

SPOTLIGHT

The Fight for fairer education

School children in New York State can look forward to a brighter educational future, thanks to a landmark settlement won with the help of White & Case.

Since 2017, the Firm has worked in partnership with the Education Law Center (ELC) to represent parents, statewide organizations and community groups in the New Yorkers for Students' Educational Rights (NSYER) vs the State of New York lawsuit.

The plaintiffs' mission was to compel New York State to fulfill its constitutional obligation to adequately fund public schools in the New York City and Schenectady districts.

New York Associate Michael Jaoude, who was the associate lead on the case alongside fellow Associate Alice Tsier, explains: "This case was fundamentally about ensuring all students, regardless of background, have access to an education and the tools they need to be successful in life."

The context of the case goes back to 2007, when the Campaign for Fiscal Equity (CFE) won its case against the State of New York in declaring the state's public school funding inadequate and unconstitutional.

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MICHAEL JAOUDE,
NEW YORK ASSOCIATE



The CFE had argued that the state's long-term commitment to provide fair opportunities for every student wasn't clearly defined, leading to huge differences in funding between districts. The Court determined that NYC schools were not providing students with the tools necessary for a sound basic education.

Michael says: "In the wake of the CFE case, the state committed to increase school funding by US\$5.5 billion statewide over four years and to ensure that funding was distributed fairly by an improved formula that measured each district's individual needs."

The State failed to live up to its obligation as, following the global financial crisis in 2008, it quickly reneged on its promise, cutting budgets and even clawing back previous budget increases.

Michael says: "A decade later, schools remain billions of dollars behind the commitment of full funding."

"The result of this lack of funding is overcrowding, rundown classrooms, a shortage of qualified teachers and a lack of basic services such as books and teaching materials."



"This settlement gives parents and students across New York additional assurance that the Legislature will honor its word and fully fund our schools over the next two years. Our children have already had to wait 15 years. They must not wait any longer."

JAMAICA MILES, SCHENECTADY
PLAINTIFF AND PARENT



"To put that into context, based on the State's own academic assessments, only 13 percent of students in the Schenectady district can read at grade level when it's widely accepted that children who can't read at grade level by third grade have very little chance of graduating."

"So, it's clear that these children (many of whom are from minority or disadvantaged backgrounds and some with learning disabilities) are being badly let down by a lack of funding."

The Firm was asked to help in the fight for justice by former White & Case partner Greg Little, who is now chief trial officer at ELC.

Michael says: "The Firm has worked with ELC several times in the past, including our successful class action lawsuit for the Children of Flint against the Michigan Department of Education, Genesee Intermediate School District and Flint Community Schools."

"I'd worked with Greg on the Flint case so, when I was asked to get involved, I was ready to go. We were even more fortunate when Partner Chris Shore signed on to the case during our hectic preliminary injunction period."

ELC provided educational expertise while the Firm litigated the case from discovery through to deposition.

Michael says: "The fact a lot of our work took place during the pandemic was challenging for logistical reasons, but it also heightened the urgency and importance of the case."

"At the height of the pandemic, Governor Cuomo threatened school districts with a 20 percent budget cut, resulting in Schenectady laying off more than 25 percent of its staff. As a result of the pandemic, the district needed more support than ever, but it was forced to cut many of the programs designed to assist its neediest students."

"For instance, in Schenectady district, the pandemic highlighted the fact that 88 percent of students rely on the district providing free lunch at school, so the schools needed resources to provide lunches to the children at home, otherwise, many kids would go without food all day.

"It also highlighted that many students didn't have the books or computer technology needed to study from home, so many didn't get any kind of education during lockdown, let alone a basic one."

White & Case drafted and filed a 52-page preliminary injunction in less than 72 hours, challenging Governor Cuomo's budget cuts. Faced with the injunction, the State rescinded the threat and agreed to reimburse districts for money previously withheld.

Michael says: "The preliminary injunction was a defining moment of not only the litigation, but of the New York educational movement. It signaled to the State and to our legislators that serious attention to funding equity issues was necessary now more than ever."

At the peak of the case, the White & Case team included 30 lawyers who took around 60 depositions from officials at the department of education, the Board of Regents (which oversees the administration of public education) and district officials.

Several lawyers committed between 500-1,000 hours each to the case in 2020 alone including New York associates Renza Demoulin and Sequoia Kaul.

Their investment in the case was well worth it though – in October, the new New York State Governor Kathy Hochul announced the state had reached a pre-trial settlement to honor its commitment to phase in full funding of the Foundation Aid Formula.



"This settlement sends a strong message to New York lawmakers that we expect them to deliver the promised increases in public school funding over the next two budget cycles. If they don't follow through, we'll be ready to return to court immediately."

GREG LITTLE, FORMER WHITE & CASE
PARTNER AND CHIEF TRIAL OFFICER AT ELC



“From a personal perspective, it’s great to know that our work is making a big impact and to learn and develop while making a lasting difference.”

MICHAEL JAOUDE, NEW YORK ASSOCIATE

Should the State fail to follow through on its promise, the settlement allows the plaintiffs to immediately restart the case in its current state and move quickly to a trial.

Michael says: “We were absolutely delighted with the outcome because, as we were only representing two New York State districts, there was no guarantee the governor would pledge to honor the Foundation Aid Formula for the entire state.

“This is a great result for our plaintiffs, the schools and the children. We’ll now be keeping a close eye on budgeting decisions and statements to ensure the state keeps its promises.

“We’re pleased with the settlement but, looking ahead, this case raises important questions, such as whether a funding commitment made 15 years ago is still enough for an education system that’s changed radically over those years and that will continue to change following the pandemic. So, there could be more work yet to do to ensure the children of New York State get the basic education they expect and deserve.”

Looking back on the case, Michael is delighted to have been involved in such a life-changing case. He says: “I was privileged to work on the Flint case, which won several awards, and I think this case will attract similar positive reviews.

“From a personal perspective, it’s great to know that our work is making a big impact and to learn and develop while making a lasting difference.”

