

ESSENTIAL RESOURCES

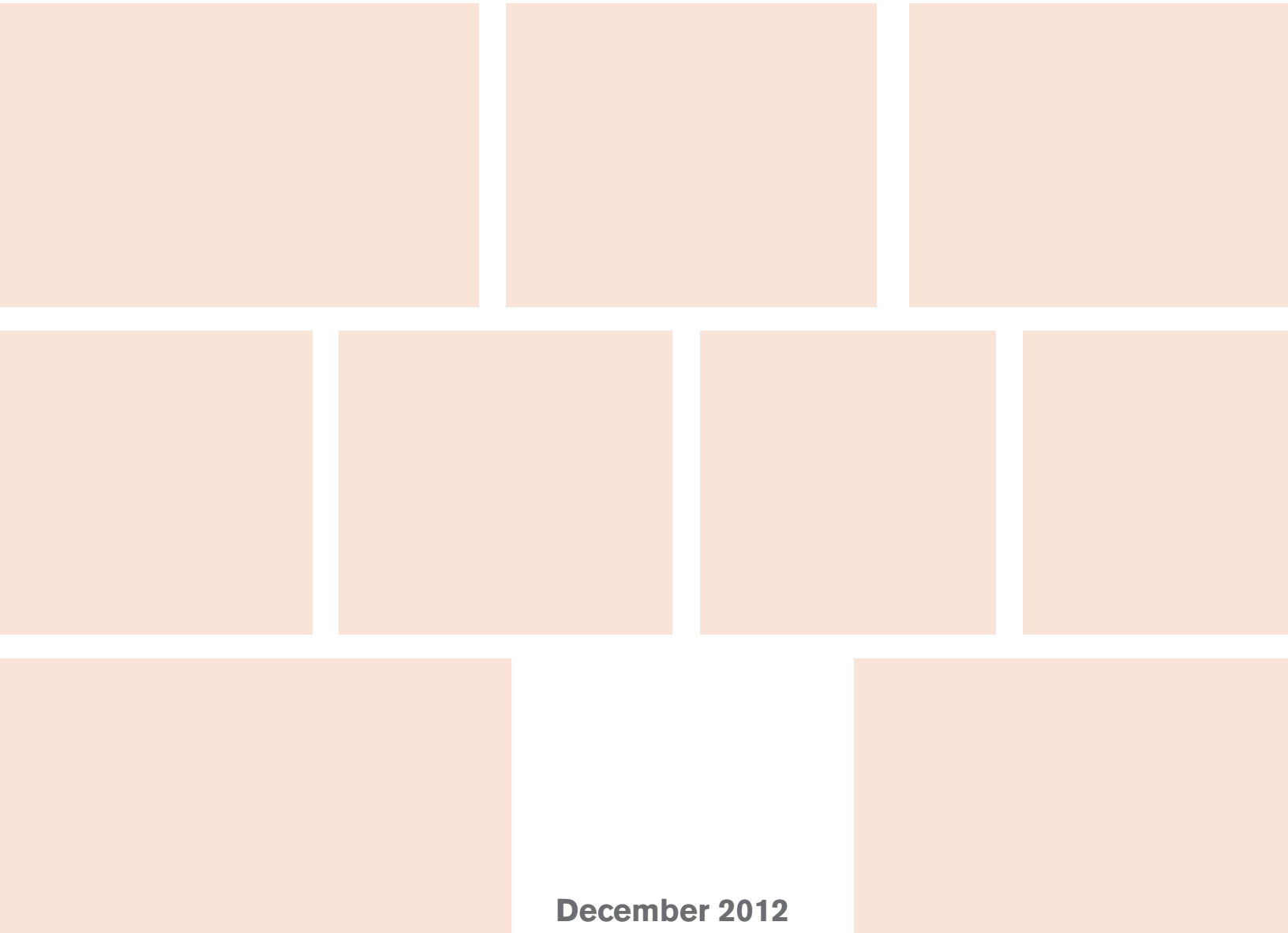
**The Constitutional Requirements for Providing
All Students in New York State the Opportunity
for a Sound Basic Education**



December 2012

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The Campaign for Educational Equity is a nonprofit research and policy center at Teachers College that champions the right of all children to meaningful educational opportunity and works to define and secure the full range of resources, supports, and services necessary to provide this opportunity to disadvantaged children.

We believe that all children, whatever their family background, wherever they live, and whatever the current political and economic climate, are entitled to a meaningful opportunity to graduate from high school prepared for college success and/or competitive employment. We promote a comprehensive approach to educational opportunity that would provide disadvantaged students the full spectrum of resources, services, and supports most critical for school success because we believe their right to meaningful educational opportunity entails access to these essential resources.

Founded in 2005 by internationally known educational law scholar and advocate Michael A. Rebell, who successfully litigated the landmark school funding lawsuit, *CFE v. State of New York*, the Campaign pursues systems change through a dynamic, interrelated program of research, legal analysis, policy development, coalition building, curriculum development, and advocacy dedicated to developing the evidence, policy models, curricula, leadership, and collaborations necessary to advance this agenda at the federal, state, and local levels.

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Introduction

In 2003, the Court of Appeals, New York's highest court, held in *Campaign for Fiscal Equity (CFE) v. State of New York* that the state constitution requires New York State to provide all of its students “a meaningful high school education,”¹ one that will prepare them to “function productively as civic participants capable of voting [or] serving on a jury,”² and “to obtain ‘competitive employment.’”³ In the *CFE* litigation, the courts also described in general terms the essential resources that are necessary to provide all students the opportunity for a sound basic education. These essentials were initially expressed in the following terms:

Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.⁴

Justice Leland DeGrasse, the trial judge, adopting that outline, then articulated seven specific categories of resources that “essentially fall within the three areas set forth by the Court of Appeals”:⁵

1. sufficient numbers of qualified teachers, principals and other personnel;
2. appropriate class sizes;
3. adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum;
4. sufficient and up-to-date books, supplies, libraries, educational technology and laboratories;
5. suitable curricula, including an expanded platform of programs to help at-risk students by giving them “more time on task”;
6. adequate resources for students with extraordinary needs; and
7. a safe orderly environment.⁶

In New York, the Board of Regents has established “learning standards” and academic course requirements that all students must meet in order to receive a high school diploma. The New York State Learning Standards and Regents diploma requirements, therefore, define, in practice, much of what constitutes a “meaningful high school education” for constitutional purposes.⁷ All students in the state are entitled to the educational

¹ *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 907 (2003)(hereinafter “*CFE I*”).

² *Id.* at 905 (quoting *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 316 (1995) (hereinafter “*CFE I*”).

³ See *CFE II*, 100 N.Y.2d at 905 (citation omitted).

⁴ *CFE I*, 86 N.Y.2d at 317.

⁵ *Campaign for Fiscal Equity v. State*, 295 A.D.2d 1, 10 (1st Dep’t 2002). The term “resource,” as defined by the court and as used in this document, refers broadly to “a means of supplying a deficiency.” Shorter Oxford English Dictionary, 2549 (6th ed. 2007), and includes, in addition to material assets, suitable programs and activities needed to provide students a meaningful opportunity for a sound basic education.

⁶ *Campaign for Fiscal Equity v. State*, 187 Misc.2d 1, 114-15 (Sup. Ct. 2001) (hereinafter “*DeGrasse*”). The trial court’s elucidation of the minimum constitutional requirements was directly affirmed by the Appellate Division, First Department. See *Campaign for Fiscal Equity v. State*, 295 A.D.2d 1, 10 (1st Dep’t 2002), and then this aspect of the Appellate Division’s decision was implicitly affirmed by the Court of Appeals in *CFE II*, 100 N.Y.2d at 932.

⁷ In the *CFE* litigation, the parties and the Court of Appeals agreed that the learning standards in effect at the time met, and in some respects exceeded, constitutional requirements, and that the Regents’ criteria “standing alone” do not define the constitutional right to a sound basic education. See *CFE II*, 100 N.Y. at 907-08. For all practical purposes, however, since most students cannot receive a diploma that signifies that they have received a “meaningful high school education” without meeting the Regents learning standards and the graduation requirements related to them, the learning standards do define much of the essence of a “meaningful high education.” Therefore, operationally, the Regents learning standards and the laws and regulations that have been adopted to implement them must be presumed to accord with constitutional sound basic education requirements. See *CFE II*, 100 N.Y.2d at 915, n.6

opportunities that will allow them to meet these requirements and obtain a high school diploma. The state education law and the detailed regulations issued by the commissioner of education, as well as certain federal laws and regulations such as those pertaining to students with disabilities, set forth specific resources that schools must provide to allow students an opportunity to meet the state's standards and graduation requirements.⁸ These statutes and regulations, therefore, operationally identify and define what is a "qualified" teacher and what are "sufficient and up-to-date books, [and] supplies ... adequate and accessible school buildings...suitable curricula... an expanded platform of programs to help at-risk students...[and] a safe orderly environment."

The state's statutory and regulatory framework is not, however, complete. Neither the legislature nor the Regents have as yet responded to the Court of Appeals' *CFE* decision by explicitly reviewing and revising the education law and commissioner's regulations to be sure that they identify and define in operational terms all of the essential resources needed to meet constitutional sound basic education requirements. For example, the current state statutes and regulations do not define key constitutional aspects of a "meaningful high school education" such as the programs and assessment criteria needed to prepare students for capable citizenship. And although the Regents have made a general commitment to enhancing their requirements to ensure that high school graduates are "college- and career-ready," they have not reviewed and reconsidered teacher qualifications, curricular sufficiency, and other essential resource areas that relate to these desired outcomes.

In 2007, after the *CFE* litigation had ended, the legislature undertook major reforms of the state's system for funding public education and committed the state to substantial increases in state aid in order to provide all students in the state the opportunity for a sound basic education. Because of recent economic constraints on the state budget, however, the legislature has now put on hold⁹ the funding increases it promised and has no plan in place to achieve constitutional compliance. Under current conditions of fiscal constraint, it has, therefore, become imperative that all of the essential resources needed to ensure the opportunity for a sound basic education be explicitly delineated. Doing this makes it possible to determine whether or precisely when reduced budget levels may be causing schools to breach constitutional thresholds.¹⁰

Because the state has not thus far met its constitutional obligation to delineate the essential resources needed to provide a sound basic education, the Campaign for Educational Equity has developed the present compendium of essential resources. We were initially motivated to do so in order to guide our school-based study of the extent to which high-need schools in New York City and seven other districts throughout the state currently have sufficient resources to meet constitutional requirements.¹¹ In the course of developing this

(Kaye, C.J.), *CFE II*, 100 N.Y.2d at 951-53 (Read, J., dissenting). Should the legislature or the Regents take any actions to weaken the current standards, such changes might or might not fall afoul of the constitutional standards, but further elucidation by the courts would be needed to discern precisely where the line of minimal constitutional acceptability would be drawn under such circumstances.

⁸ In some cases, applicable federal laws and regulations are also a part of the mandatory constitutional requirements. For example, in regard to students with disabilities, compliance with the federal Individuals with Disabilities Education Act must be considered to delineate the "adequate resources" that the state must provide for students with "extraordinary needs." See generally Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.*

⁹ See N.Y. EDUC. LAW § 3602(4) (McKinney 2012) (deferring phase-in of scheduled increases); N.Y. EDUC. LAW § 3602(1)(dd) (McKinney 2012) (capping annual general increases in educational funding in accordance with annual increases in personal income in the state).

¹⁰ As the Montana Supreme Court put it:

Without an assessment of what constitutes a "quality" education, the Legislature has no reference point from which to relate funding to relevant educational needs. In the absence of a threshold definition of quality, we cannot conclude that the system is adequately funded as required by [the state constitution].

Columbia Falls Elem. Sch. v. State, 109 P.3d 257, 262 (Mont. 2005).

Specifically, at this time, the Regents and the commissioner need to (1) reconsider and expand some of existing regulations; (2) develop additional regulations in new areas; and (3) enforce these regulations. One of the goals of the present essential resources compendium is to encourage them to do so. For a more detailed discussion of the state's obligations in this regard, see Michael A. Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, 75 ALB. L. REV. 1855 (2012).

¹¹ Campaign for Educational Equity, *Deficient Resources: An Analysis of the Availability of Basic Educational Resources in High-Needs Schools in Eight New York State School Districts* (December, 2012).

document, however, we realized that in the absence of any authoritative analyses of this type from the state, this document may also serve a broader purpose in providing comprehensive guidance to school boards, administrators, parents, advocates—and public officials—on current constitutional requirements for a sound basic education. We have, therefore, prepared this document with that broader purpose in mind. We hope that this analysis will lead to a dialogue among the governor, the legislature, the Regents, the commissioner of education, and the public, and to the promulgation by the State of New York of a definitive, official state compendium of the essential resources needed to provide the opportunity for a sound basic education.

In preparing this compendium, we have analyzed all of the relevant judicial, legislative, and regulatory requirements that relate to constitutional compliance and implementation of the New York State Learning Standards. Where the courts have explicitly discussed or defined essential resources, we have relied on those precedents. In the many areas where state law or commissioner’s regulations articulate specific resource requirements that relate to the opportunity for a meaningful high school education, we have incorporated those statutory or regulatory provisions. In most areas, the specific judicial precedents combined with applicable state statutory and regulatory requirements have delineated in operational terms a basic set of essential resources. Where they have not, we have set forth additional criteria based on our analysis of the likely positions that would be taken by the New York courts, consistent with the record and judicial decisions in the *CFE* litigation and legal precedents from other states.

In a number of areas, the courts have not provided definitive criteria as to what would be a “sufficient” or “adequate” level of services, leaving that determination, at least at this stage, to professional judgment. Specific understandings of what are “sufficient” or “adequate” levels of services that are needed to provide the opportunity for a sound basic education for high need students, are set forth in the *Deficient Resources* study,¹² based on the combined, considered judgments of the experienced educators who work with these students on a daily basis and who participated in that study.¹³ That report should be considered a companion piece to the present document.

¹²The *Deficient Resources* study is based on school visits and interviews with principals, teachers, and other school personnel in 38 schools in New York City and 25 schools in seven other districts around the state. It details findings on 33 high-needs schools utilizing detailed rubrics based on the sources for the *Essential Resources* compendium.

¹³Each item in this compendium is footnoted with a reference to the applicable legal authority. Those sources, and the abbreviations for them used in this report, are as follows:

- CFE I: Decision of the New York Court of Appeals, 86 N.Y.2d 307 (1995).
- CFE II: Decision of the New York Court of Appeals, 100 N.Y.2d 893 (2003).
- Comm. Reg: Regulations of the Commissioner of Education, codified at N.Y. COMP. CODES R. & REGS. tit. 8, referenced herein as 8 NYCRR.
- DeGrasse: Decision of trial court justice Leland DeGrasse, 187 Misc.2d 1 (Sup. Ct., N.Y. Cnty. 2001), *aff’d* CFE II, 100 N.Y.2d 893 (2003).
- Ed Dep’t Rep: Decisions of the Commissioner of Education.
- N.Y. Educ. L.: McKinney’s New York Education Law.
- ESEA: Title I of the federal Elementary and Secondary Education Act, 20 U.S.C. § 7801 *et seq.*
- IDEA: The federal Individuals with Disabilities Education Act, 20 U.S.C. §1401 *et seq.*
- IDEA Regs: Federal regulations issued to implement the IDEA, codified at 34 C.F.R. § 300 *et seq.*
- N.Y. CONST.: The Constitution of the State of New York.

The Constitutional Requirements

I. Qualified Teachers, Principals, and Other Personnel

Each school must have a sufficient number of qualified and adequately trained teachers, principals, and other personnel to meet the needs of all students. Specifically, each school must have at least the following:

A. Classroom and Core Subject Area Teachers

1. A sufficient number of certified teachers who are adequately trained to provide suitable instruction based on current state standards in the core areas of English language arts, mathematics, science and social studies for all students, including students performing below grade-level proficiency.¹⁴

B. Specialized Subject Area Teachers

1. A sufficient number of certified, adequately trained teachers, with expertise in:
 - a. The arts (visual art, music, drama, dance and theatre)¹⁵
 - b. Career development and occupational studies¹⁶
 - c. Health education¹⁷
 - d. Physical education¹⁸
 - e. Family and consumer science/home and career skills (middle schools)¹⁹
 - f. Technology education (middle and high schools)²⁰
 - g. Languages other than English (middle and high schools)²¹

C. A Sufficient Number of Certified and Adequately Trained Library-Media Specialists²²

D. Academic Support Providers

1. A sufficient number of certified teachers and specialists who are adequately trained to provide appropriate interventions and additional instruction/more time on task for all students failing or at risk of failing to achieve grade-level performance in English language arts, mathematics, science, or social studies.²³

¹⁴ *CFE I*, 86 N.Y.2d at 319; *CFE II*, 100 N.Y.2d at 910-11; *DeGrasse*, 187 Misc.2d at 114.

¹⁵ 8 NYCRR §§ 100.2(h)(1)-(2), 100.3(a)(3)(iii), 100.3(b)(1)(v), 100.4(b)(1)(v), 100.4(c)(1)(ix).

¹⁶ 8 NYCRR §§ 100.2(h)(1)-(6), 100.3(b)(1)(vi), 100.4(b)(1)(vi), 100.4(c)(1)(xii), 100.4(c)(2)(ii), 100.4(c)(3).

¹⁷ 8 NYCRR §§ 100.2(c)(4), 100.3(a)(3)(vii), 100.3(b)(1)(viii), 100.4(b)(1)(viii), 100.4(c)(1)(viii), 100.4(c)(7), 135.3(b)-(c).

¹⁸ N.Y. EDUC. LAW § 803 (McKinney 1957); 8 NYCRR §§ 100.3(a)(3)(vi), 100.3(b)(1)(viii), 100.4(c)(1)(vii), 100.4(c)(3), 135.4(c)(1)(iv), 135.4(c)(2)(ii). Elementary classroom teachers may provide instruction under the direction and supervision of a certified physical education teacher. 8 NYCRR § 135.4(c)(4)(i).

¹⁹ 8 NYCRR §§ 100.4(b)(1)(vii), 100.4(c)(1)(vi), 100.4(c)(2)(ii).

²⁰ 8 NYCRR §§ 100.4(b)(1)(i), 100.4(c)(1)(v), 100.4(c)(2)(ii), 100.4(c)(3), 100.5(b)(7)(iv)(j).

²¹ 8 NYCRR § 100.2(d).

²² *CFE II*, 100 N.Y.2d at 913; *DeGrasse*, 187 Misc. 2d at 57. Each school must have a sufficient and up-to-date library media center. 8 NYCRR § 91.1. Each school district must employ a library-media specialist for secondary schools. The library-media specialist may work part time in small secondary schools, but schools with 700 students or more must have a full-time library media specialist. *Id.*, 8 NYCRR §§91.2(a)-(e), 100.4(c)(1)(x), 100.4(c)(2)(iii). Larger secondary schools must have at least one additional library media specialist for each additional 1,000 students. 8 NYCRR § 91.2(f).

²³ *DeGrasse*, 187 Misc. 2d at 75-76, 114; 8 NYCRR §§ 100.1(g), 100.2(ee).

E. A Sufficient Number of Qualified and Adequately Trained Substitute Teachers and/or Teacher Assistants to Ensure that Students Consistently Receive a Meaningful Opportunity for a Sound Basic Education²⁴

F. Administrators

1. A qualified full-time principal for every school.²⁵
2. A sufficient number of certified and adequately trained assistant principals, and/or coaches and master teachers to provide sufficient continuous and sustained supervision and professional development to ensure that teachers remain current with the profession, and meet the learning needs of their students, especially those at risk; and to promote retention of teachers and other personnel.²⁶
3. A sufficient number of certified and adequately trained assistant principals, and/or coaches, and master teachers to carry out the mandated annual professional performance reviews and professional support activities.²⁷
4. A sufficient number of certified and adequately trained assistant principals, coaches, and master teachers to provide an adequate mentoring program for new teachers.²⁸
5. A sufficient number of administrative support staff to allow administrators to supervise instruction and ensure a “safe, orderly environment.”²⁹

G. Student Support Personnel³⁰

1. Guidance counselors³¹
 - a. Elementary schools: sufficient numbers to assist in program planning and “to help students who exhibit any attendance, academic, behavioral or adjustment problems ... and to encourage parental involvement;”³² to facilitate articulation to middle school; to provide support for academic intervention services and response to intervention services; and to provide a safe and orderly climate for learning.³³
 - b. Middle and high schools: sufficient numbers to undertake an annual review of each student’s educational progress and to develop individual high school/postsecondary education and career plans; provide (individually or in cooperation with classroom teachers) grade-level instruction about academic and career planning; to facilitate articulation to high school/college; to help students who exhibit any attendance, academic, behavioral or adjustment problems; to support academic intervention and response to intervention services;³⁴ to encourage parental awareness and involvement; and to provide a safe and orderly climate for learning.³⁵

²⁴ *CFE I*, 86 N.Y.2d at 316; *CFE II*, 100 N.Y.2d at 910-11; *DeGrasse*, 187 Misc. 2d at 114.

²⁵ *DeGrasse*, 187 Misc.2d at 114; 8 NYCRR § 100.2(a). The commissioner may approve an alternative mode of building administration upon submission of evidence showing justification for such alternative. 8 NYCRR § 100.2(a).

²⁶ *CFE I*, 86 N.Y.2d at 316; *DeGrasse*, 187 Misc.2d at 30-31,114; 8 NYCRR § 100.2(dd).

²⁷ N.Y. Educ. Law § 3012-c (McKinney 2012).

²⁸ 8 NYCRR § 100.2(dd)(2)(iv).

²⁹ *DeGrasse*, 187 Misc.2d at 115.

³⁰ The requirements set forth in this section pertain to general education students. Requirements for additional support personnel for students with disabilities are set forth in section IV below.

³¹ 8 NYCRR § 100.2(j).

³² 8 NYCRR §100.2(j)(1)(i).

³³ 8 NYCRR §§ 100.2(ee); 100.2 (ii); 100.1 (g); *DeGrasse*, 187 Misc.2d at 115.

³⁴ 8 NYCRR §§ 100.2(j)(1)(ii), 100.2(ee); 100.2 (ii); 100.1 (g).

³⁵ 8 NYCRR §100.2(j)(1)(ii); *DeGrasse*, 187 Misc.2d at 115.

2. A sufficient number of school psychologists and social workers to help students who exhibit any attendance, academic, behavioral or adjustment problems (middle and high schools),³⁶ to support academic intervention services, and to provide a safe and orderly climate for learning.³⁷
3. A sufficient number of speech and language teachers to “provide speech and language improvement services to students in grades kindergarten through six with speech impairments of a severity that does not adversely affect the student’s educational performance but does present a barrier to communication.”³⁸
4. A sufficient number of registered school nurses or other health professionals to undertake “medical examinations, dental inspection and/or screening, scoliosis screening, vision screening and audiometer tests ... to inform parents [and teachers] of the individual child’s health condition[s] ... to guide parents, children and teachers in procedures for preventing and correcting defects and diseases; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary recommendations concerning the health and safety aspects of school facilities and the provision of health information.”³⁹

H. A Sufficient Number of Adequately Trained Disciplinary and Safety Personnel (Administrators, Deans, School Safety Officers, School Aides)⁴⁰

I. A Sufficient Number of Qualified and Adequately Trained Attendance Teachers or Other Personnel to Promote Regular Attendance⁴¹

II. Suitable, Up-to-Date Curricula

Each school must provide a suitable, up-to-date curriculum and sufficient course offerings to ensure all students a meaningful opportunity to meet the New York State Learning Standards (including the Common Core State Standards in English language arts and mathematics). Specifically, students must have reasonable access⁴² to at least the following:

³⁶ 8 NYCRR §100.2(j)(1)(ii)(c).

³⁷ 8 NYCRR § 100.2(ee); *DeGrasse*, 187 Misc.2d at 115.

³⁸ N.Y. EDUC. LAW § 912-b(1) (McKinney 1986); 8 NYCRR §§ 100.1(p), 100.2(t). “A student whose speech impairment adversely affects the student’s educational performance should be referred to the committee on special education for further evaluation and recommendation for special education services.” N.Y. EDUC. LAW § 912-b(3) (McKinney 1986).

³⁹ N.Y. EDUC. LAW § 901 (McKinney 2006). *See also* N.Y. EDUC. LAW § 902 (McKinney 2005); 8 NYCRR §§ 136.1, 136.2, 136.3. These requirements do not pertain to the cities of New York, Buffalo and Rochester, but similar services are expected to be provided in those cities by the municipal departments of health and other municipal agencies working with the education authorities. 8 NYCRR §§ 136.2(b), 136.3(b)(1). In New York City, for example, the New York City Department of Health and Mental Hygiene is responsible for providing school-based health services pursuant to the New York City Charter and the New York City Health Code. (See, e.g., N.Y.C. CODE §17-187 (requiring school nurses in all schools with enrollment over 200 students); New York City Health Code Art. 49.05 (comprehensive examinations)).

⁴⁰ *DeGrasse*, 187 Misc.2d at 114-115.

⁴¹ *DeGrasse*, 187 Misc.2d at 111-12, 114-115.

⁴² “Reasonable access” ordinarily means that each of these curriculum offerings should be available in each school. In the case of small rural or urban schools, availability through regional consortia or enrollment options in nearby schools may be acceptable if off site or distance learning, including online courses, are appropriate for students’ learning needs and schedules, timely transportation is readily available, and all students have meaningful access to suitable curricula offerings in alternate sites or approved distance learning arrangements.

A. Required Subjects⁴³

1. Elementary level (grades K-6): mathematics (including arithmetic, science and technology), English language arts, social studies (including geography and U.S. history), languages other than English, the arts, career development and occupational studies, health education, physical education and family and consumer sciences.⁴⁴
2. Secondary level (grades 7-12):⁴⁵
 - a. English language arts: grades 7/8: two units;⁴⁶ high school: four units⁴⁷
 - b. Mathematics: grades 7/8: two units;⁴⁸ high school: three units⁴⁹
 - c. Science: grades 7/8: two units;⁵⁰ high school: three units, at least one of which must be in the life sciences and at least one in the physical sciences, plus a lab experience⁵¹
 - d. Social studies: grades 7/8: two units;⁵² high school: four units (including one unit in U.S. history and ½ unit of credit in economics and ½ unit of credit in Participation in Government)⁵³
 - e. Visual arts, music, dance and theatre: grades 7/8: ½ unit visual art and ½ unit music;⁵⁴ high school: one unit⁵⁵
Career development and occupational studies (no specified amount)⁵⁶
 - f. Languages other than English: two units by grade 9;⁵⁷ high school: one unit, and two additional units for a Regents diploma with advanced designation⁵⁸
 - g. Technology: grades 7/8: one unit of study; one unit or integrated with math and/or science⁵⁹

⁴³ All instruction in English language arts, mathematics, science and technology, social studies, languages other than English, the arts, health and physical education, family and consumer sciences and career development and occupational studies must be aligned with the appropriate levels required by the New York State Learning Standards. 8 NYCRR §§ 100.1(t), 100.3(a)(1), 100.3(b)(1), 100.4(b)(1), 100.4(c)(1), 100.5(b)(7)(iv).

⁴⁴ 8 NYCRR §§ 100.3(b), 100.4(b), 165.3(b), 135.4(c)(2)(i).

⁴⁵ 8 NYCRR §§ 100.5, 135.3(b), 135.4(c)(2)(ii). A “[u]nit of study means at least 180 minutes of instruction per week throughout the school year, or the equivalent.” 8 NYCRR § 100.1(a). Students in an approved career and technical program may substitute other approved career and technical courses for these requirements. See 8 NYCRR § 100.5(b)(2).

⁴⁶ 8 NYCRR § 100.4(c)(1)(i).

⁴⁷ 8 NYCRR § 100.5(a)(3)(i).

⁴⁸ 8 NYCRR § 100.4(c)(1)(iv).

⁴⁹ 8 NYCRR § 100.5(a)(3)(iv) (must be at a more advanced level than grade eight, meeting commencement-level learning standards).

⁵⁰ 8 NYCRR § 100.4(c)(1)(iii).

⁵¹ 8 NYCRR §§ 100.5(a)(3)(iii), 100.5(b)(7)(iv)(d); N.Y. CONST. art. XI, § 1; CFE II, 100 N.Y. 2d at 911, n.4.

⁵² 8 NYCRR §§ 100.4(c)(1)(ii).

⁵³ 8 NYCRR §§ 100.5(a)(3)(ii), 100.5(a)(6)(i)-(ii).

⁵⁴ 8 NYCRR § 100.4(c)(1)(ix).

⁵⁵ 8 NYCRR § 100.5(a)(3)(v). Schools must also offer students the opportunity to complete a three or five unit sequence in the arts. 8 NYCRR § 100.2(h)(1).

⁵⁶ 8 NYCRR § 100.4(c)(1)(xii). Schools must also offer students the opportunity to complete a three or five unit sequence in career and technical education. 8 NYCRR § 100.2(h)(1).

⁵⁷ 8 NYCRR § 100.2(d)(1)-(2).

⁵⁸ 8 NYCRR §§ 100.2(d)(1), 100.5(b)(7)(iv)(g), 100.5(b)(7)(v)(c); N.Y. CONST. art. XI, § 1.

⁵⁹ 8 NYCRR § 100.5(b)(7)(iv)(j).

- h. Health: grades K-6: a sequential health-education program;⁶⁰ grades 7/8: ½ unit;⁶¹ high school: ½ unit⁶²
- i. Physical education: grades K-3: daily; grades 4-6: 120 minutes, 3x/week; grades 7-12: 3 periods one semester; 2 periods other semester or daily for 7 semesters/120 minutes per week⁶³
- j. Family and consumer science/home and career skills: grades 7/8: ¾ of a unit of study⁶⁴
- k. Library and information skills: grades 7/8: one period per week⁶⁵

B. Specialized Elective Courses

1. An adequate number of specialized elective courses, including appropriate electives for career and technical/theme-based schools, to complete a total of 22 units of high school credit necessary for a Regents diploma, and to develop subject-area knowledge in greater depth than the required courses.⁶⁶

C. Preparation for Capable Citizenship

1. Adequate curricular emphasis on civics and civic values to provide students the opportunity to acquire the knowledge needed to function productively as civic participants.⁶⁷
2. Sufficient extracurricular activities, including, but not limited to, sports, student government, debate, and/or school newspapers to provide students an opportunity to acquire the character traits and social skills needed to function productively as civic participants.⁶⁸
3. Sufficient opportunities for community engagement in civic institutions to provide students the civic knowledge and practical skills needed to function productively as civic participants.⁶⁹

D. Preparation for College and/or Competitive Employment⁷⁰

1. Sufficient advanced, honors, college-level, and Advanced Placement and/or International Baccalaureate courses to provide all students a meaningful opportunity to compete for admission to competitive colleges.⁷¹

⁶⁰ 8 NYCRR §§ 100.3(a)(3)(vii), 100.4(b)(1)(vii), 135.3(b).

⁶¹ 8 NYCRR §§ 100.4(c)(1)(viii), 135.3(c).

⁶² 8 NYCRR §§ 100.5(a)(3)(vi), 135.3(c). "Learning standards in the area of parenting shall be attained through either the health or family and consumer sciences programs or a separate course." 8 NYCRR § 100.5(a)(3)(vi).

⁶³ 8 NYCRR § 135.4(c)(2). Students in grades 5-6 in a middle school follow the middle school requirements. *Id.*

⁶⁴ 8 NYCRR § 100.4(c)(1)(vi). High schools must provide instruction in child development and parental skills and responsibility, but these topics may be taught as part of the required high school health course and need not be established as a separate course. N.Y. EDUC. LAW § 804-b(2) (McKinney 2007); 8 NYCRR § 100.5(a)(3)(vi).

⁶⁵ 8 NYCRR § 100.4(c)(1)(x). All junior or senior high schools must have libraries that, depending on size, contain at least 1,000 titles (fewer than 200 students) or as many as 8,000 titles (more than 1,000 students.) 8 NYCRR § 91.1.

⁶⁶ 8 NYCRR § 100.5(b)(7)(ii)(b)(iv).

⁶⁷ *CFE I*, 86 N.Y.2d at 316, *CFE II*, 100 N.Y.2d at 905-06.

⁶⁸ *CFE I*, 86 N.Y.2d at 318; *CFE II*, 100 N.Y.2d at 906-07; *DeGrasse*, 187 Misc.2d at 37-38; 8 NYCRR § 135.4(c)(1)(i)(h).

⁶⁹ *CFE I*, 86 N.Y.2d at 316-18, *CFE II*, 100 N.Y.2d at 906-07.

⁷⁰ New York State is officially committed to preparing all students for college and career readiness. See, e.g. N.Y.S. DEP'T OF EDUC., ESEA FLEXIBILITY REQUEST (Feb. 28, 2012), available at <http://www2.ed.gov/policy/eseaflex/ny.pdf>. See also, N.Y.S. EDUC. DEP'T, 10 THINGS TO KNOW ABOUT NY'S ESEA WAIVER (2012), available at <http://usny.nysed.gov/docs/10-things-to-know-about-the-esea-waiver.pdf> (an explanation thereof).

⁷¹ *CFE II*, 100 N.Y.2d at 905; N.Y. CONST. art. XI, § 1.

2. Sufficient college counseling to provide students with a meaningful opportunity to apply for admission to college and matriculate.⁷²
3. Sufficient access to career and technical training courses, internships, and career counseling to provide students a meaningful opportunity to obtain competitive employment.⁷³
4. Sufficient involvement in extracurricular activities to help students acquire interpersonal skills needed for college and/or competitive employment.⁷⁴

III. An Expanded Platform of Services for At-Risk Students

Each school must provide an expanded platform of services, including “more time on task” for students at risk of low academic achievement. Specifically, each school and/or school district must provide at least the following:

A. Sufficient and Appropriate Academic Intervention Services (AIS), and/or Response to Intervention (RTI), and Other Nonacademic Support Services

1. Sufficient and appropriate additional instruction during the regular school day or extended day, as well as through afterschool and/or Saturday, extended year or summer programs⁷⁵ to improve the performance of all students failing to achieve grade-level performance in English language arts, mathematics, science, or social studies.⁷⁶
 - a. For English language learners, these services must be in addition to, and not in place of, the bilingual and English as a Second Language (ESL) instructional program requirements.⁷⁷
 - b. For students with disabilities, AIS must be provided on the same basis as for nondisabled students and must be provided in addition to, and not in place of, special education services; accommodations and supports consistent with the students’ individualized educational plan (IEP) must be provided when AIS are delivered.⁷⁸
2. Sufficient and appropriate response to intervention procedures to implement a multilevel intervention and prevention system, including screening, academic and behavioral interventions adjusted based on response, and progress monitoring.⁷⁹
3. Sufficient and appropriate nonacademic support services, including guidance and counseling, coordination with services from other agencies, services to improve attendance, and study skills to address barriers to academic progress.⁸⁰

⁷² See n. 71 above; N.Y. CONST. art. XI, § 1; *CFE II*, 100 N.Y.2d at 936 (Smith, J., concurring.)

⁷³ *CFE II*, 100 N.Y.2d at 906; *id.* at 932-33 (Smith, J., concurring); *DeGrasse*, 187 Misc. 2d at 15-18.

⁷⁴ *DeGrasse*, 187 Misc. 2d at 15-18; *CFE II*, 100 N.Y.2d at 934-36 (Smith, J., concurring); 8 NYCRR § 135.4(c)(iii).

⁷⁵ *DeGrasse*, 187 Misc.2d at 76-77, 115; 8 NYCRR §§ 100.1(g),100.2(ee)(4)(i)(c).

⁷⁶ *DeGrasse*, 187 Misc.2d at 75-76, 115; 8 NYCRR §§ 100.1(g),100.2(ee), 100.2 (ii).

⁷⁷ 8 NYCRR §§ 100.1(g), 154.1.

⁷⁸ 8 NYCRR § 100.1(g).

⁷⁹ 8 NYCRR § 100.2(ii).

⁸⁰ 8 NYCRR § 100.1(g).

B. Sufficient Pre-kindergarten and Kindergarten Programs to Meet the Needs of Students at Risk of Low Academic Achievement⁸¹

C. School Health Services

1. All students must have access to school health services including, but not limited to, medical examinations, dental inspections and/or screenings, scoliosis screenings, vision screenings and audiometer tests, designed to [i] determine the health status of a child, [ii] inform parents or other persons in parental relation to the child, pupils and teachers of an individual child's health condition ... [iii] guide parents, children and teachers in procedures for preventing and correcting defects and diseases.⁸²

D. Sufficient Family Outreach and Communication

1. Sufficient family engagement, including translation services as needed, to ensure that parents play an integral role in assisting their child's learning and that parents are encouraged to be actively involved in their child's education at school.⁸³
 - a. Parents of "students receiving academic intervention services must be provided with an opportunity to consult with the student's regular classroom teacher(s), and other professional staff providing academic intervention services," receive quarterly reports on the student's progress and "information on ways to work with their child to improve achievement; monitor their child's progress; and work with educators to improve their child's achievement."⁸⁴
 - b. Each Title I school must "develop, with parents for all children ... a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improv[ing] student academic achievement and the means by which the school and parents will build and develop a partnership to help children achieve the State's high standards."⁸⁵
 - c. Each Title I school must also:
 - i. "provide assistance to parents . . . in understanding such topics as the State's academic content standards and state student academic achievement standards, State and local academic assessments . . . and how to monitor a child's progress and work with educators to improve the achievement of their children;"⁸⁶ and
 - ii. "provide materials and training to help parents to work with their children to improve their children's achievement, such as literacy training and using technology, as appropriate, to foster parental involvement."⁸⁷

⁸¹ *DeGrasse*, 187 Misc.2d at 76, 79. Justice DeGrasse indicated that at-risk students were entitled to access these types of programs as necessary to meet their needs. He cited with approval New York State's commitment to making universal pre-kindergarten available to all eligible children by 2004, and expressed concern that funding was lagging behind the schedule needed to meet that deadline. See, N.Y. EDUC. LAW § 3602-e (McKinney 2012); 8 NYCRR §§ 151-1.2, 151-2.2 (universal pre-kindergarten program); N.Y. EDUC. LAW § 211-d(3)(a)(vi) (pre-kindergarten listed as priority area for "Contract for Excellence" funding). Full-day kindergarten programs, which were available to all students in New York City at the time of the CFE trial, was a further implied essential resource for students at risk of low academic achievement in order to maintain the educational progress they attain in pre-kindergarten programs.

⁸² N.Y. EDUC. LAW § 901(2); 8 NYCRR § 136.2(b). These specific requirements do not apply in New York City, Rochester and Buffalo, but similar services are expected to be provided in those cities by the municipal departments of health and other municipal agencies working with the education authorities. In New York City, the New York City Department of Health and Mental Hygiene is responsible for providing health services pursuant to the New York City Charter and the New York City Health Code.

⁸³ 8 NYCRR §§ 100.11, 100.2(ee)(6) (applicable to all children receiving AIS services); ESEA, 20 U.S.C. §§ 7801(32), 6318, 6312(b)(1)(P) (applicable to schools with students receiving federal Title I funding).

⁸⁴ 8 NYCRR § 100.2(ee)(6)(iii)(a)-(c).

⁸⁵ 20 U.S.C. § 6318(d).

⁸⁶ 20 U.S.C. § 6318(e)(1).

⁸⁷ 20 U.S.C. § 6318(e)(2).

IV. Adequate Resources for Students with Extraordinary Needs

Each school district must provide adequate resources to meet the needs of students with disabilities and English language learners.⁸⁸ Specifically,

A. Students with Disabilities

1. Each district must provide sufficient and appropriate services, programs, personnel, and materials to ensure that all students with disabilities and students suspected of having a disability receive all of the procedural protections, services, and resources set forth in the Education law,⁸⁹ the commissioners' regulations,⁹⁰ and the federal Individuals with Disabilities Education Act.⁹¹ All children with disabilities must be provided a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.⁹²
2. Each school that serves students with disabilities must provide students all requisite procedural protections, resources, and services including, but not limited to, referral and accurate evaluation procedures, due process protections, appropriate class sizes, sufficient appropriately certified and adequately trained teachers and other instructional staff, suitable curricula, appropriate instructional materials, a safe orderly environment, and accessible and adequate facilities.⁹³

B. English Language Learners

1. Each district must ensure that every school that operates a program for English language learners has sufficient resources and appropriate services, programs, personnel, and materials to ensure English language learners opportunities to achieve the same educational goals and meet the same standards as the general student population.⁹⁴
 - a. "A pupil who by reason of foreign birth or ancestry speaks a language other than English, and either understands and speaks little or no English, or who has been identified by any English language assessment instrument approved by the commissioner as a pupil of limited English proficiency, [must] receive a program of bilingual education or English as a second language."⁹⁵

⁸⁸ *DeGrasse*, 187 Misc.2d at 115.

⁸⁹ N.Y. Educ. L. § 4401 *et seq.* (McKinney 2007).

⁹⁰ 8 NYCRR § 200 *et seq.*

⁹¹ 20 U.S.C. § 1401 *et seq.* (2010); *see also* section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a) (2002); Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (2009); and the orders issued by the federal court in *Jose P. v. Ambach*, 79 Civ. 1834 (E.Dist. N.Y. 1979).

⁹² 20 U.S.C. § 1401(9) (2010). *See also DeGrasse*, 187 Misc.2d at 94-98; *CFE II*, 100 N.Y.2d at 921-22.

⁹³ N.Y. Educ. L. § 4401 (McKinney 2007); 20 U.S.C. § 1401(9) (2010). *See also DeGrasse*, 187 Misc.2d at 114-15.

⁹⁴ 8 NYCRR § 154.1. In addition,

1. "Each school district [must] ... develop a comprehensive plan [] to meet the educational needs of pupils of limited English proficiency." N.Y. Educ. Law § 3204(2-a)(1) (McKinney 2008).

2. Districts with schools receiving federal funding for programs for students who are limited English proficient under the federal Elementary and Secondary Education Act must prepare plans that set forth how they will ensure that children who are limited English proficient, including immigrant children and youth, attain English proficiency, develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet. 20 U.S.C. § 6811 *et seq.* (2002).

⁹⁵ N.Y. Educ. Law § 3204(3) (McKinney 2008); 8 NYCRR § 117.3. A pupil's proficiency in the English language must be reassessed annually in order to determine whether further participation in bilingual education or English as a second language program is necessary. N.Y. Educ. Law § 3204(3). Specific content requirements for ESL and bilingual programs are set forth in 8 NYCRR § 154.2.

- b. Each school district must also provide pupils participating in these programs “appropriate support services needed ... to allow [these] pupils to achieve and maintain a satisfactory level of academic performance. Such services may include, but need not be limited to, individual counseling, group counseling, home visits, and parental counseling.”⁹⁶
2. “Each school district that has an enrollment of 20 or more pupils with limited English proficiency of the same grade level assigned to a building,⁹⁷ all of whom have the same native language which is other than English, [must] provide these pupils with bilingual education programs.”⁹⁸
3. School districts must also “ensure a transition for former limited English proficient pupils transferring from a bilingual or free-standing English as a second language program into an English mainstream program. Transitional services [must] be provided for the first year after the pupil is placed in the English mainstream instructional program.”⁹⁹
4. In each school serving English language learners, all personnel providing instruction or other services to such pupils must be provided in-service training “in order to enhance their appreciation for the pupils’ native languages and cultures and their ability to provide appropriate instructional and support services.”¹⁰⁰

V. Class Size/Instructional Groupings

Each school must have appropriate class sizes and instructional groupings at all grade levels and in all subject areas to meet the needs of all students.

A. Appropriate Class Sizes and Instructional Groupings

1. Although there is no specific maximum class size number beyond which children cannot learn, the Court of Appeals has indicated that classes of about the sizes listed below are appropriate and that larger class sizes may lead to unsatisfactory results.¹⁰¹ For schools and classes with large concentrations of students below grade level, and for AIS and RTI services, smaller class sizes may be necessary.

⁹⁶ 8 NYCRR § 154.3(h). “Where appropriate, such services shall be provided in the first language of the pupil and the pupil’s parents or other persons in parental relation to the pupil.” *Id.*

⁹⁷ When two or more schools share a building and need to provide some mandated services on a building-wide basis, all students in each school must have meaningful access to the required programs and services.

⁹⁸ 8 NYCRR § 154.3(g)(1). “In a school building where the number of eligible pupils does not require the offering of a bilingual education program, parents [] have the option [to] transfer [] their child to a school within the district” that has such a program. 8 NYCRR § 154.3 (k)(3). The parents of a child in a bilingual education program may withdraw the child from that program and enroll him/her in an English as a second language program after consulting with the principal. 8 NYCRR § 154.3 (k)(2).

⁹⁹ 8 NYCRR § 154.3(i).

¹⁰⁰ 8 NYCRR § 154.3(j). The parents of a child in a bilingual education program may withdraw the child from that program and enroll him/her in an English as a Second language program after consulting with the principal. 8 NYCRR § 154.3 (k)(2).

¹⁰¹ *CFE II*, 100 N.Y.2d at 911-12; *DeGrasse*, 187 Misc.2d at 52-54. The class sizes that the Court of Appeals used as benchmarks in the CFE litigation were based on the average class sizes in effect at the time of the CFE trial in all districts in New York State, excluding New York City. Those class sizes were at the lower end of the ranges listed above. Justice DeGrasse cited examples that included the above ranges. The State Education Department accepted as constitutional compliance for purposes of the contract for excellence, class sizes for New York City at the high end of the ranges listed above. N.Y. Educ. L. § 211-d (b)(ii)-(iii) (McKinney 2012). See N.Y.C. DEP’T OF EDUC., FIVE-YEAR PLAN EXEC. SUMMARY (Nov. 8, 2007), available at http://eservices.nysed.gov/c4epublic/reports/2007/NYC/Other/NYCDOE%20CSR%205YR_11%208%2007_FINAL.doc. Variations from these historical patterns based on alternative research-based instructional approaches that are shown to improve educational outcomes may be acceptable, but the court rulings imply a legal presumption that increases in class size effected solely for cost savings would be unconstitutional. Different, and generally smaller class size requirements apply to classes for students with disabilities. See 8 NYCRR § 200.6.

- a. Kindergarten-grade 3: 20 students
- b. Grades 4-6: 21-23 students
- c. Middle and High School: 21-23 students

VI. Instrumentalities of Learning

Each school must provide its students with sufficient and up-to-date books, supplies, libraries, educational technology and laboratories.¹⁰² Specifically, each school must provide at least the following:

A. Books

1. A sufficient number of reasonably current textbooks, including hard-covered or paperback books, workbooks, software, or any other content-based instructional materials in an electronic format.¹⁰³
2. The school must ensure that such instructional materials are reasonably available to all students in school and at home.¹⁰⁴

B. A Sufficient and Up-to-Date Library Media Center,¹⁰⁵ Providing a Sufficient Number of Books and Up-to-Date Instructional Technology and Software¹⁰⁶

C. Sufficient and Up-to-Date Instructional Technology Including Computers, Related Hardware Such As Printers and Appropriate Software and Supplies¹⁰⁷

D. Sufficient Basic Classroom Supplies Such As Chalk, Paper, Pencils, and Art Supplies¹⁰⁸

E. Sufficient and Up-to-Date Subject-Area-Specific Instructional Materials and Equipment Such As Beakers, Bunsen Burners and Microscopes for Science, Math Manipulatives, Maps, Etc.¹⁰⁹

F. Sufficient Classroom Furniture and Equipment Such As Desks and Chairs¹¹⁰

¹⁰² *CFE II*, 100 N.Y.2d at 913, 911, n.4. See *CFE I*, 86 N.Y.2d at 317, *DeGrasse*, 187 Misc.2d at 115.

¹⁰³ *DeGrasse*, 187 Misc.2d at 57.

¹⁰⁴ Appeal of Lease, 39 Ed Dep't Rep 215, Decision No. 14,219 (1999); Appeal of Lahm, 41 Ed. Dep't Rep 193, Decision No. 14,662 (2001).

¹⁰⁵ *CFE II*, 100 N.Y.2d at 913; *DeGrasse*, 187 Misc.2d at 57.

¹⁰⁶ *CFE II*, 100 N.Y.2d at 913, *DeGrasse*, 187 Misc.2d at 57-60. The Commissioner's Regulations require secondary school libraries to have at least 5-8 books per student, depending on school size. 8 NYCRR § 91.1. The Court of Appeals has indicated that these minimums are insufficient, and that a ratio somewhere between 9 and 18 books per student is the minimum necessary to meet constitutional requirements. *CFE II*, 100 N.Y.2d at 913.

¹⁰⁷ *CFE II*, 100 N.Y.2d at 913, *DeGrasse*, 187 Misc.2d at 58-60.

¹⁰⁸ *CFE I*, 86 N.Y.2d at 317; *DeGrasse*, 197 Misc.2d at 58.

¹⁰⁹ *DeGrasse*, 187 Misc.2d at 58.

¹¹⁰ *CFE I*, 86 N.Y.2d at 317; *DeGrasse*, 187 Misc.2d at 58.

VII. Safe and Orderly Environment

Each school must provide a safe and orderly climate for teaching and learning.¹¹¹ Specifically, this requires the following:

A. A Safe and Orderly Environment for Teaching and Learning

1. Every school district must implement policies to create an environment in all schools that is free from discrimination, harassment and bullying.¹¹²
2. Each school district must adopt a code of conduct containing standards and procedures to assure security and safety of students and school personnel and a safe and supportive school climate in every school building, school structure, or athletic field, and at every school function.¹¹³
3. Each school district must also adopt district-level and building-level school safety plans that include, among other things, provision for proper training for students and staff and appropriate prevention and intervention strategies such as nonviolent-conflict-resolution training programs; peer mediation programs and youth courts; and extended day and other school safety programs.¹¹⁴
4. In order to ensure the proper implementation of the district safety code, the school safety plan, and the provision of a safe and supportive school climate, each school must have:
 - a. a sufficient number of adequately trained disciplinary and safety personnel, including administrators and school safety officers
 - b. a sufficient number of qualified student support staff, including guidance counselors, social workers, and school psychologists.¹¹⁵
5. School districts must ensure that transportation it provides directly or through contractors is safe and that its code of conduct is enforced on school buses.¹¹⁶

¹¹¹ *DeGrasse*, 187 Misc.2d at 115.

¹¹² N.Y. Educ. L §§ 10, 12 (McKinney 2012).

¹¹³ N.Y. Educ. Law § 2801. Specifically,

1. The code must include "provisions regarding conduct, dress, and language deemed appropriate and acceptable on school property, including a school function, and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property, including a school function, ... and the roles of teachers, administrators, other school personnel, the board of education and parents." N.Y. Educ. L § 2801(2)(a) (McKinney 2012).

2. The code must also ensure that no student is subjected to harassment or bullying such as "threats, intimidation or abuse, including cyberbullying, that (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or (b) reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety." N.Y. Educ. L § 11(7), (McKinney 2012) (eff. July 1, 2013).

¹¹⁴ N.Y. Educ. Law § 2801 (McKinney 2012); 8 NYCRR § 155.17(e).

¹¹⁵ *DeGrasse*, 187 Misc.2d at 115.

¹¹⁶ N.Y. Educ. Law § 2801(1) (McKinney 2012). See also *Pratt v. Robinson*, 39 N.Y.2d 554, 560 (1976); *Appeal of M.H.*, 43 Ed Dep't Rep 210, Decision No. 14,973 (2003).

VIII. Adequate and Accessible Facilities

Each school must have a physical environment conducive to learning, one that provides adequate and accessible facilities with enough light, space, heat and air to permit children to learn.¹¹⁷ Specifically, each school must have:

- A. A Structurally Safe, Adequately Maintained School Building or Buildings¹¹⁸**
- B. “Adequate Levels of Illumination ... for the Tasks Being Performed”¹¹⁹**
 - 1. Sufficient windows to permit “a view of the exterior.”¹²⁰
- C. Sufficient “Controlled Heating and Ventilation ... in All Areas to Produce Conditions Suitable for [Learning] and for the Varying Activities that Take Place in the [Building]”¹²¹**
- D. Sufficient Space for a Suitable Number of Classrooms of Appropriate Size¹²²**
- E. Adequate Specialized Spaces for Libraries, Laboratories, Auditoriums, Gymnasiums, Playgrounds, Art Rooms, Etc.¹²³**
- F. Appropriate Electrical Wiring to Support Instructional Technology¹²⁴**
- G. Sufficient Bathrooms, with an Adequate Number of Proper Fixtures, and a Safe and Potable Water Supply¹²⁵**
- H. Ramps, Bathrooms, Elevators and Other Accommodations Sufficient to Meet the Accessibility Needs of Students and Staff with Disabilities¹²⁶**

¹¹⁷ *CFE II*, 100 N.Y.2d at 911, *CFE I*, 86 N.Y.2d at 317; 8 NYCRR § 155.1.

¹¹⁸ *DeGrasse*, 187 Misc.2d at 46-47; *CFE I*, 86 N.Y.2d at 317, *CFE II*, 100 N.Y.2d at 911. In addition,

1. Each school district must prepare and update annually “a comprehensive long-range plan pertaining to educational facilities” that includes, among other things, “present and projected pupil enrollments; space use and State-rated pupil capacity of existing facilities; the allocation of instructional space to meet the current and future special education program and service needs [including] serv[ing] students with disabilities in settings with nondisabled peers; priority of need of maintenance, repair or modernization of existing facilities, including consideration of the obsolescence and retirement of certain facilities; and the provision of additional facilities.” 8 NYCRR § 155.1(a).
2. Each school district must conduct annually “[a] visual inspection of structural elements of all school buildings occupied by students.” 8 NYCRR § 155.1(d).
3. “Each school district [must] prepare a five-year capital facilities plan [] and update [it] annually.” 8 NYCRR § 155.1(a)(4).

¹¹⁹ 8 NYCRR § 155.1(b)(2)(i); see also *CFE I*, 86 N.Y.2d at 317.

¹²⁰ 8 NYCRR § 155.1(b)(2)(iii).

¹²¹ 8 NYCRR § 155.1(b)(3)(i); *CFE I*, 86 N.Y.2d at 317. Air conditioners if necessary to permit children to learn during the summer. *DeGrasse*, 187 Misc.2d at 45-46, 8 NYCRR § 155.1(b)(3)(iii).

¹²² *CFE I*, 86 N.Y.2d at 317; *CFE II*, 100 N.Y.2d at 911-12. *DeGrasse*, 187 Misc.2d at 114. Increased utilization of existing facilities through double shifts is constitutionally unacceptable. *DeGrasse*, 187 Misc.2d at 50-51.

¹²³ *CFE II*, 100 N.Y.2d at 911; *DeGrasse*, 187 Misc.2d at 50-51; 8 NYCRR § 135.4(c)(5).

¹²⁴ *CFE II*, 100 N.Y.2d at 917; *DeGrasse*, 187 Misc.2d at 45.

¹²⁵ 8 NYCRR §§ 155.7(e)(1)-(2); 155.1(b)(4).

¹²⁶ 29 U.S.C. § 794(a) (2002), 34 CFR §§ 104.1, 104.3; 42 U.S.C. §§ 12132, 12133 (1990).

 The **Campaign** for **Educational Equity**

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