more than a quarter higher than the national average.

New York's local taxes are so high primarily because of policies set by the State. First, unlike other states New York requires its localities to pay a significant share of Medicaid and public assistance costs. This requirement accounts for about one-quarter of the difference between New York's local tax burden and the national average. Second, the below-average share of education spending provided by the State accounts for another quarter of the difference. Most of the remaining difference is accounted for by fringe benefits (often driven by State mandates) and above-average wages provided to public employees in New York, public safety spending, and debt service.

The relatively low statewide tax burden, and the high current local tax burden attributable largely to State mandates, support the conclusion that additional education funds should be raised from statewide taxes rather than through additional local mandates. Adding to the already high local tax burden is likely to force cuts for necessary services other than education or force tax increases that harm the City’s economic viability.

Table 1C
State and Local Taxes per $1,000 of Personal Income, Fiscal Year 2000

	State Taxes			Local Taxes		
States	**Dollars/ $1,000 Personal Income**	**Percent of U.S Avg**	**Rank**	**Dollars/ $1,000 Personal Income**	**Percent of U.S Avg**	**Rank**
New York	**68**	**98%**	**29**	**73**	**171%**	**1**
Maine	87	125%	9	52	122%	2
New Jersey	63	91%	40	51	119%	3
Alaska	81	117%	16	50	118%	4
Rhode Island	71	102%	26	48	112%	5
Ohio	65	93%	37	48	112%	6
Colorado	55	79%	46	48	112%	7
Maryland	62	89%	41	47	111%	8
Illinois	61	88%	43	47	109%	9
Texas	51	73%	48	46	107%	10
Georgia	63	91%	39	46	107%	11
Louisiana	66	95%	34	44	103%	12
Nebraska	66	95%	33	44	103%	13
South Dakota	50	72%	49	44	102%	14
Arizona	67	97%	30	44	102%	15
New Hampshire	46	66%	50	43	100%	16
Connecticut	78	112%	18	42	98%	17
Wyoming	75	107%	21	42	98%	18
Wisconsin	88	126%	7	42	97%	19
Pennsylvania	66	95%	35	41	96%	20
Virginia	62	89%	42	41	96%	21
Indiana	65	94%	36	41	95%	22
Florida	58	84%	45	40	94%	23
North Dakota	79	114%	17	40	94%	24
Missouri	60	86%	44	40	93%	25
Iowa	71	103%	25	40	93%	26
Kansas	69	100%	28	40	92%	27
Oregon	67	96%	32	39	91%	28
Utah	81	117%	15	39	91%	29
Nevada	67	97%	31	38	89%	30
Montana	73	105%	23	37	87%	31
California	84	121%	11	36	85%	32
Massachusetts	74	107%	22	36	85%	33
Washington	72	104%	24	35	83%	34
South Carolina	70	101%	27	35	81%	35
Tennessee	55	79%	47	33	78%	36
Minnesota	91	131%	5	33	77%	37
Idaho	82	119%	14	32	74%	38
Michigan	82	119%	13	32	74%	39
Oklahoma	75	109%	20	31	73%	40
North Carolina	76	109%	19	30	71%	41
Alabama	64	92%	38	30	69%	42
New Mexico	99	143%	2	28	66%	43
Mississippi	83	120%	12	28	65%	44
West Virginia	89	129%	6	27	64%	45
Kentucky	84	122%	10	27	64%	46
Vermont	95	137%	3	25	59%	47
Hawaii	102	147%	1	24	55%	48
Delaware	94	135%	4	21	50%	49
Arkansas	87	126%	8	20	46%	50
U.S. Total	**$69**	**100%**		**$43**	**100%**	

Sources: Tax data from State of New York, Department of Tax and Finance, New York State Tax Source Book, March 2003, <http://www.tax.state.ny.us/Statistics/Policy-Special/Sourcebook02/Sourcebook02_Table_10.htm> (November 5, 2003); Personal Income data from U.S. Department of Commerce, Bureau of Economic Analysis, "Regional Data," Survey of Current Business, March 2003, D-66, <http://www.bea.doc.gov/bea/ARTICLES/2003/03March/D-Pages/0303DpgJ.pdf> (November 5, 2003).

QUESTION #2

WHAT MECHANISMS OF ACCOUNTABILITY ARE NECESSARY TO ENSURE THAT ADDITIONAL FUNDS ARE USED IN WAYS ESSENTIAL FOR A SOUND BASIC EDUCATION?

ANSWER - Accountability requires planning before funds are provided, reporting on the uses and consequences of the money, and meaningful sanctions of responsible officials if funds are not used effectively. The Zarb Commission has recommended an accountability strategy that goes far towards achieving these objectives, and it should be adopted with some important improvements.

The Court's decision requires that the State develop a system of accountability to ensure that new resources have the intended effect. Both defendants and plaintiffs recognize that the State does not now have such a system. The State's Schools Under Registration Review process and the testing and reporting requirements established by the State under the federal No Child Left Behind Act each have elements of an accountability system, but nether is fully satisfactory.

The generic requirements for meaningful accountability are:

1. Planning for how resources will be used.

Each school should indicate how it will use the resources made available. The uses should identify not only "line items" (such as types of personnel or equipment), but should be organized into programmatic objectives indicating planned class sizes, pre-kindergarten enrollment and other instructional interventions. These categories should reflect the standards established for a sound basic education. The plans should span a multi-year period and be updated on a rolling basis.

2. Reporting on how resources actually are used.

Schools and district leadership should make public information indicating how funds were expended. They should indicate whether the programmatic activities planned were accomplished – class sizes achieved, pre-kindergarten enrollment attained, special instructional services provided, and the extent to which standards for a sound basic education were actually met.

3. Reporting on student performance.

Information on student achievement as measured by standardized tests and other indicators should be reported publicly for relevant subgroups of the school population. The ultimate test of school performance is the extent to which students learn, and this should be reported in meaningful ways.

4. Sanctions for unsatisfactory managerial performance.

Serious consequences should follow from a failure of a school or district management team to use resources in planned ways or to achieve satisfactory levels of student performance given the additional resources. It is also desirable to have rewards for management teams performing above expected norms.

The accountability system proposed by the Zarb Commission has most of these elements. It would require school districts to prepare comprehensive, three-year educational plans and to include school-specific plans for those schools not meeting performance standards; it would create a comprehensive statewide data base, called EduStat, to track performance of students and characteristics of schools, and it would create strong sanctions in the form of closing and restructuring schools consistently performing badly.

The system outlined by the Zarb Commission should be part of the State's response to the Court's decision. In implementing the system, particular attention should be paid to improving the Zarb Commission's recommendations with respect to these elements of the needed accountability system:

- Education plans prepared by schools and districts should be comprehensive in the sense they account for all resources made available to the school, not just incremental funds. The new funds provided based on the Court's decision should leverage change toward more effective use of all funding for the public schools.

- Reports using EduStat and other required information should make clear to the public the extent to which schools are achieving the standards of a sound basic education. The uses and results of funding should be presented in terms of improved school services such as expanded pre-kindergarten enrollment, reduced class size, and greater availability of specialized instructional services.

- Indicators of school performance based on student achievement should reflect both the value added by schools as measured by change in achievement over time (so-called "value added') as well as by comparison to absolute standards.

- School performance should be judged with measures of efficiency as well as effectiveness. Examples of efficiency measures by which schools can be compared and judged include the proportion of total spending and the per pupil amounts allocated for non-instructional purposes and the ratio of per-pupil spending (adjusted for cost differences) to "value-added" gains in standardized test scores.

- The sanctions imposed on consistently weak schools should be preceded by positive interventions intended to support management teams facing difficulties; the State should also identify school management teams performing exceptionally well and provide rewards that could be simply recognition or be more tangible.

QUESTION #3

HOW CAN THE CITY BEST PROVIDE THE CLASSROOM SPACE NECESSARY FOR A SOUND BASIC EDUCATION?

ANSWER - The new classroom space requirements for a sound basic education can be met in a timely, efficient and effective manner through a combination of two measures - redistricting of existing schools and operating existing schools on a year-round schedule. Much of the delay and expense associated with new construction can be avoided.

One key component of a sound basic education is adequate classroom space. Public schools in New York City fall short of this standard because classrooms in some schools now are over capacity, some classrooms are in temporary structures that are substandard, and space is not readily available for expanded enrollment for pre-kindergarten classes.

As part of its "costing out" study, the CFE examined the capital needs of the New York City public schools. They found that $14.7 billion (in 2003 dollars) was needed to provide New York City students with the facilities needed for a "sound basic education" as defined by their panel of experts.[5] Table 3A summarizes the needs. Of the total, $12.3 billion is for new construction. This includes $3.9 billion to build new capacity to accommodate 68,200 students projected to be in overcrowded classrooms, and $2.7 billion as part of a five-year program to provide space for classes smaller than current sizes, but still less than the CFE's requirements for a "sound basic education". Another $5.7 billion is for new capacity to accommodate more than 93,900 students who would require new classrooms for pre-kindergarten classes and new classrooms in order to allow a maximum class size of 16 in grades K through 5. The CFE does not recommend that the latter $5.7 billion investment be made until after the other projects are funded, a delay of at least five years.

The CFE's analysis is reasonable in assessing the needs relative to its standards, but its two-stage recommended capital program is deficient in two ways. First, it delays achieving the conditions for sound basic education too long. Its program would not begin to establish some standards for at least five years. It is unlikely there would be adequate space for pre-kindergarten classes and smaller elementary school classes until another decade has passed. Second, it is far more expensive than is necessary. There are more efficient ways to provide the needed space, and these options should be part of any court approved plan.

The two options are redistricting schools and operating schools on year-round schedules. As explained below, rezoning would permit more complete use of existing capacity and provide classroom space for about 136,000 students. Changes in the school calendar in order to use school buildings 12 months per year would generate space for another 135,000 students, even after closing down 17,000 seats in transportable buildings. Together these strategies more than

[5] Campaign for Fiscal Equity, *Making the Right to a Sound Basic Education a Reality: Final Report of the Sound Basic Education Task Force*, "Part II: Building Aid Reform, Adequate Facilities for All," April 13, 2004.

address the long-term shortage of 216,000 seats identified by the CFE, and would do so in a more timely manner and at less cost. These strategies deserve careful attention, even if social or political barriers make full implementation difficult.

Table 3A
CFE Estimate of New York City
Public School Capital Needs
(Cost in millions of 2003 dollars)

	Seats	Estimated Cost
Overcrowding	**68,200**	**$3,935.8**
New capacity	66,000	$3,810.0
Eliminating 15-20 year old mini-buildings	2,200	$125.8
Short-term Class Size Reduction	**52,789**	**$2,723.8**
K-3 class size reduction to 20	included in new capacity total	
4-5 class size reduction to 20	1,897	$108.9
6-8 class size reduction to 23	230	$14.9
9-12 class size reduction to 24	50,662	$2,600.0
Avoiding Imminent Additional Overcrowding	**NA**	**$976.9**
Exterior Modernizations (58 schools)		$351.1
Windows (179 schools)		$367.8
Roofs (119 schools)		$115.7
Exterior Masonry (19 schools)		$34.9
Climate Controls (175 schools)		$59.7
Heating plant upgrades (43 schools)		$47.7
Access to Specialized Spaces	**1,000**	**$823.1**
Restoring specialized spaces from overcrowding*	1,000	$70.4
Creating libraries at schools without one (125 schools)		$169.3
Creating auditoriums at schools without one (363 schools)		$204.1
Ensuring functional labs in all high schools (64 schools)		$168.3
Ensuring functional labs in all middle schools (179 schools)		$211.0
Instrumentalities of Learning	**NA**	**$452.2**
Wiring the final 20% of unwired classrooms		$176.0
Purchase of new computers		125.7
Library upgrades (350 schools)		150.5
Subtotal - Short-term BRICKS Plan	**121,989**	**$8,911.8**
Longer-term Needs	**93,906**	**$5,749.1**
Class size of 16 in K-5	66,906	$4,172.0
Pre-K for four-year-olds	17,000	992.6
Pre-K for three-year-olds	10,000	584.5
Grand Total	**215,895**	**$14,660.9**

*Replacing capacity at gymnasiums and auditoriums now used for classes.

Source: Campaign for Fiscal Equity, *Making the Right To A Sound Basic Education a Reality: Final Report of CFE's Sound Basic Education Task Force, Part II. Building Aid Reform, Adequate Facilities for All, April, 13, 2004*.

The Case for Rezoning

Crowding, defined as having more students than the school's capacity, existed at 469 schools in the past school year. (See Table 3B.)However, most of the remaining 839 schools have enrollments below their capacity. In fact, citywide there is a *surplus* capacity of more than 72,000.

The simultaneous existence of crowded and under-used school buildings arises partly from the City Department of Education policies and partly from provisions of State law. Under these policies and laws, most schools are "zoned," meaning that they draw students from designated areas. As populations shift among zones, it is necessary to rezone in order to keep capacity and demand in balance. However, this often does not happen.

Zoning takes place at two levels. First, the city since 1969 has been divided into more than 30 school districts.[6] Elementary schools and middle schools are assigned to a district. The districts have boundary lines, and schools accept students outside their district lines only under special circumstances. The 1969 legislation envisioned periodic redrawing of district lines to reflect demographic changes, but this has not happened.[7] Districts now vary much more widely in population size than they did at the time of their creation.

Within districts, individual schools are assigned geographic zones.[8] Until 2003, the zones were set by elected district school boards and these boundaries, too, have rarely been revised. With the recent changes in school governance, each district has been assigned into one of ten regions. The new governance law reserves the power to re-zone to the new bodies that replace the community school boards; there is still little attempt at central control of zoning.

New zoning policies should be adopted. As shown in Table 3B, the unused capacity at the under-utilized schools (136,430 seats) far exceeds the excess enrollment (64,231 students) at the crowded schools. Thus the problem of crowding could be alleviated, and additional capacity to accommodate smaller class sizes could be created, by rezoning.

To achieve this outcome, rezoning would have to be accompanied by some reconfiguration of grades within schools. The crowding is most prevalent in high schools, and even citywide high school enrollment exceeds the capacity of the high schools. However, this can be overcome by shifting some ninth grade students now in high schools to middle schools (which have a large surplus capacity citywide). Such reconfiguration of grades across schools is relatively common, and several new schools are planned to accommodate grades six through 12.

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[6] The 2003 legislation reorganizing school governance retained the 32 districts then in existence, although the elected boards governing the districts were eliminated.

[7] District boundaries have been changed just once, in the 1970s, to create the new District 32.

[8] There are exceptions to the zoning rules. Many high schools serve citywide populations on a competitive basis, some districts have unzoned middle schools, and parents are given a choice of where to send their children under certain circumstances.

Table 3B
New Capacity Available from Rezoning

	Number of Schools	Seats Relative to Capacity
Schools Above Capacity		
Elementary Schools	298	(13,295)
Middle Schools	63	(9,043)
High Schools	108	(41,893)
Total	**469**	**(64,231)**
Schools At or Below Capacity		
Elementary Schools	612	59,225
Middle Schools	145	55,885
High Schools	82	21,320
Total	**839**	**136,430**
Surplus Capacity after Rezoning		
Elementary Schools	910	45,930
Middle Schools	208	46,842
High Schools	190	(20,573)
Total	**1,308**	**72,199**

Source: *2002-2003 New York City Department of Education School Construction Authority Enrollment, Capacity and Utilization Report,* September 2003.

The Case for Year-Round Education

The current school calendar in New York City, and many other public schools nationwide, schedules classes for about 180 days per year between Labor Day and late June. During this "school year" there are several holidays of varying length and no regular classes are scheduled during July and August. In the summer months some schools are used for remedial instruction.

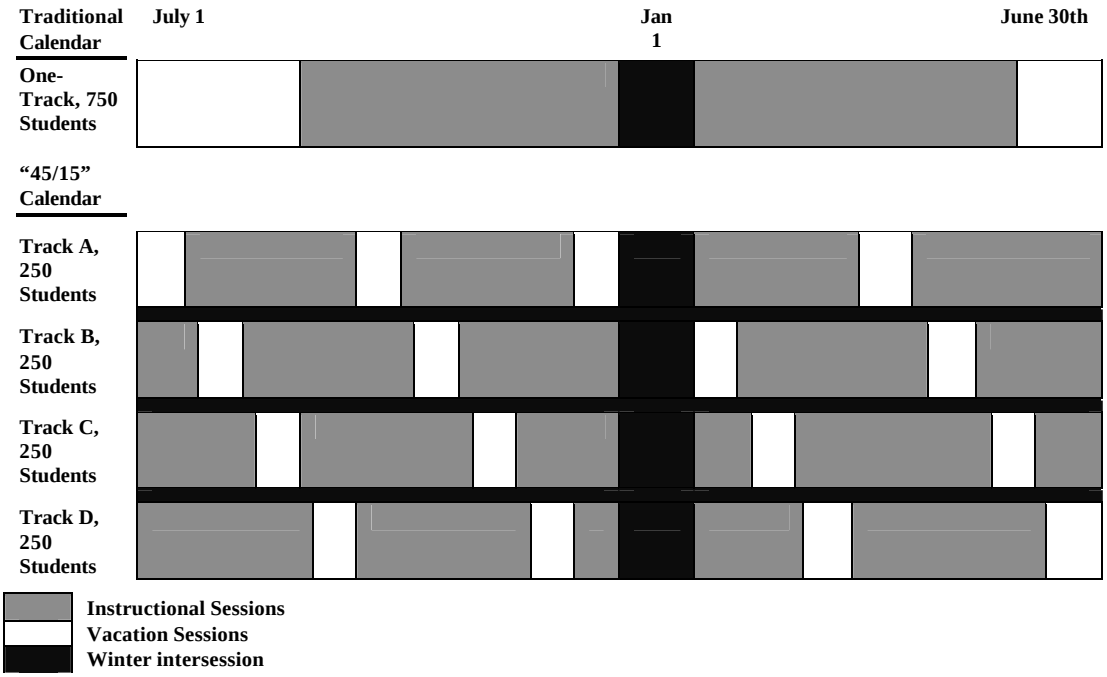
Deviations from this conventional model of several types have been implemented in school districts around the country. One variation increases the number of school days to as many as 240 annually, requiring students to attend these additional days. Such models are often called "extended" school years.

Another variation keeps the number of required school days at about 180, but spreads them over the entire calendar year and eliminates the conventional summer vacation. This model is often combined with staggered calendars in which all students do not attend the same specific 180 days. Instead, four different cohorts of students are scheduled, with only three of the four attending school on any particular day. This combination of staggered schedules among different groups of students spread over all 12 months is referred to here as "year-round education" (YRE).

YRE can be structured in a variety of ways, but a common schedule, known as the 45/15 plan, is illustrated in Figure 1. Students attend school for 45 days (9 weeks of five days) followed by a three week break. In the illustration, 1,000 students are enrolled in the school. They are divided into four cohorts of 250 each. Each cohort follows a staggered 45/15 schedule, so only 750 students are using the school on any given day. In this way, YRE increases the capacity of the school by one-third (from 750 to 1,000). YRE is a more efficient way to use school capacity than the conventional school calendar.

Figure 3C

Capacity Under Traditional and Year-Round "45/15" Calendars



School and track sizes were chosen for illustrative purposes. Multi-track scheduling could be implemented in any size school.

Although YRE is most often initiated as a way to cope with crowding in rapidly expanding districts, it has other benefits. One of the main educational reasons for YRE is the widely held assumption that students with shorter breaks between grades (that is, the 15 day vacation rather than the full two summer months) retain more of the learning from the previous grade and require less review time at the start of the school year.[9]

YRE is not simply a hypothetical model. In the 2002-03 school year, YRE was in effect for 2.3 million students at 3,181 schools in 565 districts and 46 states. In the last decade, the number of students in YRE has grown nearly 50 percent.[10]

[9] See Norman Ballinger, Charles E. Kirschenbaum, and Rita Pokol Poimbeauf, *The Year Round School: Where Learning Never Stops*, Bloomington, IN, Phi Delta Kappan Educational Foundation, 1987.
[10] http://www.nayre.org/statistics.html

Table 3D shows the extent to which YRE in combination with rezoning could increase the number of students accommodated in New York City public schools. The gross increase in capacity from YRE is simply one-third, but it is important to make two adjustments. First, a portion of the current capacity is temporary buildings that would not be suitable for more intensive, permanent use. Second, some capacity is needed for remedial instruction that now takes place in the summer; some classrooms would just not be available for YRE. Once these adjustments are made, YRE would increase capacity for regular enrollment by 134,928 from the current 1,133,646 (after rezoning) to 1,268,574.

Table 3D
New Capacity Available from Year-Round Education

	Elementary Schools	Middle Schools	High Schools	Total
Current Enrollment				1,061,497
Current Capacity given Rezoning	577,878	293,977	261,791	1,133,646
Elimination of Transportable Buildings	(14,930)	(2,023)	0	(16,953)
Permanent Current Capacity	562,948	291,954	261,791	1,116,693
Gross New Capacity from YRE	187,649	97,318	87,264	372,231
Adjustment for Summer Programs	(80,127)	(60,095)	(80,127)	(220,350)
Net New Capacity	107,522	37,223	7,136	151,881
Current and New Capacity Available for Enrollment	**670,470**	**329,177**	**268,927**	**1,268,574**

Source: *2002-2003 New York City Department of Education School Construction Authority Enrollment, Capacity and Utilization Report,* September 2003; New York Daily News, "Summer School Not for Everybody", May 14, 2004.

The expanded capacity from YRE and rezoning is more than sufficient to accommodate the expansion needs identified by the CFE. (See Table 3E.) These include space for all current students in permanent facilities, space for reduced class sizes required for a "sound basic education" as specified in the CFE's initial five-year program (called the BRICKS program) and its longer run program, and the added space for pre-kindergarten programs in the CFE's longer run program. The total capacity required to meet all these needs, space for an estimated 1,225,145 students, is less than the capacity available from YRE and full use of capacity through rezoning (space for 1,268,574 students).

Table 3E
Capacity Versus Need

Need	**1,225,145**
Current enrollment	1,061,497
Elimination of transportable buildings	16,953
Short-term class size reductions (BRICKS)	52,789
Longer-term needs	
Class size of 16 in K-5	66,906
Pre-kindergarten enrollment	27,000
Current Capacity with YRE and rezoning	**1,268,574**

Compared to new construction, the savings that these strategies offer - in time and in money - are compelling. But neither is without practical difficulties.

Implementing the schedule changes necessary for YRE would place significant demands on school administrators, families, and social service institutions. Air conditioning would be required throughout the school system if instruction is extended through the summer months. The calendar for teachers and other personnel must be adjusted to reflect the schedule changes. Parents, whose schedules and child care arrangements now are designed to accommodate a conventional school schedule, would have to alter those arrangements. Families and administrators would have to collaborate to coordinate the schedules of siblings in different schools in order to avoid unnecessary difficulties in arranging child care, vacation and recreational activities. After-school programs, conducted both in the schools and by outside agencies, may need to be augmented to assist parents in their adjustment to the new calendars.

These concerns are not inconsequential. However, schools on year-round schedules have developed strategies to address the social impact of changing from the traditional calendar. Implementing schedule changes on a district-wide basis reduces the difficulties in coordinating vacation and child care faced by families with children in different schools. Converting the entire school system to the same calendar also provides an incentive for other social institutions (day camps, employers, etc.) to alter their operations to accommodate the change. Allowing teachers to opt to teach sessions when they are off-track permits them to augment their pay by serving as substitute teachers in their field and often is seen by them as an improvement over the practice of temporary summer employment.

Concerns about rezoning also are serious and should be responded to seriously. Rezoning affects people on a visceral level; some may perceive change as a threat to the character of their neighborhood. It may be necessary to impose tighter limits on the number of students that can enroll in desirable, "good" schools; this issue, particularly important at high schools that enroll competitively, will ultimately solve itself as motivated students who do not get

their first choice help transform the schools they attend – but the process may be uncomfortable.

The political and administrative complexities of implementing YRE and rezoning are formidable, but should not prevent their adoption. The alternative is to spend billions that could be used effectively elsewhere on avoidable new construction and to delay for perhaps ten years providing a substantial share of the more than one million school children the space necessary for a sound basic education. The Court should not dismiss policy options that use existing facilities wisely, thereby promptly providing children a seat in a structurally sound and well-equipped school – without the delays or costs that accompany new construction.

QUESTION #4

WHAT CHANGES IN THE COMPENSATION AND DEPLOYMENT OF TEACHERS ARE NECESSARY TO PROVIDE A SOUND BASIC EDUCATION?

ANSWER – Changes are necessary to overcome four obstacles to effective education embedded in current policies:

1. *Lack of performance incentives;*
2. *Lack of financial incentives to deal with shortage categories of teachers;*
3. *Limits on the use of teachers' time for instructional activities;*
4. *Insufficient managerial authority in the deployment of teachers.*

The elements of a sound basic education including smaller class sizes in the early grades and more widespread pre-kindergarten classes will require more teaching staff. But the pedagogical personnel now employed, and to be employed, by the New York City Department of Education are paid and deployed in ways that hinder effective and efficient education.

Problem #1 - Lack of performance incentives.

If organizations are to perform well, their employees should be paid in relation to their contribution to that performance. Historically, this was the logic for establishing pay differentials for teachers with more experience and education. Graduate training and classroom experience were believed to be linked with better teacher performance. However, over time the pay structure has given more emphasis to these factors than is justified by their contribution to teacher performance. Under the current contract between the City and the United Federation of Teachers, a teacher can increase her annual salary up to $9,573 by earning graduate credits and up to $32,659 due to longevity. Numerous studies have failed to show a systematic relationship between graduate school credits and teacher performance, and experience significantly adds to teacher effectiveness only during the initial part of a teacher's career.[11] Thus, most of the current differences in pay among teachers bear little relationship to how well the individuals function as teachers, nor do they serve as an incentive to high performance.

This lack of relationship between pay and performance is demoralizing to good teachers. The best teachers see weaker colleagues receive equal or greater paychecks, and feel unappreciated and unrewarded for their superior service.

[11] Linda Darling-Hammond, "Teacher Quality and Student Achievement: A Review of State Policy Evidence," (Center for the Study of Teaching and Policy, August 1999); S. J. Rosenholtz, "The Organizational Context of Teaching," *Learning to Teach* (IL: University of Illinois at Champaign-Urbana, 1986); Hamilton Lankford and James Wychoff, "The Changing Structure of Teacher Compensation, 1970-94," *Economics of Education Review*, 1997, Vol. 16, No. 4, pp. 371-384.

Recommendation #1 - Restructure the pay schedule to make a larger share of compensation conditioned on job performance and to de-emphasize longevity and graduate educational credits.

In recognition of the dysfunctional consequences of basing teachers' pay only on education and longevity, many educational, corporate and political leaders have supported developing new compensation arrangements for teachers. In 1999 the National Education Summit, a meeting of governors and corporate chief executive officers, agreed to work with teacher organizations to negotiate "pay-for-performance" incentive plans into teacher salary structures.[12]

Innovative school districts in several areas have established compensation systems that reward other factors. These systems vary, but share the common purpose of seeking to link performance and pay more closely. The approaches being tried differ in two key aspects. First, some provide rewards to individual teachers, while others reward larger work units such as an entire school. In the latter case, the principal or a committee in the school determines how to allocate the financial incentive among the individual members of the relevant work unit. Second, some base the reward on the performance of students using standardized tests or other measures as the yardstick, while others provide the reward based on specific accomplishments of staff members themselves rather than their students (such as submitting a portfolio or passing a national teachers examination).

Because the experience with these performance pay plans is relatively new, definitive evaluations are not available. However, results at some of the districts with longer-running initiatives are positive.[13] For example, the Dallas public school district, the tenth largest in the nation, has since 1994 used sophisticated measures of student achievement based on standardized tests to reward schools whose pupils achieve greater than expected gains. About one-fifth of the schools receive the annual incentive payments. The State of Kentucky has provided incentive payments to schools based on greater than expected gains on its standardized tests in two-year cycles that began in 1992. About one-third of the schools earned the incentive payments.

The Douglas County school system in Colorado provides an example of an approach that rewards individual teacher behavior as well as group efforts. The county and the teachers union agreed in 1993 on a pay scale that provides no reward for longevity and no annual cost-of-living increases. Instead teachers increase their base pay by earning one or more of four types of incentive payments: (1) A $1,000 bonus for being designated an outstanding teacher based on submission of a portfolio. About one-fifth of the teachers obtained this payment each year. (2) Payments ranging from $250 to $500 for successfully completing training courses in areas such as computer skills. (3) Payments for taking on additional responsibilities at the school or district level. For school level tasks, payments range from

[12] National Education Summit, "1999 Action Statement," Adopted October 1, 1999.

[13] Findings from Bisa Cunningham, Cynthia Searcy and Kristen Simpson, "Opportunities for Merit Pay in New York City Public Schools," New York University Robert F. Wagner Graduate School of Public Service Capstone Project (April 2000).

$35 to $200 for specific responsibilities such as committee assignments and mentoring colleagues. For district level tasks, payments averaging $800 are given to teachers who participate most actively in these types of activities. (4) Group incentive payments are available to groups of teachers who design and implement an innovative program to improve student performance. In the 1998-99 school year 33 of 39 schools gained these awards with payments per teacher averaging about $400.[14]

The strategy of performance pay should be used in New York City. New teachers should be hired into a new pay plan that consists of base salaries that vary less than is now the case based on education or seniority, and that provide additional compensation based on job performance. Teachers with substantial periods of service under the old plan might be given the option to remain in a modified version of that system, but the new and more recently hired teachers, who will soon comprise the bulk of the workforce, should be part of a new era in teacher compensation.

The new plan ought to have three basic elements. First, base salaries ought to represent a large majority of total compensation to teachers, but should leave a significant portion of compensation to be determined based on performance. The base salaries should vary with a few increments based on experience and with a significant increment for widely recognized professional development milestones such as National Board Certification. This certification involves review by a nationally selected group of professionals over a year-long period, and must be renewed every ten years. In 1999 only seven teachers in New York City obtained this certification, and the Board employed a total of only 25 such certified teachers. Because it does not affect their pay, the vast majority of local teachers do not seek such certification despite its developmental benefits and national recognition. In contrast, North Carolina began in 1997 giving a 12 percent pay raise to teachers who obtained national certification, and it soon had more Board certified teachers than any other state.[15]

The second component of pay should be based on the accomplishments of individual teachers during the year. This should follow the Douglas County approach described earlier, with pay available for taking on additional responsibilities, for achieving certain developmental goals, or for special service to the school or district.

The third component of pay should be given to schools or other work groups whose students have educational gains above those that could normally be expected. The approach used in Dallas and described earlier can be a model. Appropriate statistical measures should be developed to determine when a school's staff has performed better than expected norms, and the staff responsible for these gains should be rewarded.

The changes recommended here are a restructuring of compensation arrangements; they do not necessarily have an incremental cost or savings compared to what otherwise would have been paid. Instead, the money would be allocated differently. Teachers would receive

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[14] The Delaney Policy Group, *Developing A Public Workforce for the New Millennium*, A Report Prepared for the Citizens Budget Commission, June 2000.

[15] Jeff Archer, "A Little Something Extra," *Education Week on the Web*, Part of a series entitled "Quality Counts '99."

less of their total compensation as base salary and a substantial portion would depend on their individual and group performance. There would still be considerable variation among the pay of individual teachers, but it would be based less on longevity and more on the quality of their work over the past year.

Problem #2 - Selected teacher shortages.

The City does not have a single job classification known as "teacher." Rather it hires people in 225 separate titles that are specific types of teachers. This includes many titles with relatively few incumbents, notably specialized bilingual instructors such as bilingual Cantonese high school social studies teachers (and other subject-specific bilingual instructors in Mandarin, Hebrew, Russian, Creole and other languages), and specialized vocational school teachers such as the instructors in window display, aeronautics, baking and barbering.

Determining when there is a "shortage" for a particular job title is conceptually difficult. Shortages, like beauty, are to some extent in the eye of the beholder. That is, employers identify situations when they must change their recruitment practices to adapt to changes in the nature of the labor supply as a "shortage." How, then, does the Board determine that a shortage exists? It classifies job titles as in a shortage (or not) annually based on its recruiting experience. In the 1999-2000 school year, 33,633 teachers or about 43 percent of the total were in 142 shortage job titles.

The shortage conditions impact most acutely on the schools that teachers consider the least desirable. Because the deployment of teachers is governed by their seniority, the more experienced teachers are more likely to be in schools they desire, while the new teachers must accept the least desired locations. Based on their inability to attract certified teachers, in the 1999-2000 school year about 40 percent of the public schools were in a shortage situation in the sense that they have serious recruiting problems. The combined share of schools with recruiting problems (40 percent) and job titles defined as in shortage (43 percent) indicated that about 17 percent of the system's total positions were in serious shortage. Given the substantial across-the-board pay raises granted teachers since the 1999-2000 school year, the number of positions in this serious shortage category in the most recent year is likely to be even fewer.

Recommendation #2: Use financial incentives to overcome shortages.

The City should provide differential pay for teachers qualified for and serving in specific titles that are suitably deemed in a shortage condition, and who also agree to work in those schools facing the greatest difficulty in securing qualified teachers. In this way, added funds can be targeted to recruit those teachers needed most to those places with the greatest need. Differentials in the range of 20-25 percent ought to be offered for these jobs.

Problem #3 - Limits on the use of teachers' time for instructional activities.

Providing a sound basic education is likely to require more teachers, but the number and cost of additional personnel can be reduced if those hired are assigned to teach students rather than to other duties. The City now follows inefficient policies that cause about one-third of teacher time to be diverted from classroom instruction. Under current contractual arrangements, all teachers are entitled to regular preparation periods, and in the junior high and high schools teachers also are assigned to administrative tasks for part of the day. Covering classes during these periods requires additional staff. About 17 percent of all available teacher time is required to cover classes while their colleagues are on preparation periods or administrative duties. An almost equal amount of teacher time is diverted from regular classroom assignments because teachers are on sabbatical or other leaves (about 3 percent of all teachers), are serving as union representatives (the equivalent of about 200 full-time teachers), or have other non-instructional assignments.[16]

A similar finding was reported in an audit by the City Comptroller of the use of teaching staff in a sample of high schools in October 1998. The audit found that teachers in regular high schools spent 64 percent of their time on instruction, and that those in alternative high schools spent 66 percent on instruction. The proportion in the regular high schools was unchanged from a similar audit in the spring of 1996, but the proportion in the alternative high schools had increased from 64 percent.[17]

In the city's public schools, there are 13.9 pupils for each teacher, a figure about 7 percent higher than the statewide total. (See Table 4A.) However, the disparity in average class size between New York City and the rest of the state is far greater; classes are between 11 percent and 32 percent larger. This means that teachers in New York City spend less time in classrooms teaching than their counterparts in the rest of the state.

[16] The estimates in this paragraph are based on an analysis of teacher assignments by Richard Delaney for the Citizens Budget Commission based on data from the Board of Education, Division of Human Resources and Labor Relations for the 1994-1995 school year. They were presented to Mayor Giuliani and Chancellor Ramon Cortines in a letter from the CBC's then-chairman Lawrence Buttenweiser, dated September 1, 1995. There have been few, if any, significant changes in the deployment priorities underlying these estimates since that analysis was completed.

[17] Bureau of Management Audit, Office of the Comptroller, City of New York, "Audit Report on the Board of Education's High School Teacher Utilization," MG 98-218A, June 29, 1999.

Table 4A
Pupil-Teacher Ratio and Average Class Sizes
in New York City and New York State Public Schools, 2001-02

	New York City	New York State	Percent Difference
Pupil-Teacher Ratio	13.9	13.0	6.9%
Average Class Size			
Kindergarten	21	19	10.5%
Grades 1 - 6	25	22	13.6%
English Grade 8	28	23	21.7%
Math Grade 8	28	23	21.7%
Science Grade 8	29	23	26.1%
Social Studies Grade 8	29	24	20.8%
English Grade 10	29	22	31.8%
Math Grade 10	28	23	21.7%
Science Grade 10	29	22	31.8%
Social Studies Grade 10	29	22	31.8%

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Source: State Education Depaartment, "A Report to the Governor and the Legislature on the Educational Status of the State's Schools," submitted July 2003, Tables 1 & 3.

Recommendation #3 - Increase teacher time spent on classroom instruction.

There is a ready source of additional teaching talent available from the current staff, if their non-teaching time is reallocated to teaching. The misallocation of the scarce resource of available teachers should be rectified.

Four specific measures to increase instructional time are:

- Reduce combined preparation and administrative periods for junior high and high school teachers from 10 to five per week.
- Reduce preparation periods for elementary school teachers from five to three per week.
- Eliminate sabbatical leaves for travel and study.
- Eliminate subsidized time for union activities.

Reallocating teacher time in this way would have the impact of adding the equivalent of more than 4,250 teachers to the payroll. These gains in productive time could be used to offset the need for additional hires necessary to provide a sound basic education.

Problem #4 - Insufficient managerial authority in the deployment of teachers.

Seniority is now the dominant criterion for determining staff assignments. Within their areas of competence, teachers select their class and other assignments based on seniority. This limits a principal's ability to staff classes and programs based on individual performance and capabilities. Similarly, principals running schools with good reputations must accept teachers transferring from other schools based on their seniority. This sometimes limits a principal's ability to select those most able or best suited to performing well in the school. The ability of teachers to transfer based on seniority also creates a drain of teachers from needy schools, obliging some troubled schools to rely disproportionately on new, and less experienced, hires.

Recommendation #4 - Enhance principals' managerial discretion.

The City is wisely pursuing a policy making principals more responsible and accountable for the performance of their schools. The principals' pay is now partly based on school performance. But in order to work more effectively, these steps need to be accompanied by changes in the teachers' contract that give principals more authority over how to engage, deploy and otherwise manage their staff.

The performance pay arrangement recommended above would be one important such measure. It would allow principals to help determine the pay of teachers by approving them for particular assignments in the individual component of the performance pay, and it would provide incentives for teachers to follow a principal's leadership in seeking to earn the group-based performance pay.

However, perhaps the leading constraint on principals' ability to use their judgment in deploying staff is the requirement that seniority determine most assignments. Principals should be given more discretion in determining which teachers may transfer to their school, and what assignments each teacher is given within their school. An appropriate step in enhancing such discretion would be to modify the seniority rules to allow principals to select teachers for given posts from among those three (or five) candidates with the most seniority. A similar "rule of three" is often used in hiring from civil service lists based on test scores (a supervisor can select from among the three highest scorers), and seniority need not be more binding than exams in personnel decisions.