

Restructuring New York City's Schools

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INTRODUCTION

New York City's public school system is the largest in the nation. Its administrative structure is correspondingly large. It enrolls nearly one million students and has 120,000 staff people who work in over a thousand buildings. The New York City Public Schools transport over a half million students a day. Its school security staff would be the nation's sixth largest police force. Its budget is over seven billion dollars, larger than that of most states. In addition to its sheer size, the New York City school system has many serious problems. Perhaps most striking are those problems associated with poverty, language, and disability. A third of the children in the public school system are on public assistance, well over 100,000 are of limited English proficiency, and roughly 120,000 are in special education.¹

The ebb and flow of the budget has affected profoundly the education system in New York City. One budget crisis was allowed to dismantle the City's education programs in 1975; however, the recession of the 1990s has not been allowed to divert a nascent reform movement. In fact, the school system has been able to meet current city budget constraints with management restructuring that parallels the City's school reforms.

In late 1989, the operating structure of New York City's public schools resembled that of a large corporation. Unfortunately, that corporate structure had been discarded long ago by the business world. In the early 1970s, a team of corporate executives from the Economic Development Council helped restructure the school system headquarters. Utilizing a model adopted by many large corporations in the late 1960s, a military-style, hierarchical structure was placed atop the already fiercely hierarchical and top-down structure of the individual school. This structure changed little over the decades. The school system that the new Chancellor, Joe Fernandez, inherited on January 1, 1990, had shown itself to be immune to the wave of school restructuring that had swept other urban school systems. Few decisions could, or would, be made at the local school level, and mid-level bureaucrats habitually eschewed

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1. NEW YORK CITY PUBLIC SCHOOLS, CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, at 24 (1992) [hereinafter CHANCELLOR'S BUDGET REQUEST FOR 1991-1992].

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decisionmaking, kicking more and more decisions up to the Chancellor's office.

New York City once had a great school system, producing projects which served as national models.² The 1970s, however, unquestionably brought a period of educational decline. Reading scores, math scores, and pupil attendance all showed downward trends.³ Although by no means the beginning of that decline, the 1975 fiscal crisis was a turning point in the City's history, as the schools went through a major reduction in services.⁴ As New York City struggled to avoid bankruptcy, the schools, whose population was increasingly made up of poor and minority youth, were asked to bear the brunt of the City's budget cuts: Over one hundred million dollars was cut from the Board's fiscal year 1976 budget of \$2.8 billion.⁵ The reduction was achieved almost entirely through cuts to classroom services, an ultimately shortsighted effort to win support against future cuts. While over 14,000 teachers were laid off, relatively few administrative employees lost their jobs.⁶ Guidance services were decimated.⁷ Art, music, and school health services all but disappeared, and class size increased dramatically.⁸ In a particularly damaging occurrence, the school week was shortened by ninety minutes because the schools could not afford to pay for teacher preparation periods.⁹

Since teachers are assigned based on city-wide seniority by license area, the result of the layoffs was "bumping" and "excessing" of staff throughout the schools.¹⁰ Classes were organized and then reorganized as teachers passed through the system, "bumping" down to positions in schools that were laying off more junior staff. Many students had seven or eight different teachers during the school year, and class size soared.¹¹ Teachers cascaded through a half dozen school buildings as teaching staff changed dramatically in individual schools. Most of the teachers forced to leave the system were the youngest teachers. The fiscal crisis thus set back the City's struggling affirmative action

2. DIANE RAVITCH, *THE GREAT SCHOOL WARS* at xii, 280, 403 (1974).

3. OFFICE OF RESEARCH, EVALUATION, AND ASSESSMENT, NEW YORK CITY PUBLIC SCHOOLS, ANN. READING RANKS REP. AND ANN. REP. ON CITYWIDE SPRING TESTING (Reports, 1970-1990).

4. ROBERT BERNE & LEANNA STIEFEL, *FIFTEEN YEARS OLDER AND DEEPER IN DEBT: EFFECTS OF THE MID-1970S FISCAL CRISIS ON PUBLIC ELEMENTARY AND SECONDARY EDUCATION IN NEW YORK CITY* 8 (1991).

5. Message of the Mayor, in *CITY OF NEW YORK, MAYOR'S EXECUTIVE BUDGET, FISCAL YEAR 1976* at 1.

6. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 13; *see also* BERNE & STIEFEL, *supra* note 4, at 9 (13,039 classroom teachers and 17,246 professional staff—which includes classroom teachers—lost their jobs); JOSEPH VITERITTI, *ACROSS THE RIVER* 44 (1983).

7. BERNE & STIEFEL, *supra* note 4, at 13.

8. *Id.* at 9.

9. *Id.* at 10.

10. Bumping and excessing is the process of transferring positions from school to school to comply with the complicated licensure and seniority system that guarantees individuals seniority by school and/or license area. *See Id.* at 11.

11. *Id.* at 12.

programs.¹²

Attendance, one of the clearest barometers of the quality of a school system, fell by a staggering three percentage points in the year directly following the reductions.¹³ Since state education funding is tied to attendance, this decrease brought a drop in funding the next year. The quality of the system declined by every measure imaginable, and that decline coincided with the next half decade of fiscal stress. As the City coped with fiscal austerity, reading and math scores declined, dropout rates soared, diploma rates fell, and the salaries of teachers and administrators lost ground compared with the rest of the region.¹⁴

By the mid-1980s, ten years after the fiscal crisis began, New Yorkers still found their schools in a state of crisis. While the fortunes of the City and its schools improved somewhat during the City's economic recovery during the 1980s, the fiscal crisis in many ways redefined the New York City public school system for the entire decade. Those students who entered the schools in the mid- to late-1980s were the "fiscal crisis kids." Less was spent on their education than in neighboring counties. By 1989-1990, approved operating expenses per pupil in New York City averaged only \$5,080 compared with \$7,775 in Nassau, \$7,565 in Westchester, \$7,287 in Rockland, and \$7,042 in Suffolk.¹⁵ Over the twelve years of a standard public school education, New York City students received only three-fourths of the resources invested in students in the rest of the state.¹⁶ By 1990, class size had grown significantly in New York City. For example, ninth grade English classes that in the rest of the State averaged twenty students, in the City averaged twenty-nine students. High school physics classes that averaged eighteen students elsewhere in the State averaged over twenty-nine in New York City.¹⁷

Underfunding was evident in more than just class size. In 1988, New York City spent \$458 per child on plant operations and maintenance for its aging infrastructure, contrasted with a \$574 state-wide average; New York spent less than each of the other large cities in the State, i.e. Buffalo, Syracuse, Rochester.¹⁸ To this day, neither the City nor the State adequately funds the schools in New York City. For example, New York City has thirty-six percent of the

12. *Id.* at 31. Cf. Joseph Berger, *Choosing \$90 Million in School Cuts: Layoffs or Attrition, It's Class Chaos*, N.Y. TIMES, Nov. 21, 1990, at B3 (1990 budget crisis similarly threatened teacher diversity).

13. Memorandum from Robin Willner to Stanley S. Litow re: attendance and State Aid 2 (June 19, 1991); Cf. NEW YORK CITY PUBLIC SCHOOLS, THE COHORT REPORT: FOUR-YEAR RESULTS FOR THE CLASS OF 1990 AND FOLLOW-UPS OF THE CLASSES OF 1987, 1988, AND 1989, AND THE 1989-90 ANNUAL DROPOUT RATE (1990).

14. BERNE & STIEFEL, *supra* note 4, at 23.

15. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 14.

16. BERNE & STIEFEL, *supra* note 4, at 32.

17. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 14.

18. NEW YORK CITY PUBLIC SCHOOLS, CHANCELLOR'S BUDGET REQUEST FOR 1990-1991, at 34 (1990) [hereinafter CHANCELLOR'S BUDGET REQUEST FOR 1990-1991].

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state's students but gets only thirty-two percent of the State's education aid.¹⁹ Were it to get exactly the same percentage of funding as it has students, with no weighting based upon need, the City would receive another \$380 million in aid, an amount sufficient to add eleven more teachers to every school. This increase would not even account for the fact that New York City has sixty-four percent of the students in the State reading below standard, sixty-three percent of those who are disadvantaged, over eighty percent of those who are of limited English proficiency, and half of the State's special education students.²⁰ City support as a percentage of the school budget also dropped precipitously. Whereas in 1982, New York City funded fifty-five percent of the school budget, by fiscal year 1992, the City's funding accounted for only forty-five percent.²¹ New York City currently spends a considerably smaller percentage of its city budget on its schools than do most major cities. Less than twenty cents of every local tax dollar goes to the school budget in New York City, a smaller percentage than in Buffalo, Boston, Baltimore, or Memphis.²²

I. SCHOOL RESTRUCTURING

When Joseph A. Fernandez became Chancellor of Schools for New York City on January 1, 1990, he brought with him twenty-five years of experience in the Miami Public Schools, which culminated with his service as Superintendent of Schools. Most important, however, was his commitment to the democratization of schools embodied in School Based Management/Shared Decision Making (SBM/SDM). Fernandez introduced SBM/SDM to Miami's schools, where his entrepreneurial style was exemplified by Saturn Schools. These schools sought partnerships with businesses and others to create satellite schools (run at the site of businesses). Through the initial success of restructuring in Miami and the attention it gained nationwide, he and SBM/SDM became symbols of a national movement toward urban school restructuring.

A. *SBM/SDM*

School Based Management/Shared Decision Making seeks to tailor school programs to meet the needs of children in a particular school rather than the

19. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 10.

20. *Id.* at 12.

21. *Id.*

22. COOPERS & LYBRAND, COMPARATIVE ANALYSIS: NEW YORK CITY PUBLIC SCHOOLS 14 (May 1991).

"average" need of students across all schools.²³ Borrowing from the concept of worker-owned and democratically-managed private sector enterprises, SBM/SDM advocates breaking down the traditional hierarchical structure within schools by encouraging teams of teachers, parents, administrators, and students to chart educational reforms from the school level up and empowering these teams to make decisions involving curriculum, schedules, and budgets. In practice, each team initially examines a variety of data about the school, and then develops a school plan designed to meet identified problems. School teams can thus more readily address the needs of the local school community.

A typical SBM/SDM team receives a grant of approximately \$9,000 for planning. The school staff and parents must volunteer to participate in the program for the school to begin any SBM/SDM program. The Chancellor's office provides access to training, staff development, and technical assistance, but the locus for action remains at the school level. The Chancellor's office "brokers" external services at no cost to the participating school. The school system also assigns trained facilitators to assist with the SBM/SDM planning process at a fixed number of schools. Working with school profile data and input from the school community, the team completes needs assessments and develops instructional plans that tailor the school program, schedule, and allocation of resources to the individual school's needs. The teams reach out to engage parents and the broader school community in support of improving the school. Overcoming obstacles of "turf" and governance, the teams quickly focus on issues of curriculum and educational achievement.

While SBM/SDM vests great responsibility with individual workers/teachers and other SBM teams, accountability remains with the principal of each school and with the head of the school system, whose management style is critically important. Fernandez's management style is aggressively entrepreneurial and change-oriented, and emphasizes the need for enhanced educational accountability of individual schools and the school system. Although training and staff development are necessary, SBM/SDM is designed not to cost more than the standard school program. The goal of SBM/SDM is not only to get more people involved, but also to improve student educational outcomes. Fernandez linked program accountability to fiscal stability: "If we are to ensure that taxpayers get a dollar's value for every education dollar spent, we must have rigorous achievement standards for every initiative."²⁴

While other school systems have experimented with school restructuring,

23. For example, in Miami, through SBM/SDM, one school contracted out its bilingual program to Berlitz, a private language instruction company; another school instituted Saturday school; a third started an ungraded primary program; a fourth altered the school schedule to increase the level of instruction; a fifth instituted cooperative learning models.

24. CHANCELLOR'S BUDGET REQUEST FOR 1990-1991, *supra* note 18, at 1.

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the national debate has instead mistakenly focused on "school choice."²⁵ In their recent book, *Politics, Markets & America's Schools*, Chubb and Moe advocate a market-driven system of school choice. While their choice program does not explicitly eschew SBM/SDM restructuring at the school level, it focuses instead on the magic of the marketplace. Chubb and Moe believe that the model for effective schools are private schools, which, they argue, substitute market control for interest group or bureaucratic control in the schools. Under Chubb and Moe's plan, parental choice and school selection and retention procedures based on any criteria except race would be the determinants of school populations.²⁶ The exclusionary admissions standards and ability to decide to expel or retain students on the basis of intelligence, achievement, disciplinary record, or motivation is clearly a ticket to a two-tier system—a private system with public dollars, and a public system with insufficient resources to meet the greater needs of its population.

Though the idea has suddenly captured the public imagination, school choice, in one form or another, is not a new idea. In fact, New York City currently operates the largest school choice system in the country; however, it is carefully circumscribed choice within the public system. The program, operated within the Division of High Schools, allows public high school students to choose from approximately seventy-five high school programs featuring studies as diverse as aeronautics, fine arts, and marine science. Many local City districts also operate choice programs. However, choice programs are vulnerable to biased admissions and retention procedures that can lead to economic, racial, and academic imbalances. In addition, parents and students of all economic and educational backgrounds must be assured equal access to accurate information about their choices. Efforts in New York City have demonstrated that while some parents choose to find and do move their children to schools that meet their needs, many more parents continue to send their children to neighborhood schools.

Finally, choice is meaningless unless students have successful schools from which to choose. Choice by itself will not magically produce good schools, as James Liebman has demonstrated in a recent article.²⁷ Schools work because of effective program planning, the hard work of talented teachers and administrators, and the active participation of parents. Although parental choice—if appropriate controls are placed upon it—clearly can contribute to an effective school reform strategy, as a linchpin of reform, it fails. There is no one key to school reform, but the SBM approach offers a much greater

25. See, e.g., *Debate on Merits of Public/Private Schools Reignites*, EDUCATION WEEK, Sept. 18, 1991, at 1; GEORGE BUSH, AMERICA 2000 PROPOSALS, MAKING THIS LAND ALL THAT IT SHOULD BE (Mar. 6, 1991).

26. JOHN E. CHUBB & TERRY M. MOE, POLITICS, MARKETS & AMERICA'S SCHOOLS (1990).

27. James S. Liebman, *Voice, Not Choice*, 101 YALE L. J. 259 (1991).

chance of success than the market reforms suggested by Chubb and Moe.

B. *Entrepreneurial Bureaucracy*

While SBM/SDM and enhanced accountability are perhaps the cornerstone of the Fernandez agenda, the 1991 budget crunch meant that the success of the programs would depend on Fernandez's entrepreneurship. The term "entrepreneurial bureaucracy" denotes a fluid management style that responds quickly to perceived needs and new constraints, harnesses the resources of the surrounding community to bolster those of the bureaucracy, and does not fear innovation.²⁸ Fernandez's approach to entrepreneurial bureaucracy is, in fact, almost anti-bureaucratic. For instance, by the end of his first month in office, he had removed a principal for incompetence, directed one of the thirty-two local school districts to fire its Superintendent (who had misused public funds), and trimmed hundreds of jobs from a top-heavy school bureaucracy as part of a \$20 million savings program.²⁹

His energy, creativity, and restlessness began to permeate the bureaucracy at school headquarters, and two months later, he announced his SBM/SDM initiative. He began by attracting ten percent of the City's 1000 schools to participate in the program during the next school year (1990-91), making it the largest such effort in the United States.³⁰ The restructuring required serious governance changes. Individual school budgets were created for SBM/SDM schools, and the central administration was reoriented toward providing services to the schools. Fernandez also mounted a challenge to two of the longest-standing structural impediments to educational reform in New York City: (1) the Board of Examiners (the City's 100 year old, antiquated, expensive teacher licensing system) and (2) building tenure for principals. The former prevented creative school staffing and individualized school improvement programs, while the latter deprived the Chancellor of the power both to make principals accountable and to introduce new leadership into the schools. By June 1990, both of these road blocks to reform were removed.

Decentralization is a key component of the SBM/SDM reform. As but one example, Fernandez ended the uniform Promotional Gates Program.³¹ The Gates, initiated ten years earlier, required students to pass a single standardized

28. For related views, see DAVID OSBORNE, *REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR* (1992).

29. Joseph Berger, *Fernandez Acts to Oust District Head*, N.Y. TIMES, Jan. 17, 1990, at B1; New York City Public Schools, Press Release, *Fernandez Reorganization Eliminates Nearly 400 Positions*, April 5, 1990.

30. OFFICE OF THE CHANCELLOR, NEW YORK CITY PUBLIC SCHOOLS, SPECIAL CIRCULAR NO. 41, 1989-1990: REQUEST FOR PROPOSAL: VOLUNTARY PARTICIPATION IN SCHOOL-BASED MANAGEMENT/SHARED DECISION-MAKING (Mar. 26, 1990).

31. OFFICE OF THE CHANCELLOR, NEW YORK CITY PUBLIC SCHOOLS, SPECIAL CIRCULAR NO. 48, 1989-1990: PROMOTING SUCCESS PROGRAM FOR SUMMER 1990, at 1 (June 12, 1990).

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reading test at the fourth and seventh grades in order to advance to the next year. He rejected the Gates program because research indicated that holdovers became "overage" for their grade, failed to make academic progress, felt frustrated and stigmatized, and ultimately dropped out of school in large numbers.³² Fernandez replaced the Gates program with "Promoting Success," which offers enrichment, remedial classes, and a mandatory summer program in grades one to three to provide additional educational time without repeating grades. Holding children back was not to be decided based on test scores, but individually, if at all, by the child's teacher and parents.

The City's high school dropout prevention program was also given a decentralized design to correct documented differences in its effectiveness.³³ The prior system, initiated in 1986, was centrally-designed rather than based on a school-by-school needs assessment. In addition, it evaluated actions only at year's end and focused on counseling and support services which were not integrated into the school program. The old program added supplemental guidance and attendance services to attract students back to a school that for them remained fundamentally ineffective. Fernandez' new program, called "Project Achieve," focused on SBM/SDM school planning teams. Based on a comprehensive needs assessment, as well as ongoing monitoring and review, the program focused on the entire school, including integration of instruction and support services.

At the end of six months, Fernandez was hailed by *The New York Times* as having accomplished more than his predecessors had in their entire tenures in office.³⁴ However, as New York cheered the beginning of education reform and readied itself for the new school year, the city and state economies, already slumping, began to plummet. Could this bottom-up school reform survive a fiscal crisis like the one that nearly destroyed the public schools in 1975? Fernandez's strategy was to protect SBM/SDM by employing strategies of entrepreneurial management.

32. OFFICE OF EDUCATIONAL ASSESSMENT, NEW YORK CITY PUBLIC SCHOOLS, EVALUATION UPDATE ON THE EFFECTS OF THE PROMOTIONAL POLICY PROGRAM (Nov. 12, 1986); CENTER FOR POLICY RESEARCH IN EDUCATION, REPEATING GRADES IN SCHOOL: CURRENT PRACTICE AND RESEARCH EVIDENCE (1990).

33. JOSEPH C. GRANNIS & CAROLYN J. RIEHL ET. AL, EVALUATION OF THE NEW YORK CITY DROPOUT PREVENTION INITIATIVE 1985-86 THROUGH 1987-88 FINAL LONGITUDINAL REPORT (Jan. 22, 1990).

34. Joseph Berger, *Fernandez at 6 Months*, N.Y. TIMES, July 31, 1990, at B1.

II. FISCAL CRISIS

A. *The Budget Gap*

The combined city and state budget gap for Fiscal Year 1991 was projected to exceed \$5 billion.³⁵ Tax revenues kept declining, and the economy was in what the Bureau of Labor Statistics referred to as a "free fall."³⁶ The City and State were forced to make massive, mid-year spending cuts just to meet legal requirements for a balanced budget in the current fiscal year, and then to plan for even steeper reductions for the following year. The scale of these reductions in the city and state budgets was far greater than that of 1975.³⁷ The startling difference between 1990 and 1975, however, was that in 1975 the federal government finally provided loan guarantees and the State assumed the cost of a variety of city programs from prisons and mental health to higher education. In 1990, with the State fiscally constrained and the federal government effectively turning its back on the nation's urban centers, the City was left on its own. In casting about for places to effect reductions, city budgeters began to focus on the education budget, which represented twenty-five percent of the City's expenditures.³⁸

Historically, school administrators had eschewed cooperative planning with the City's Office of Management and Budget (OMB) because they distrusted OMB's motives. Only through the direct intercession by Deputy Mayors with oversight responsibility for schools, and by Board Presidents with ties to the Mayor, was some semblance of cooperation achieved between the Board and the City. In 1991, however, with no strong Deputy Mayor interested in or responsible for education, nor any Board President with countervailing influence over the Budget Office, the schools were powerless to fight against devastating reductions in their budget. In the words of one official, OMB turned to the school system for the same reason Willie Sutton claimed he robbed banks: "Because that's where the money is."³⁹

A full \$250 million in Fiscal Year 1991 (close to a third of the entire City's reduction program), and another \$600 million in Fiscal Year 1992 (almost forty percent of all the cuts), were proposed to come from the schools. The

35. CITY OF NEW YORK, JANUARY FINANCIAL PLAN, FY 1992 (Jan. 1991).

36. *Id.*

37. CITY OF NEW YORK, MAYOR'S EXECUTIVE BUDGET, FISCAL YEAR 1977. *Compare* NEW YORK CITY PUBLIC SCHOOLS, CHANCELLOR'S BUDGET REQUEST FOR 1976, with Letter from Joseph A. Fernandez, Chancellor, New York City Public Schools, to David N. Dinkins, Mayor, New York City (Nov. 7, 1990).

38. Education had been shielded from the minor cuts of FY 1988 and FY 1989, and, in fact, had been a major beneficiary of added discretionary dollars in the late 1980s. City funding for education had declined slower than in other areas. As the crisis developed, however, City budget planners could not, or would not, sustain this practice.

39. *See, e.g.,* United States v. Derby, 857 F.2d 623, 630 (9th Cir. 1988) (Tang, C.J., dissenting).

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City implied that the reductions could be made by trimming the bureaucratic fat, but the entire central administrative budget at that point represented only two percent of the Board's funds.⁴⁰ The City claimed that the cuts would not necessarily hurt children; increases in class size were called "productivity improvements," while cuts in math and science were called "administrative reductions." The City proposed a variety of cuts that were in violation of existing labor contracts or court mandates.⁴¹ Items not covered under the existing labor contracts or otherwise categorically restricted represented less than \$2 billion (thirty percent) of the Board's budget.⁴² The challenge, therefore, was to convince the city administration of the impossibility of a financial cut that targeted one out of every three non-mandated dollars in the school budget. However, budget officials proved unwilling to bend on the legal or contractual issues, and the Mayor's support for the OMB's proposals seemed to ensure that the Board would approve the cuts.

B. *The Chancellor's Response*

In October, Fernandez attempted to resist the mid-year budget cuts. He argued that there was a maximum level of \$50 million in reductions that could be sustained, which he offered to achieve by trimming administration. Beyond that point, he argued, crucial services would suffer. The media portrayed his resistance as intransigent disloyalty to the Mayor.⁴³ With reductions inevitable, Fernandez refused to cut as previous Chancellors had done, in ways that hurt schools and children, as a means of dramatizing needs and building public support. His reforms were only beginning, and such cuts would undercut SBM/SDM. Novice planning teams would lose their credibility and become symbols of eliminated services—that is, if bumping and layoffs would leave any of the teams intact. Slashing classroom services as in 1975 would, in his view, have long term costs for New York City. It would also create a ripple effect well beyond the City's borders, for it would threaten a success in New York City that Fernandez believed could be translated to success in a nationwide public education reform.

With these considerations in mind, he endeavored to create a second option. Through the tools of entrepreneurial management, he proposed a major

40. Letter from Joseph A. Fernandez, *supra* note 37.

41. CITY OF NEW YORK, JANUARY FINANCIAL PLAN, FY 1992 (Jan. 1991); Chancellor Joseph A. Fernandez, Testimony Before the New York City Council Finance and Education Committees (May 22, 1991).

42. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1. For example, class size limitations for regular education are written into labor contracts, while special education class size is mandated by court order and state regulation.

43. See, e.g., Nick Chiles, *Fernandez Rips City Hall*, NEWSDAY, Oct. 24, 1990, at 3; Joseph Berger, *Fernandez Warns of Impact of Cuts*, N.Y. TIMES, March 7, 1991, at B4.

restructuring of the fiscal, managerial, and service relationships in the school system. He argued that his proposal would save money without direct cuts to classroom services, and thus allow his reforms to proceed. Entrepreneurial management in a school system this complex would prove arduous. The school system has locally-elected school boards controlling elementary and junior high schools, 120 centrally-run high schools, and bifurcated control over special education (some central, some local), presenting a formidable obstacle to reform. The thirty or more individual bargaining units with which the Board contracts, Central Board appointees accountable to six different politicians, and the influences of race, ethnicity, and local politics on matters large and small produce a mix that is truly mind-boggling. For the school system to plan, promote, and execute a restructuring strategy in this complex structure would require school headquarters to behave not like a bureaucratic behemoth, but like a small, flexible new business riding the crests and waves of the economy. While Fernandez had already begun an effort to streamline and flatten the school bureaucracy—bringing in outsiders and making use of pro bono business consultants and outside task forces to promote restructuring—such reform was still in an early stage. A short-term plan was needed to ride out the proposed cuts.

A plan to cope with New York City's budget crisis and to develop short-term restructuring plans began to take shape in the winter of 1990. Any effort had to rest on six key concepts. First, it needed the full cooperation of the City and State and required intergovernmental action from every level of government. Second, the plan required the cooperation of labor. Third, it needed the financial and educational support of the business, philanthropic, and civic communities. Fourth, the educational bureaucracy and its managers had to put an end to business as usual and provide a firm commitment to management and productivity improvements. Fifth, the school system needed to use the full weight of the legal system in support of its program. Finally, the reforms needed broad public support. The plan's development, design, and implementation would have to be realized without slowing down Fernandez's basic educational reforms. Here's how it worked:

1. *Intergovernmental actions.* With the support of state officials, the Governor, the State Legislature, and the State Education Department, Fernandez was able to gain passage of unprecedented state legislation which allowed an advance payment of state aid to straddle the cusp between Fiscal Year 1991 and Fiscal Year 1992. Subsequent action permitted this advance to be rolled over to Fiscal Year 1993. This plan avoided a mid-year cut during the 1990-91 school year and vitiated the need to cut \$140 million that would have otherwise had to have been cut by July 1, 1991.⁴⁴ Some saw this as a fiscal gimmick,

44. Berger, *supra* note 43.

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borrowing from the future, but in reality it averted costly layoffs (with the concomitant high unemployment insurance costs and termination pay in the middle of the year), and allowed slowed spending in state and city programs to be stretched out over eighteen months.

Securing passage of this legislation was made difficult by two facts. First, the City believed that the \$70 million advance might threaten city compliance with Generally Accepted Accounting Principles (GAAP). For political reasons, the City also resisted a solution which would avoid a large number of layoffs. Under pressure from the rating agencies, Standard and Poors and Moody, to downsize government, city budget officials felt that avoiding layoffs, even if done in an intelligent fashion, could actually hurt the City's credit rating since it might be interpreted as reluctance to downsize. The Board's argument, that downsizing was better if it took place during the summer (when school was not in session, when unemployment benefits need not be paid, and "bumping" and school reorganization could be avoided) inexplicably fell on deaf ears at the City's budget office. The Board explained to city budgeters the difference between the need to preserve student progress and the school's nine-month schedule on the one hand, and a standard twelve-month city service, like sanitation, that, on the other hand, could be rescheduled at any time. With the cooperation of state legislative leaders and the Governor's office, Fernandez took the case directly to the City's auditors, fiscal monitors, and rating agencies, and the legislation was approved.⁴⁵

Next, Fernandez fashioned an elaborate and successful strategy to obtain state mandate relief to stretch another \$70 million in state dollars. First, he sought a conditional waiver of full implementation of a statewide teacher mentor program which cost the school system \$30 million a year.⁴⁶ This program enabled interested first-year teachers to have full- and part-time experienced, older teachers serve as mentors during the school year. The mentor program required removing experienced teachers from classroom duty and replacing them with additional teachers to cover their classes. The teachers' union, which had sought passage of the mentoring program, agreed with Fernandez that layoffs would render the mentoring program irrelevant, as the new teachers who would benefit from the program would be the ones most likely to be laid off.

A second element of mandate relief involved relaxing regulations governing class size and workload for teachers of mildly and moderately handicapped youngsters. A coalition representing the major school districts in the State pushed hard to support this change, while the teachers' union and some advocates for the handicapped fought hard to resist it. Fernandez obtained the

45. 1991 N.Y. Laws 1.

46. 1990 N.Y. Laws 947.

regulatory changes, increased class size (from twelve to fifteen, where appropriate) closer to the class sizes in other states, and increased caseloads for teachers in resource rooms from twenty to twenty-five students. All told, this mandate relief saved approximately \$40 million, since fewer special education teachers were necessary.⁴⁷ While some criticized these cutbacks as not "keeping the cuts away from kids," Fernandez pointed to the inconclusiveness of research on whether a ratio of one to fifteen was any worse, for handicapped youngsters, than a ratio of one to twelve.⁴⁸ Without mandate relief, a \$40 million cut in regular education would have driven class size higher in regular education and could have resulted in additional special education referrals. Fernandez's approach also helped to diffuse potential conflicts between special education parents and regular education parents in the budget debate and paralleled Fernandez's progress on reducing special education waiting lists.

2. *Labor relations.* Fernandez's work in labor negotiations provided another significant easing of the budget quandary. Capitalizing on his favorable working relationship with the teachers' union, he fashioned a \$40 million wage deferral agreement to avert teacher layoffs. This landmark agreement called upon the United Federation of Teachers (UFT) to defer the equivalent of 4.4 days of pay interest-free for four years.⁴⁹ In return for this deferral, which would be paid back outside of the City's four-year financial plan, the Board of Education promised not to lay off any teachers through the end of that school year (five months) and instead make reductions through retirement or attrition over the summer. The Board also agreed to cluster existing school holidays such as Washington's Birthday, Lincoln's Birthday, and Election Day, in one week to permit creation of a mid-winter recess. The mid-winter recess was achieved while still offering an identical number of instructional days for students in Fiscal Year 1992 as had been offered in the prior year. In other words, the clustering would not result in decreased instructional time, which would have hurt the children.⁵⁰

Because of repeated delays in negotiations, the agreement was fashioned only a day before mid-year layoffs were scheduled to take effect. First, OMB indicated incorrectly that a wage deferral was in violation of GAAP. Fernandez

47. THOMAS SOBOL, COMMISSIONER, N.Y. ST. EDUC. DEP'T, CLARIFICATION OF AMENDMENT OF PART 200 OF THE REGULATION OF THE COMMISSIONER RELATING TO SPECIAL CLASS SIZES (Mar. 18, 1991).

48. See, e.g., JOSEPH A. FERNANDEZ, REMARKS ON SPECIAL EDUCATION MANDATE RELIEF (Mar. 21, 1991). In fact, in states with more effective school programs for moderately handicapped youngsters, e.g., California, Minnesota, and Massachusetts, class size for moderately handicapped youngsters currently ranges from one to fifteen.

49. Joseph Berger, *Teachers to Defer Wages in New York*, N.Y. TIMES, Jan. 26, 1991, at 1.

50. The schools already offered more instructional days than mandated by the State. NEW YORK CITY PUBLIC SCHOOLS, BRIEF CALENDAR, 1990-91 SCHOOL YEAR, 1991-92 SCHOOL YEAR. Unfortunately, an official arbitration decision excused teachers from two professional development days, which resulted in two fewer scheduled work days, but maintained the student instructional calendar. Cf. Joseph Berger, *What Price Harmony atop New York City's Schools?*, N.Y. TIMES, Dec. 15, 1991, at D5.

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once again went directly to the City's auditors to make his case. The City then argued that while a no-layoff pledge was workable in return for the UFT wage deferral, they felt that such a pledge would produce a dangerous precedent for the City in its negotiations with other unions. They claimed they intended to negotiate a wage deferral of their own at the beginning of the next fiscal year and felt the precedent of a tight no-layoff pledge would back them into a corner. To reduce this problem, the City demanded that the Board negotiate a less specific pledge in a second deferral agreement with another bargaining unit to minimize the precedential effect. Fernandez approached Local 372, District Council 37 of AFSCME, which represents lunch workers, drug workers, school aids, and certain other support staff, and obtained a \$5 million deferral mirroring the teacher's agreement. While it contained a weaker no-layoff pledge, the union knew that Fernandez was committed to downsizing through attrition rather than through layoffs.⁵¹

With the issue of precedent now put to rest, the City dropped its objections to the no-layoff guarantee contained in the teachers' union deferral agreement. The deferral was announced on February 1, the very day layoffs were due to take effect. The combined \$45 million wage concession (\$40 million from teachers and \$5 million from other school workers) avoided the mid-year layoffs of approximately 4500 staff, at least 3000 of whom would have been classroom teachers. In addition to the wage deferrals and mandate relief measures, the UFT quietly acquiesced to increases in food prices in teacher cafeterias, the closing of underused teacher cafeterias, and reductions in discretionary funds used by teachers to order supplies for Fiscal Year 1992.

The most successful element of Fernandez' budget strategy (and a major departure from the 1975 crisis) was the passage of an Early Retirement Incentive program (ERI) for teachers and supervisors. The plan offered three years of non-qualifying service credit to any employee age fifty-five or older with thirty years experience.⁵² To win support for the proposal, Fernandez commissioned a study by Buck Associates, a private pension consultant. The Buck study established that using normal rates of retirement and assuming twenty to fifty percent rates of replacement of the retirees, the Board could save \$30-50 million through such an incentive. It further showed that greater participation would yield larger savings.⁵³ Because every (older, more expensive) teacher who retired would avert 1.7 layoffs, the process would protect class size ratios.⁵⁴ In addition, the plan protected Fernandez's affirmative action program with specific targets for school districts and central offices.

51. Agreement Between the District Council 37 Administrative Benefits Fund Trust and the Board of Education of the City of New York (Apr. 24, 1991).

52. 1991 N.Y. Laws 178.

53. BUCK CONSULTANTS, REPORT TO THE N.Y. CITY BD. OF EDUC. ON A RETIREMENT INCENTIVE PROGRAM FOR CERTAIN MEMBERS OF THE N.Y. CITY TEACHER'S RETIREMENT (Mar. 13, 1991).

54. *Id.*

Finally, while senior teachers would leave schools, the rest of the staff could remain intact, thus avoiding the chaos of bumping teachers from one school to another based on city-wide seniority lists. Given the fledgling status of SBM/SDM and the new relationship between staff and parents, this stability was essential to protect educational reforms.

The schools began to draft legislation and actively seek the City's assistance in advocating its passage by the legislature. Initially, the City demurred, suggesting that in order to be supported, the ERI would have to result in a positive present value to the City within a twenty-one year period. That is, the cost of the program in added pension benefits would have to be substantially less than the budgetary benefit of reductions in average teacher salary, and, through attrition, in the number of teaching positions. The OMB challenged the Buck study's "no cost" standard, and insisted that the program would have to "turn a profit." The City also argued that the ERI would set a precedent that would cost the City far too much if extended to the City's own employees, because the differential between entry level salaries and retirement salaries for city employees was not large. Once again, to win approval, Fernandez took his case beyond city budget officers, to the City Council, the City's auditors, fiscal monitors, and private sector members of the Mayor's new Management Advisory Board. All eventually backed the program. Lobbying by the unions, Board, and City won its passage.⁵⁵ Ultimately, teacher participation in ERI far exceeded the Buck study estimates and savings exceeded the projected \$50 million.⁵⁶

More than any other action, the ERI helped reduce the effect of the budget cuts on classroom services. It allowed 5000 teachers at an average salary of \$50,000 each to retire and permitted the rehiring of 2000 replacement teachers at roughly \$25,000 a year. It also bought time that allowed 3000 teaching positions to be eliminated through attrition over the summer. This caused a modest upward adjustment in class size system-wide with no "bumping" or "excessing" of staff, while minimizing disruption, averting layoffs, and permanently reducing the average teacher salary. It saved countless dollars in unemployment insurance benefits and termination pay that would have resulted from layoffs. The resulting savings of nearly \$100 million became the single largest element of the budget savings plan. Of course, the downside of ERI was the fact that experienced teachers who might not have retired for several years did so all at once. While the number of retirees amounted to about five percent of the teaching force, the retirements came in a particularly favorable

55. The *New York Times* also expressed support for the ERI plan. See *School Bells Ring, Nervously*, N.Y. TIMES, Sept. 13, 1991, at A24.

56. JOSEPH A. FERNANDEZ, NEW YORK CITY PUBLIC SCHOOLS, STATUS REPORT CONCERNING THE RETIREMENT INCENTIVE PROGRAM AND THE STAFFING OF SCHOOLS MEMORANDUM TO MEMBERS OF THE BOARD OF EDUC. (Aug. 26, 1991). The City was even able to restrict other city employees' access to Early Retirement Incentives, as it had planned.

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recruitment environment, which permitted the Board to attract new teachers with richer educational backgrounds and experience.

ERI also protected affirmative action gains made in the 1980s. In 1975, of the 14,000 teacher layoffs only one out of eleven of those laid off ever returned to the system as a teacher. A large number of those laid off who never returned were minority teachers, eroding affirmative action gains made in the early 1970s. In contrast, by extending retirement incentives to supervisors as well as teachers, the program brought fresh leadership to many of the schools, and cut down on the number of tenured administrators. Many principal and assistant principal positions vacated by white males were filled by minority and female personnel.⁵⁷ This helped foster affirmative action goals by positively affecting the racial mix in school personnel.

None of those labor concessions would have been possible without the strong sense of labor/management cooperation between the Fernandez team and labor leaders. Perceived as an advocate of a cooperative labor strategy, Fernandez came to New York City with a track record of collaborating with unions in Miami. He had been a labor negotiator for the Miami school district with close ties to the American Federation of Teachers local union. He believed that one could only get performance, productivity, and restructuring with a cooperative spirit.

3. *The role of outside institutions.* New York City has an incredibly rich reservoir of talents and resources in its business, philanthropic, civic, cultural, and non-profit communities. Sadly, those resources have been squandered due to the failure of the school system to work cooperatively and creatively with them. Restrictive union contracts had also stymied past partnership efforts. Fernandez endeavored to reduce these barriers and enlist the support of the private sector in helping the financially strapped school district continue to innovate. Examples abound:⁵⁸

The Fund for New York City Public Education raised funds and managed dozens of school programs and a series of working groups on new initiatives. Morgan Guaranty Trust Company of New York set up a professional development laboratory school that allows teachers to learn by watching their colleagues and actually experimenting with new techniques. Bankers Trust Company set up a Math Family Resource Center. DeWitt Wallace/Readers Digest Funds refurbished and revitalized one hundred elementary school libraries and provided millions of dollars for arts groups to work directly in the schools. Citibank helped open a new high school in a multi-service community center. IBM adopted an entire South Bronx school district (twenty-five schools and 25,000 children), providing computers and assistance in strategic

57. JOSEPH A. FERNANDEZ, *NEW YORK CITY PUBLIC SCHOOLS, EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION: THE CHANCELLOR'S 1990-1991 ANN. REP.*, at iii (1991).

58. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 5-6.

planning. The Children's Aid Society is helping construct a health and social services facility to serve parents and children inside three new schools. The Council on the Environment, with funds from the Surdna Foundation, designed a plan for a new environmental school. Private sources, such as New York Community Trust and the Aaron Diamond Foundation, provided all the additional funding to support the Chancellor's AIDS/HIV education and condom availability program. With support from the Aaron Diamond Foundation and the Ford Foundation, Bank Street College for Education created a Professional Development Center to provide skills upgrading for transferred principals and to support new supervisors. The United Way of New York City matched millions in public funds with private support to foster the integration of non-profit organizations into the school's dropout prevention efforts.

In total, from June 1990 to June 1991, approximately \$15 million was donated and/or leveraged for improved school services, and private sector funds supported initiatives in math, science, reading, parent involvement, and training.⁵⁹ While the total dollar sum raised was greater than had been achieved previously, the amount is small in relationship to the Board's total budget. Nevertheless, these private dollars permitted the school system to continue to engage in demonstration efforts and innovative programs that otherwise would have been threatened by the strained fiscal circumstances.

4. *Management and productivity in the bureaucracy.* None of the labor concessions could have been attempted unless the administration was prepared to make a major effort to downsize school headquarters, make its administrative activities more productive, and increase other revenues. Bringing about such a restructuring effort within such a tight time frame was difficult given the size and organization of the school system. New York City's public schools have a history of being resistant to change. School headquarters at 110 Livingston Street in Brooklyn often has been characterized derisively as being the "leaning tower of jello" or the "Livingston Hilton," a symbol of a bloated and unresponsive bureaucracy.⁶⁰

First, Fernandez addressed the issue of administrative downsizing. In 1989, before he arrived in New York, school headquarters had over 5500 employees and accounted for roughly two percent of the school budget, including all staff associated with functions such as business, budget, personnel, computers, research, evaluation, facilities, food, and transportation.⁶¹ In November, before he had assumed the duties of Chancellor, he requested and obtained a job freeze. On January 1, 1990, there were 5259 central administrative staff

59. *Id.*

60. For other epithets applied to the school bureaucracy, see DAVID ROGERS, 110 LIVINGSTON STREET: POLITICS AND BUREAUCRACY IN THE NEW YORK CITY SCHOOLS (1968).

61. NEW YORK CITY PUBLIC SCHOOLS, SCHOOL BUDGET CUTS—UPDATE MEMORANDUM TO INTERESTED PARTIES FROM STANLEY S. LITOW (Nov. 26, 1990).

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spread out in offices and schools throughout the City. Concurrent with the budget tightening, he accelerated his downsizing efforts through the aggressive use of attrition and the selective use of administrative layoffs and reorganization. Within eighteen months, central administrative headcount dropped from 5259 to nearly 3600—a thirty percent decline, which made the New York City Public School's administrator/pupil ratios among the smallest in the State. Of the remaining 3600 employees, only 2000 were professional administrators; the rest were support staff. Of the professionals, only 1200 were paid for by city tax dollars since Fernandez increased and improved the use of reimbursable state, federal and private funds.⁶² Fernandez also reduced the consultant payroll by twenty percent, and trimmed the hourly payroll by ten percent. Controls were placed on new hires, purchases, long distance telephone calls, and out-of-town travel, in an effort to slow spending.⁶³ Administrative spending declined to 1.6 percent of the school budget.⁶⁴

Second, Fernandez instituted a number of management and productivity initiatives. He recruited top consulting talent from Booz, Allen and Hamilton to investigate, pro bono, a short-term but wide-ranging set of productivity savings. Fernandez instituted a plan for bus rerouting, new accountability procedures, and individualized determinations to move some moderately handicapped special education students from door-to-door transportation to stop-to-stop transportation. In-house computer repairs saved expensive outside consulting costs. Greater use of already prepared foods cut down on the required number of School Food Services kitchen staff.

Third, Fernandez's more aggressive management procedures spurred additional collections of state and federal revenues in school transportation, food, and building aid.⁶⁵ Federal Medicaid funds were sought to support certain special education costs and the entire central bureaucracy was reduced through layoffs and attrition.

The results of this aggressive three-pronged effort at downsizing, productivity, and revenue enhancement led to another \$70 million in central savings.⁶⁶ More importantly, Fernandez delivered the message that central headquarters was not going to ask any other elements of the school community to do what

62. Fernandez's changes resulted in a ratio of only one professional administrator paid with city tax levies to every 830 students. NEW YORK CITY PUBLIC SCHOOLS, SCHOOL BUDGET UPDATE MEMORANDUM TO INTERESTED PARTIES FROM STANLEY S. LITOW (March 20, 1990) [hereinafter SCHOOL BUDGET UPDATE].

63. NEW YORK CITY PUBLIC SCHOOLS, OFFICE OF THE CHANCELLOR, CHANCELLOR'S MEMORANDUM No. 20 (1990-1991), FREEZE ON PERSONNEL ACTIONS, PER SESSION AND OTHER THAN PERSONAL SERVICE EXPENDITURES (March 7, 1991) [hereinafter CHANCELLOR'S MEMORANDUM No. 20].

64. SCHOOL BUDGET UPDATE, *supra* note 62.

65. OFFICE OF BUDGET OPERATIONS AND REVIEW, NEW YORK CITY PUBLIC SCHOOLS, ALLOCATION MEMORANDUM No. 2, FY '92 TO COMMUNITY SCHOOL BOARD PRESIDENTS ET AL. FROM LEONARD HELLENBRAND (Aug. 1991).

66. SCHOOL BUDGET UPDATE, *supra* note 61; CHANCELLOR'S MEMORANDUM No. 20, *supra* note 62.

it was not prepared to do centrally. This meant putting an end to business as usual and demonstrating an aggressive commitment to keep budget cuts away from children. While these efforts satisfied only a portion of the school system's budget woes, they won the larger battle for community-wide credibility that the school system so badly needed.

5. *Legal avenues.* The very last card available to persuade the community to preserve educational services was a state law known as "Stavisky-Goodman."⁶⁷ Immediately after the fiscal crisis of 1975, then-Assemblyman Leonard Stavisky (D-Queens) and Senator Roy Goodman (R-Manhattan) advanced a law to protect schools from further devastating budget cuts. The Act required the amount accorded to education in the city budget on a percentage basis in any one year to be no lower than the average percent of the three prior years. Since the law had been passed after the reductions of 1975 (essentially closing the barn door after the horse had left), it had never been triggered. Yet school and city officials felt certain that the Fiscal Year 1992 budget would trigger the law.

Both believed, however, that by using the leverage provided by the law a solution could be negotiated rather than litigated. The City assumed the Chancellor and Board of Education would find it unthinkable to sue the City in a time of fiscal crisis. Although the Central Board had established greater independence from the Mayor, and several members threatened to follow through on a suit, Fernandez and the Board knew that, even if they won in a court of law, they could lose in the court of public opinion given the City's fiscal woes. In addition, success might lead to the law being repealed in the next legislative session, and would subject the Board to the wrath of a bitter city budget office. In short, Stavisky-Goodman could be a negotiating tool, but to be effective, the City had to believe that the schools fully intended to sue. Fernandez and the Board thus had to "rattle the sabres" and indicate publicly, in a believable way, their full intent to exercise the legal opportunity. Thus, they retained aggressive outside legal counsel.

The rating agencies, the Financial Control Board, and City and State Comptrollers were carefully watching to see the effect of Stavisky-Goodman as well. They believed that approximately \$125 million would have to be given to the schools after the city budget adoption to satisfy Stavisky-Goodman requirements. They identified it as a risk in the City's financial plan and had it written directly in the City's offering statement for a bond sale, a risk for which the City had not provided. Fernandez and the Board knew they could get leverage, but also knew the City did not have an additional \$125 million without cutting other city services. They needed to identify exactly what the City did have, get them to commit it to the schools, and then decide what other

67. 1991 N.Y. Laws 2576 (5).

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benefit to identify of equivalent value to the dollars the schools needed but the city did not have.

Fernandez and the Board found a resolution in bricks and mortar. The schools' capital plan of \$4.3 billion was in its second year. It had been created out of a sense of despair over the schools' capital planning capacity and the inability of prior administrations to build schools in a timely fashion. This concern had culminated in the creation of a School Construction Authority charged with responsibility for the entire school building program. With 1000 school buildings, half of them over fifty years old, and a burgeoning school population, this was clearly an important area for Fernandez to address.

In order to bring the amount of the city budget required for debt service down to no more than fifty percent of the total budget, the City planned a major cut in its entire capital program, including close to \$1 billion out of the school's remaining four-year capital plan. The schools' capital cut was scheduled to be \$950 million, with \$250 million of that cut to be taken in Fiscal Year 1992. Cuts of this magnitude were especially problematic given the massive increases in pupil population and the deterioration of the capital plant. Fernandez and Board President McCall felt that the City had some flexibility on the capital side, so they endeavored to create a plan that would settle the potential Stavisky-Goodman lawsuit by commingling relief on the capital side as part of an overall budget settlement.⁶⁸

The ultimate resolution of the Stavisky-Goodman issue provided \$32 million in new city funds to the Board and guaranteed that the Board would get \$65 million in state funds made available as a result of the State Aid advance, for a total of \$97 million. This was reasonably close to the Stavisky-Goodman gap noted by the Financial Control Board. The major benefit however, was on the capital side. The City reduced the capital cut from \$950 million to \$750 million. It also held the Fiscal Year 1992 capital plan harmless from cuts, allowing over \$200 million in spending, and committed to work cooperatively with the schools on an innovative plan to bond school construction separately, and in the long run to restore the capital budget cut in its entirety.⁶⁹ These efforts saved the capital program at a time when enrollment growth and an aging infrastructure threatened to burst schools at the seams.⁷⁰

Taking all of these pieces together, \$200 million of \$250 million in reductions proposed during the Fiscal Year 1991 year and \$300 million of the remaining \$430 million in reductions during Fiscal Year 1992 were diverted away from direct services to children. (Approximately \$170 million in reduc-

68. STATE OF NEW YORK, DRAFT MEMORANDUM OF UNDERSTANDING ON THE "STAVISKY-GOODMAN" LAW (Aug. 6, 1991).

69. *Id.*

70. In the City budget released on April 27, 1992, CITY OF NEW YORK MAYOR'S EXECUTIVE BUDGET FISCAL YEAR 1993, once again the City appears to have violated the Stavisky-Goodman law by a sum in excess of \$150 million setting off this complex negotiation once again.

tions originally called for in the Executive Budget were reduced by the legislature or restored by the Mayor or City Council.) Even those reductions that were finally enacted in schools were implemented in ways that provided maximum flexibility for local discretion.⁷¹

III. THE PROGRAM'S RESULTS

When schools opened in September 1991, the day was remarkable only for the limited number of problems that were evident. While some classes were larger, and some classes had fewer supplies, services essentially had been preserved despite nearly one-half billion dollars in cuts.⁷² Most opening day problems had to do with a 25,000 increase in student enrollment and with voluntary retirement of teachers under ERI. Almost no teacher layoffs took place, nor any "bumping" or "excessing" of staff. Guidance caseloads increased, but a wholesale layoff of guidance counselors did not take place as it had in 1975. Art and music programs, school libraries, and physical education, while reduced, were preserved. New staff was in place and trained, and schools operated smoothly. Remarkably, these strategies, so complex at their conception and so interdependent on one another, had all fallen into place.

In an editorial written just after school opened in September 1991, the *New York Times* wrote:

The present crisis tested the ability of administrators to devise creative solutions Fernandez has reduced central administrative positions and stressed more collaborative efforts among teachers, parents and the business community. . . . It is difficult to predict how schools will be affected by the city's troubles. But, the best way to spare the children is to focus the remaining resources on classroom services—as Mr. Fernandez has wisely done.⁷³

However, to judge how successful the programs were in the long run depends not on the actions themselves, nor on the degree to which they preserved class size, guidance, or the overall educational program. In the last analysis, the plan's success depends on the quality of the education maintained, and on the degree to which it permitted the initial educational reforms to continue. The educational results of those reforms, once fully implemented, would be the true test of the budget strategy.

One measure of success with the voluntary SBM/SDM program is the degree to which it encouraged school participation. School Based Management

71. For example, before Fiscal Year 1992, class size for the early grades was set at an average of 25 children to a class but was capped at 28. In practice, this meant that if there were 29 children in second grade, the school had to set up two classes. Compliance with class size caps often led to artificially small classes and the reduction of other vital services. Fernandez waived the class size cap in cases in which the mandate would require other significant services to be cut, e.g., force elimination of a guidance counselor position or push fourth grade class size above 35. These waivers did lead to classes of 29 or 30 in certain instances, but it saved hundreds of other staff and preserved the basic instructional program.

72. Joseph Berger, *Opening Day for 216 New Principals*, N.Y. TIMES, Sept. 12, 1991, at B2.

73. *School Bells Ring, Nervously*, *supra* note 54.

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began in the spring of 1990 with a call for schools to participate.⁷⁴ Ninety schools obtained planning grants and were scheduled for the 1990-91 school year. At the end of 1991, a total of 200 schools were participating with at least another fifty more to be selected during 1991-92. This would bring twenty-five percent of New York City schools into SBM/SDM within a year and a half. Perhaps the best interim evaluation of SBM/SDM is the word on the street, or in this case, in the schools. More than 300 schools sent teams of three to four staff and parents to technical assistance meetings in fall 1991 to learn how to enter SBM/SDM.⁷⁵ Clearly, school staff have heard from their colleagues that the experiment is worth the effort.

Efforts to implement SBM/SDM are growing. For instance, at Adlai Stevenson High School in the Bronx, waivers have allowed the school to schedule a common conference period and a peer observation program designed to improve instruction. Two team-teaching programs have been instituted. At P.S. 262 in Brooklyn a core grouping of teachers in grades three through six has allowed for team-teaching. Students also have been given choices in selecting arts programs as part of this quasi-departmental program. In an ungraded school for severely handicapped youngsters, the school developed mini schools on each floor with classes in homemaking, arts, drama, and personal care. A transitional center has involved parents in a more substantive way in the school program. Some schools have initiated model after-school programs or transitional class programs. Through ungraded units, cooperative learning, team-teaching, new schedules, interdisciplinary approaches, and staff development, schools have focused on instruction and the goal of improving pupil performances. Other schools have responded with ways to integrate new immigrant students. Still other schools are expanding parent involvement and bringing outside organizations into the school.

However, a major change in the structure of our school system cannot be judged on the basis of enthusiasm or interest alone. It will ultimately be judged on the basis of improved outcomes for children. Although it is too early to make a definitive assessment, a preliminary State Education Department evaluation based on fifty school visits reported very positive results.⁷⁶ Other indicators are also promising. In Project Achieve, the Chancellor's SBM/SDM high school initiative for poorer performing high schools, students join each of the SBM/SDM planning teams. The first year of operations produced the

74. OFFICE OF THE CHANCELLOR, NEW YORK CITY PUBLIC SCHOOLS, SPECIAL CIRCULAR NO. 14, INVITATION TO PARTICIPATE IN THE SCHOOL-BASED MANAGEMENT/SHARED DECISION-MAKING PLANNING INITIATIVE: 1991-1992 (Oct. 18, 1991).

75. OFFICE OF THE CHANCELLOR, NEW YORK CITY PUBLIC SCHOOLS, SCHOOL-BASED MANAGEMENT/SHARED DECISION-MAKING (SBM/SDM) UPDATE 1 (Jan. 16, 1992).

76. See EDUC. DEP'T, STATE OF NEW YORK, CHAPTER 1/PCEN SCHOOLWIDE PROJECT INITIATIVE REPORT (Feb. 5, 1992).

following results in its thirty-two partnership schools:⁷⁷

- Average daily attendance increased every month. On an annual basis, attendance increased from 79.63% in Fiscal Year 1990 to 80.34% in Fiscal Year 1991. Individual schools had gains of as much as two to eight percentage points.
- During the first two months of the 1991-92 school year, despite budget cuts and major staff turnover due to early retirement, attendance is once again on the increase in the Project Achieve schools, showing gains over last fall.
- There was a parallel decline in the percentage of students who were long-term absentees last year. This is particularly significant because it demonstrates success for the most at-risk students.
- Reading and math achievement improved at a faster rate than the citywide average.
- The percentage of ninth graders reading at or above grade level increased from 28% to 35.6% and the percentage of tenth graders reading at or above grade level increased from 37.9% to 48.9%.

To increase graduation rates, Project Achieve schools developed new opportunities for students to earn credits and eventually graduate. "Concurrent Options," the umbrella program, includes extended day schedules, independent study programs, computer-assisted independent study, structured work experience, evening and summer school, and in-school GED preparation programs. Students are no longer limited to the Monday through Friday, 8:30 to 3:00 schedule, and the fixed courses typically offered at their home school. These nontraditional offerings in Project Achieve schools have had an impact: In 1990-91, 6300 students at all thirty-two schools contracted for competency-based independent study courses. This has increased to 7290 for this year. Twenty-seven of the thirty-two schools have computer-assisted, individualized independent study programs. Installation is currently underway at the remaining schools. More than 13,000 students at the thirty-two schools attended a PM School program to make up failed courses last year. This year, more than 16,000 students will be served. At ten of the schools, a federally-funded Peer Tutor/Mentor Project assists at-risk students taking evening school classes or independent study. More than 2500 students from the Project Achieve schools were able to take vocational education courses at fifteen vocational high schools, earning an additional 5100 credits. All thirty-two schools offer work experience programs for credit, approved by the State. Students earned approximately 4500 credits through work experience last year. Not including summer school, students will earn approximately 34,000 credits through nontraditional options at the thirty-two Project Achieve schools in the coming year.

Beyond Project Achieve, other improvements were also noticeable. Overall,

77. STANLEY S. LITOW, PROJECT ACHIEVE: FIRST YEAR PROGRESS REPORT 2-3 (Dec. 3, 1991).

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New York City High Schools met or exceeded eleven of the twelve State performance indicators called for under the State's Comprehensive Assessment Report.⁷⁸ Promoting Success, which took the place of the Promotional Gates program, has already produced a demonstrable reduction in special education referrals. Educational indicators improved. Since the schools moved to strengthen the entire math curriculum by upgrading math requirements, adding a Family Math Resource Center, and initiating an early grades family math program, math scores have improved systemwide. In Fiscal Year 1991, about sixty-one percent of New York City students were doing math at or above grade level, an increase of 4.9 percentage points from the year before. A reading task force examined systemwide reading performance highlighted several key reading programs; for the first time in three years, student reading scores reached or exceeded national averages. Daily attendance was the highest in twenty-five years. It reached ninety percent in elementary schools, the highest ever recorded. In high schools, traditionally the schools with the worst attendance, significant improvements were made. The annual high school dropout rate declined from 8.1% to 6.6%.⁷⁹ Most importantly, in the thirty-two high schools with the highest dropout rates, the new dropout prevention program produced an attendance improvement of 0.8%.⁸⁰

Fernandez's efforts at early intervention began to take hold, resulting in declines in special education referrals. Students attending the enriched summer primary program were only about half as likely to be placed in special education programs as other students.⁸¹ Special education itself improved. A backlog of children awaiting placement and referral into special education was significantly reduced,⁸² and the Special Education Division moved towards compliance with legal mandates for the first time in a decade. Fernandez adopted recommendations of a ground-breaking report to move the schools towards greater early intervention and increased blending of special education and general education children and services. Ten new high schools are being initiated in partnership with academic institutions such as Kingsborough Community College, businesses such as Goldman Sachs, nonprofit organizations such as the Council on the Environment, and other partners. Each of these theme schools will be smaller and more individualized. Schools have been subjected to increased fiscal oversight and accountability through a Board of Education outside audit committee and certified audits of community school districts. As an element of SBM/SDM, parents have new decisionmaking

78. OFFICE OF THE MAYOR, NEW YORK CITY PUBLIC SCHOOLS, COMPREHENSIVE ASSESSMENT REPORT 1990-1991 SCHOOL YEAR 1 (1990).

79. *Id.* at 28.

80. *Id.* at 11.

81. OFFICE OF RESEARCH, EVALUATION, AND ASSESSMENT, NEW YORK CITY PUBLIC SCHOOLS, SUMMER PRIMARY PROGRAM 1990 FINAL EVALUATION REPORT 23 (July 6, 1991).

82. CITY OF NEW YORK, THE MAYOR'S MANAGEMENT REPORT 457, 473 (Sept. 17, 1991).

powers and a new mandated role in the selection process for school supervisors, insofar as committees at the initial level of selection must include six to ten parents.⁸³

For 1991-92, staff are building on these successes. The network of facilitators and professional development activities has been expanded to assist schools in attendance, bilingual instruction, coordination, collecting and using data for program planning, guidance, "house" designs, school planning team process, and special education. Another critical indicator of school reform is the pass rate on Regents Competency Tests, required for graduation. This is a priority for the 1991-92 school year. A series of staff development sessions has been instituted and new classroom practices implemented to support student performance. Finally, a Federal Dropout Demonstration Grant has been secured to work intensively with students who first enter the school system at high school age without prior registration. These youngsters are often immigrants, usually have limited English proficiency, and sometimes have only limited formal educational experience in their native country. This project will provide resources and staff development opportunities for us to design new instructional and support services to assure that these youngsters can make significant academic gains. They require special multicultural approaches, parent outreach, and guidance services to assure a smooth transition in their new schools. Project Achieve has already demonstrated the success of SBM/SDM approaches that utilize research from effective programs. These early successes at the most at-risk schools indicate the power of these approaches. We expect to see continued progress, translating into higher graduation rates throughout the system.

Some may suggest that performance results as encouraging as these are difficult to attribute to a specific set of actions initiated over less than a two year period. Clearly, those encouraging signs have to do with a complicated set of factors, including the cumulative effect of changes initiated more than two years ago. However, to discount Fernandez' program as key to these results would quite simply be wrong. Attendance improvements are a direct result of improved programming, Project Achieve, Promoting Success, a summer primary program, new regulations, citywide training, and public awareness of and support for the restructuring going on in the schools. Math improvements result from stressing math repeatedly in training sessions with schools, instruction and staff development program for teachers, including the release of a report and implementation plan to upgrade math achievement. Monitoring has intensified over the first eighteen months with the creation of a separate department for monitoring and school improvement. District man-

83. NEW YORK CITY PUBLIC SCHOOLS, CIRCULAR 30, PEDAGOGICAL PERSONNEL: REGULATION GOVERNING THE SELECTION, ASSIGNMENT AND APPOINTMENT OF PEDAGOGICAL SUPERVISORS AND ADMINISTRATORS (Apr. 13, 1990).

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agement assistance teams have been dispatched to address chronic managerial weaknesses in local districts, allowing districts to spend more time on instructional support.⁸⁴

IV. CONCLUSION

To assess what is now almost two years of Fernandez' tenure as Chancellor, let us return to the process that brought Fernandez to New York, the approach he has taken to the basic reform of our schools, and the effect the fiscal crisis has had on that reform. Last, but perhaps most important, are the lessons we can draw for other school systems. Fernandez fulfilled the four roles required for the job of Chancellor—educator, manager, leader, and strategist. His vision was to restructure the educational system to shake the pattern of failure of the last several decades. To Joe Fernandez, schools were places where innovation would flourish. SBM/SDM would help restructure schools from the bottom up, but reform would not end there. Diploma requirements would also be strengthened in math, science, and foreign language. Great expectations would result in greater accomplishments.

The very boundaries of school life were extended into the community with advances in guidance and health services. School officials could no longer bury their heads in the sand. Fernandez exemplified leadership in this area by championing the issue of AIDS/HIV instruction, including condom availability. This program, implemented after a protracted battle with religious leaders and within the School Board itself, though controversial, won national approval. His management ability led to a downsizing of central administration and an end to centrally operated programs. Entire headquarters office buildings were emptied out and turned into schools.⁸⁵ He projected his educational vision by being an unrelenting "can do" manager, willing to take on sacred cows. His strategic skills allowed him to succeed in the complicated milieu of New York City that had bedeviled so many other outsiders.

When he arrived in January 1990, Fernandez established a quick pace and tone. He got to work at 7 A.M. and demanded the same of his subordinates. He understood the fundamental constituencies and special interests that could block reform, and he knew how important it would be to develop momentum. Even before January 1, 1990, he had instituted a job freeze, obtained letters of resignation from more than 400 staff, framed a legislative and budget agenda, and identified two dozen crucial appointments. But it would be the

84. Six school districts have been superseded for failures in personnel, business, and budget practices. One district superintendent was forced out and replaced after a review by the Chancellor's staff identified clear systemic educational weaknesses in the district's schools.

85. For example, 362 Schermerhorn, a central administration building in the headquarters complex that housed over 200 administrators, was turned into a high school and special education facility.

strategy for coping with the budget that would test Fernandez. There was no time for three months or even three weeks of transitional planning. The strategy had to be concurrently planned and implemented. Only a hands-on Chancellor with a firm grip of the issues and the stakes could accomplish this.

To get a large, previously unresponsive bureaucracy to become change-oriented, he had to inject an entrepreneurial spirit into this sluggish and lumbering mammoth institution. Such a spirit is normally foreign to big institutions. Large enterprises—public or private—are not often noted for their flexibility and willingness to confront issues promptly. Fernandez's style—that of a hard-driving, hands-on manager who emphasized restructuring, empowerment, and accountability, and who had a sophisticated strategic sense—is more commonly associated with the private sector entrepreneur, not the educator. Such a style is found more often in a small, growth-oriented enterprise, not a complicated bureaucracy. But this style is what Fernandez needed to keep the school system moving relentlessly forward.

It would be a mistake to come away from this experience in crisis management by concluding that financial deprivation is the key to reform. It is not. While money is not the key to reform, its creative use can spur reform. Clearly, lack of funds over the long term can and will prove disastrous. Adequate funding of education is essential for America's schools. Technology can be of great benefit, but technology is expensive. Education depends primarily on quality teachers who are properly compensated, class sizes that are low, and lengthened school days and school years. Schools need to focus additional time on instruction, which in turn requires more staff development and better training. Leadership training and mentoring of school personnel is essential, but costly. While fiscal retrenchment can provide opportunity, no school system can afford constant budget cutting.

It is also true that public education and large public enterprises in general can be made more productive and more adaptable if put to the test. An effective strategy would be to couple increased funding for education with the achievement of productivity and outcome progress goals. Bureaucracy can and must be cut, but a more intelligent way to cut bureaucracy is to foster increased accountability through positive incentives and sanctions. Additional dollars could be a quid pro quo for achieving further reductions in central and district administration and specific productivity and outcome gains by teachers, administrators, and other school employees. Easing costly regulations would help ensure that additional funds would be applied where they can do the most good. For reform plans of this nature to take hold, however, education must truly become everyone's business. The business and civic communities must join with leaders of the school system to achieve these goals, and to monitor and hold educators accountable.

As New York City moves towards the twenty-first century, its school

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revitalization must continue. To do so, its budget must be stabilized. School Based Management can and will be instituted in more and more schools, but the choices that these schools face cannot be limited to decisions regarding the implementation of budget cuts. Over the long term the City must receive a more equitable share of state education funds. Were the City to receive a per capita share of education aid from the State, over \$300 million more would be available. Were the City to contribute just twenty cents of every local tax dollar to its schools (which would still put it at the low end of what most cities provide), another \$380 million would be available.⁸⁶ An investment of that magnitude—almost \$700 million—would help lengthen the school day, provide more concentrated time on math and science, initiate professional development laboratory schools to train and retain teachers and administrators, introduce technology (especially computer-assisted instruction) into many more schools, prevent youngsters from entry into costly special education programs, and expand quality pre-kindergarten programs for every eligible child in New York City. With more money, the schools could expand parental involvement programs, and art and music programs as well.

Education can no longer afford to maintain the top-down factory model that American business long ago jettisoned, nor can it afford high rates of administrative spending. Make no mistake about it: the future of education and of our nation is in classrooms and in school buildings. But while the key to school reform is at the lowest level, in better teaching and increased learning, these reforms only can be achieved by institutions that function in a creative way, that drop business as usual and the trappings of bureaucracy, and that recruit and reward administrators who will help reconstruct and revitalize the education industry. To be truly successful, school systems and their leaders must become educational entrepreneurs.

86. CHANCELLOR'S BUDGET REQUEST FOR 1991-1992, *supra* note 1, at 13.