

SUPREME COURT OF THE STATE OF NEW YORK : New York County Courthouse  
COUNTY OF NEW YORK 60 Centre Street  
New York, New York 10007

----- : Hon. Leland DeGrasse  
CAMPAIGN FOR FISCAL EQUITY, INC. : Index No.: 111070/93

Plaintiffs,

v.

: Special Masters:  
Hon. William C. Thompson  
Hon. E. Leo Milonas  
John D. Feerick, Esq.

THE STATE OF NEW YORK

Defendants.

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ADDITIONAL STATEMENT BY JOHN YINGER AND WILLIAM DUNCOMBE

John Yinger  
Trustee Professor of Public  
Administration and Economics  
Syracuse University  
The Maxwell School  
426 Eggers Hall  
Syracuse, New York 13244  
Telephone: (315) 443-9062  
Facsimile: (315) 443-1081  
Email: jyinger@maxwell.syr.edu

William Duncombe  
Professor of Public Administration  
Syracuse University  
The Maxwell School  
426 Eggers Hall  
Syracuse, New York 13244  
Telephone: (860) 424-1946  
Facsimile: (315) 443-1081  
Email: duncombe@maxwell.syr.edu

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## **ADDITIONAL STATEMENT BY JOHN YINGER AND WILLIAM DUNCOMBE**

### **1. Introduction**

In the *amicus curiae* brief we submitted on September 17, we emphasized two points: First, “calculating cost adjustments is a technical issue, which should be resolved through a process that includes scholarly input.” Second, “the cost of a sound basic education in New York City” is heavily influenced by adjustments for the City’s “concentration of disadvantaged students.”

Both of these points were central to the requests made in the “Amended Order of the Referees” (Ind. No., 11070-93) on September 22. This order asked the parties to discuss “The mechanism that should be put in place to permit the computation of that necessary level of funding each year hereafter” (par. A. 2). The Referees also asked what costing out method should be used (par. A. 8), which is a key issue in determining the necessary level of funding.

In addition, this order specifically asked the parties to “provide evidence and argument in support of, or in opposition to” the various approaches to student weights, including “the cost-weighting multiples proposed by professors Duncombe and Yinger” (par. A. 10 ( c)). A similar query about weights that does not mention our work is linked to the professional judgment approach to costing out (par. A. 11 ( c)).

This additional statement is written to respond to testimony on these two points by Dr. Finn and Dr. Palaich, witnesses for the defendant, and Dr. Parrish and Dr. Berne, witnesses for the plaintiff.<sup>1</sup>

## **2. The Need for a Costing-Out Process with Scholarly Input**

In our judgment, the testimony by these four witnesses provided ample support for a future costing-out process that includes scholarly input. After all, both parties called experts to comment on the strengths and weaknesses of various approaches to costing out, which is exactly the type of process that is needed in the future. Scholars do not all agree on the right approach, but scholarly debate and scholarly standards are still needed to keep costing-out, a key element in meeting the standards set by the court of appeals, from becoming nothing more than a political compromise.

Thus, we concur with Dr. Berne that costing-out analyses should be conducted on a regular basis (par. 41) and that the Court should not endorse a particular methodology, even if it selects a cost estimate based on a particular methodology as a starting point (par. 42). In our view, the Court should provide broad parameters for the costing-out process to assure that it occurs on a timely basis and that the methods employed have a sound basis in scholarly research. We find Dr. Berne's specific recommendation on this point to be reasonable: "So long as a methodology that is consistent with established professional practices is administered in a reasonable, consistent manner, future costing-

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<sup>1</sup> To be specific, we consulted "Testimony by Chester E. Finn, Jr.," "Testimony by Robert M. Palaich," "Statement of Thomas Parrish," "Statement of Dr. Robert Berne," and "Transcript of Berne Testimony." All of these documents were obtained from the CFE website ([www.cfequity.org](http://www.cfequity.org)). The paragraph and page citations in the text refer to these documents.

out approaches should be left to the sound discretion of the Regents or other policy makers” (par. 42).

Dr. Finn disagreed with our statement that “costing out is a technical step, which can be conducted using scientific procedures.” Specifically, Dr. Finn said “That statement is crucially wrong in a key respect. Though the specific methods employed in a costing-out activity surely have technical elements [list excluded], all of their most important elements rely on basic assumptions about what is the best way to approach educational costs” (par. 30). Dr. Finn then proceeds to undermine his own argument by providing his expert opinion on the strengths and weaknesses of the successful-schools and professional-judgment approaches to costing out. How can he reject the need for scholarly debate but then participate in it himself?

Indeed, Dr. Finn himself endorses the use of scientific standards for evaluating student weights at a later point in his testimony. Specifically, he says “periodic future reviews would be desirable, both to ascertain how well those weightings are working in fiscal terms and how successful is the educational performance by special-needs students that they are intended to pay for” (par. 45). We agree that such reviews would be desirable, and emphasize that this is exactly the point we are trying to make.

### **3. The Need for Accurate Estimates of the Extra Costs of Disadvantaged Students**

Several witnesses make misleading comment about our approach to estimating the cost of educating disadvantaged students or about the advantages of other approaches.

## A. Criticisms of the Duncombe/Yinger Weights

1. Dr. Finn rejects estimated weights as subjective. He says, “The reason it’s difficult—and subjective—to establish reasonable ‘weights’ is because they are normally based on estimates of current expenditures on behalf of the education of such children without regard for the efficiency or effectiveness of these expenditures” (par. 43).

This statement does not accurately describe the cost estimation approach for determining student weights. The cost models estimated by us and by other scholars explicitly control for student performance differences across districts and control for school district efficiency in a careful, if indirect way. As we indicated in our *amicus curiae* brief, school district efficiency cannot be measured directly and there is no consensus on the best indirect measurement technique, but several promising methods have been used in the scholarly literature.

In addition, any method for finding student weights, not just the cost estimation approach, must account for school district efficiency. As discussed below, the weights Dr. Finn supports, namely, those in the S&P report, are not estimated at all and certainly do not account for efficiency or effectiveness.<sup>2</sup>

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<sup>2</sup> Ironically, Dr. Finn also supports the use of the S&P weights to help identify “efficient” districts. Specifically, “efficient” districts are the ones with the lowest adjusted spending among districts meeting the performance standard. (See the S&P report, pages 42-47.) Adjusted spending is actual spending adjusted for student needs and wage costs. According to Dr. Finn, it is inappropriate to use estimated weights that actually control for efficiency, but there is no problem using arbitrary weights to determine which districts are efficient. We agree with Dr. Berne (par. 20), that there is no basis in the scholarly literature for excluding the highest-spending half of the “successful school districts” as a way to account for efficiency.

2. Dr. Parrish argues that statistically estimated weights are unrealistic.<sup>3</sup> To be specific, he writes

To the extent that the conclusions reached by our panels are more moderate than the poverty weightings utilized by scholars such as Duncombe and Yinger, that difference may reflect the fact that our panelists, being experienced educators who deal with the realities of school district administration and school programming on a daily basis, were guided by a realistic sense of the level of additional funding that schools in New York City and elsewhere could properly absorb and effectively utilize in a four-year period. Such a reality basis was undoubtedly infused into the panel deliberations by the school business managers that we included on each panel to ensure that concerns for fiscal realities were fully considered in all of the panel deliberations (par. 29).

This comment reveals that Dr. Parrish interprets pupil weights in a fundamentally different way than we do. In our judgment, pupil weights are intended to indicate how much more it would cost to bring a disadvantaged student than a non-disadvantaged student up to a given performance standard. Dr. Parrish apparently interprets these weights to be estimates of how much more money a school with poor students could “absorb and effectively utilize in a four-year period.” These are totally different concepts.

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<sup>3</sup> Dr. Berne did not comment on our approach to estimating weights. In his testimony, however, he was asked to discuss what he said at the initial CFE trial in 1999. Here is what he said (p. 1250, lines 9-22):

Again, I think there are three main methods that are being used in various states or by academics.

The first is what I'd call an econometric approach. That would be an approach where you would try to estimate equations that model the behavior of spending and school performance in the school districts and use the results of those equations to guide education policy and school finance distribution.

I would say at this stage we are at the early point of that, as the estimates are not as stable as one would like, I think, from the early work that's been done in this area.

Although he did not say so, his concern that econometric methods are at an “early” stage might not be so great today. Eleven of the references on the cost estimation approach or on a comparison of approaches that are provided at the end of our *amicus curiae* brief are dated in 2000 or later.

Concerns about absorbing and effectively utilizing funding are, of course, entirely appropriate, but they belong in the accountability system, not the pupil weights. If the needed funds cannot be absorbed and effectively utilized in a four-year period, then an aid system's performance objectives will not be achieved. The appropriate way to respond to such a possibility is to devise an accountability system that helps needy districts absorb and effectively utilize the funds they need, not to penalize these district by withholding some of the money they need based on the presumption that they will not know what to do with it.

Dr. Parrish also testified on the magnitude of the weights in the AIR/MAP report.

Although we have not done calculations that would yield "weightings" comparable to those used in the S&P study, the regents' study and Duncombe and Yinger's analyses, generally speaking, I think that the poverty factor that is implicit in our findings would be at a lower level than the weightings these studies used – and certainly substantially below the 100% poverty weighting used by the regents and the 120% poverty weighting used by Duncombe and Yinger –and that if somehow one were to build their weightings into our calculations, the resulting recommendations would be substantially higher than those we in fact reached (par. 28).

We agree with this conclusion: The cost of reform would be higher than stated in the AIR/MAP report if they used weights closer to ours. To some degree, this difference in weights appears to reflect the difference in interpretation just described. If so, we believe the AIR/MAP report understates the cost of reform because it is based on inappropriate view about the interpretation of student weights.

Although we believe the AIR/MAP report understates the extra costs of disadvantaged students, we also believe that Dr. Parrish was mistaken when he said that the implicit weights in the AIR/MAP report are below those in the S&P report. As stated

in our *amicus curiae* brief, we estimate that for a student receiving a subsidized lunch, the implicit extra weights in the AIR/MAP report equal 81 percent for elementary school, 37 percent for middle school, and 49 percent for high school, all of which are above the S&P weight of 35 percent. In other words, the S&P report (and Zarb Commission) understates the weights for disadvantaged students even more than does the AIR/MAP report.

### **B. Support for the S&P Weights**

Dr. Finn and Dr. Palaich provide strongly worded endorsements of the S&P weights. Dr. Finn claims that “The Zarb Commission based its recommended weighting on a careful analysis by S&P that examined available data on spending patterns across the country on behalf of children in various circumstances” (par. 44). This is not correct. According to S&P, it “uses weightings drawn from a review of the research literature concerning the coefficients that education agencies use in practice” (p. 20). This is the only explanation of these weights provided in the S&P report. Despite the misleading reference to the research literature, this quotation indicates that the S&P weights are based on state aid formulas (which are often discussed in scholarly publications), not on spending patterns. S&P did not do any analysis, careful or otherwise, and its weights cannot be interpreted as a serious estimate of the extra costs of students from poor families or with limited English proficiency.

Dr. Palaich makes a similar error. He says that “for economically-disadvantaged students, the weight of 1.35 is in line with the best thinking and practice in the field of education” (p. 28; this weight of 1.35 is equivalent to an extra weight of 35 percent as

discussed above). He then cites a report by the Education Trust to support this claim.<sup>4</sup>

According to the latest version of this report,

The need to adjust school funding based on the additional costs of poverty has also been codified by Congress under NCLB. In creating a formula to reward states that fund education equitably, Congress set a standard that states should provide districts with additional funding per low-income student equal to 40% of the average per student amount” (p. 2)

The basis for the 40 percent weight in NCLB is not clear, but it is clear that the 40 percent weight used by the Education Trust is not based on their research on “best thinking and practice in the field of education.” An extra weight of 35 percent may reflect average practice, but Dr. Palaich provides no evidence that it represents “best practice,” let alone that it represents “best thinking.”

### **Conclusion**

Estimating the extra cost of disadvantaged students is a difficult but manageable task. It is also a critical task in this case; because so many of New York City’s students are disadvantaged, adjustments for the extra costs of educating these students have a large impact on the cost of a sound basic education in the City. As shown in our *amicus curiae* brief, shifting from the implicit student-need weights in the AIR/MAP report to those we have estimated could raise the annual cost of reaching a sound, basic education in New York City by up to \$2 billion.<sup>5</sup> Both CFE and the Zarb Commission have decided both to

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<sup>4</sup> Dr. Palaich refers to a 2003 report by The Education Trust. An update of this report, which still uses the 40 percent weight, is now available: Kevin Kerry, *The Funding Gap 2004: Many States Still Shortchange Low-Income and Minority Students Receive Fewer Dollars*. Washington, D.C.: The Education Trust, 2004. Available at <http://www.edtrust.org>.

<sup>5</sup> We would like to correct a related typographical error in our original *amicus curiae* brief. On page 30 we say that the AIR/MAP report results in an estimated cost of \$14,039 per pupil. The correct figure is \$17,724 per pupil. The statement at the end of this paragraph is correct, however: “introducing reasonable

set high performance standards and to understate the extra costs of disadvantaged students. As we said in our conclusion of our brief,

The danger with this approach is that the City will be blamed for not achieving the high performance standards in these proposals even though the failure to achieve these standards results from insufficient funding, not insufficient effort from the City.

A better approach would be to start with accurate, scientifically based calculations of the extra costs of disadvantaged students today and then to put in place a scientifically based process for calculating these extra costs in the future.

Dated: November 4, 2004  
Respectfully submitted,



By: \_\_\_\_\_

John Yinger  
Trustee Professor of Public Administration and Economics  
Syracuse University  
The Maxwell School  
426 Eggers Hall  
Syracuse, New York 13244  
Telephone: (315) 443-9062  
Facsimile: (315) 443-1081  
Email: jyinger@maxwell.syr.edu



By: \_\_\_\_\_

William Duncombe  
Professor of Public Administration and Economics  
Syracuse University  
The Maxwell School  
426 Eggers Hall  
Syracuse, New York 13244

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calculations for both wages and student needs raises the cost estimate by about 20 percent to a figure above \$20,000 per pupil.”

Telephone: (860) 424-1946  
Facsimile: (315) 443-1081  
Email: [jyinger@maxwell.syr.edu](mailto:jyinger@maxwell.syr.edu)