



NEW YORK  
CITY BAR

**COMMITTEE ON  
EDUCATION AND THE LAW**

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March 14, 2013

The Honorable Andrew M. Cuomo  
Governor of New York State  
New York State Capitol Building  
Albany, NY 12224

Dear Governor Cuomo,

I am writing on behalf of the New York City Bar Association's Committee on Law and Education to register the Committee's strong support for restoring the state aid to New York City schools that was lost as a result of the failure of the New York City Department of Education and the United Federation of Teachers to reach an agreement on a new teacher evaluation system. The Committee opposes the reported \$260 million in cuts to New York City schools on both legal and policy grounds.

As an initial matter, the cuts in education funding for New York City conflict with the State's obligation under the Constitution to ensure that all children receive a sound basic education. As the Court of Appeals held in *Campaign for Fiscal Equity, Inc. v. State of New York*, the New York City Department of Education and the City itself are "creatures or agents of the State" and "the State remains responsible when the failures of its agents sabotage the measures by which it secures for its citizens their constitutionally-mandated rights."<sup>1</sup> In other words, the State is ultimately responsible for providing adequate funding to New York City schools, regardless of whether the City and the UFT reach an agreement on teacher evaluations.

Moreover, there is no moral basis for depriving the students of New York City's public schools of adequate funding based on the failures of the Department of Education and teacher's union. As Judge Mendez found when he preliminarily enjoined the State from withholding these funds, the penalty provisions place "[i]nnocent students that had no influence over the legislative

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<sup>1</sup> 100 N.Y.2d 893, 922 (2003).

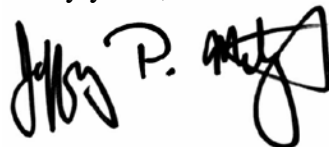
process or [teacher evaluation] negotiations ... at risk academically.”<sup>2</sup> We agree with Judge Mendez’s ruling.

Indeed, to the extent that the new teacher evaluation system would have improved teaching and learning in New York City schools, the penalty provisions actually add insult to injury because, unless state aid is restored, New York City students would be deprived of the benefits from a new teacher evaluation system *and* suffer from the “loss of 700 guidance counselor and teacher lines; increases in class size; cuts in after-school and anti-bullying programs; cuts in pre-kindergarten special education and cuts in test preparation.”<sup>3</sup>

Finally, it cannot be argued that funding is irrelevant to a student’s constitutionally protected right to a sound basic education. Based on the testimony of 72 witnesses and over 4,000 exhibits, the court in *Campaign for Fiscal Equity* found a “causal connection between better funding, improved inputs and better student results.”<sup>4</sup> Notwithstanding continued academic debate on this subject, the Court’s holding – that money matters in determining whether students are receiving their constitutional right to a sound basic education – remains the law in New York State.

To be sure, the Committee appreciates the importance of deadlines and accountability for results. However, it is an odd notion of accountability to punish innocent students with substantially reduced funding because a term-limited Mayor and union officials who are not elected by the people were unable to reach an agreement on a new teacher evaluation system. We strongly urge you to restore state education aid to New York City.

Truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey P. Metzler". The signature is stylized and includes a large, looped flourish at the end.

Jeffrey P. Metzler  
Chair

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<sup>2</sup> *Aristy-Farer v. State of New York*, Index No. 100274/13 (Supreme Court, New York County February 19, 2013) (order granting preliminary injunction).

<sup>3</sup> *Id.*

<sup>4</sup> 100 N.Y.2d at 920.