



# ENSURING THE FUTURE OF FAIR SCHOOL FUNDING

## A PROPOSAL TO ESTABLISH A PERMANENT COMMISSION TO GUARANTEE A SOUND BASIC EDUCATION FOR ALL NEW YORK STUDENTS

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### Executive Summary

In 2021, New York's governor and legislature committed to full funding of the Foundation Aid Formula, which had been adopted in 2007 to comply with the state constitution's guarantee to provide all children a meaningful opportunity for a sound basic education. The state will likely fulfill this commitment in the *next school* year. But critical questions now need to be faced in looking to the future: What will happen after 2023-2024? How will the state government ensure the future of fair school funding?

In the 16 years since the current formula was adopted, New York has seen many changes in demographics, school policies, and state education mandates. As a result, many new resource inequities and inadequacies have developed. These must be remedied to ensure all schools are fairly and adequately funded and students' constitutional right to a sound basic education is honored in 2024 and the years to come.

Planning must begin immediately for a fair new funding system. The new system must take current realities and current student needs into account, and it must be designed to respond to changing needs and costs in the future. It must be insulated from undue political influence, and it must respond to the experience of education stakeholders, the people most affected by inequities and inadequacies.

To this end, we call for the immediate establishment by either the governor, the legislature, or the Board of Regents of a standing commission whose charge will be to ensure the state's system for financing education (1) is equitable and allocates the level of funding needed to provide all students a meaningful opportunity for a sound basic education; (2) meets applicable constitutional and legal requirements; (3) monitors and reports to the public on implementation and proposes periodic modifications to meet changing needs; and (4) provides guidance and stability for effective, cost-efficient educational programming and planning. We further recommend that the state utilize a new comprehensive cost methodology that is grounded in evidence of best practices in New York State, the judgment of distinguished New York State educators, and New York State's constitutional requirements.

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These mechanisms are necessary to guarantee the future of fair school funding. They will ensure students' needs are met and constitutional rights honored; provide the governor, the legislature, the Regents, and the state education department comprehensive, objective data for making sound appropriation and accountability decisions; allow school districts to engage in effective educational planning based on stable funding projections; and deter future litigations.

## Introduction

For decades New York City and other school districts serving large numbers of children in poverty and children of color were dramatically underfunded, both in comparison with other districts and in relation to their students' educational needs. Over the years, when political and economic forces aligned to enrich the state education budget, the fortunes of schools in these districts would incrementally improve, but grave inequities and inadequacies remained.

Decades of protest and advocacy against these injustices largely fell on deaf ears, and New York State lawmakers did little to fix a fundamentally broken school-funding system. In the 1990s, a coalition called the Campaign for Fiscal Equity (CFE), representing parents, students, and other education stakeholders brought a lawsuit against the state charging that New York's education funding system violated students' rights under the state constitution.

In 2003, the plaintiffs prevailed. In a landmark decision in *CFE v. State of New York*, the New York Court of Appeals, the state's highest court, held that every student in this state has a right under Article XI of the state constitution to a "meaningful opportunity" to obtain the skills they need to be prepared for "competitive employment" and to "function productively as civic participants capable of voting and serving on a jury." The court determined that, among other things, many students in New York City were being taught by unqualified teachers, class sizes were unreasonably large, schools had too few computers, libraries, and science labs, and the graduation rate was unacceptably low. Accordingly, the court ordered the state to determine the "actual cost of providing a sound basic education" and to establish a fair, need-based funding system that would ensure "every school . . . would have the resources necessary for providing the opportunity for [such an] education."<sup>2</sup>

In 2007, in response to this order, the state adopted the Foundation Aid Formula, which promised to direct more resources to underfunded school districts and increase annual state operating aid funding by \$5.4 billion phased in over a four-year period. That amount constituted the state's share of the cost of providing all students in the state the opportunity for a sound basic education according to a study undertaken the previous year by the New York State Education Department (NYSED).

The state did not, however, fulfill the Foundation Aid commitment on a timely basis. The requisite amounts were appropriated for the first two years of the four-year phase-in, but, following the 2008 recession, the state first froze further increases, and then substantially cut funding for several years.

Those cutbacks, and the resulting harm they perpetuated for students in underfunded districts led a coalition of parents, local advocacy groups, and statewide education organizations to initiate a new lawsuit, *New Yorkers for Students' Educational Rights (NYSER) v. State of New York*, asking the courts to order the state to fulfill its constitutional commitment. In 2021, the state government at last agreed to fund the Foundation Aid Formula fully by appropriating the approximately \$4.5 billion (with inflationary and other adjustments) still outstanding at that time in equal increments over the next three years. The parties to the *NYSER* case, who were preparing for a trial, then settled the case on the condition that, if the State did not keep its

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<sup>2</sup> *Campaign for Fiscal Equity (CFE) v. State of New York*, 100 N.Y.2d 893 (2002).

pledge to pay out the remaining Foundation Aid amounts over three years, the case would be reinstated on short notice.

### **What's Next for the Future of Fair School Funding?**

The governor and the legislature have now met their commitment for the first two years of the promised three-year payout period, and it is likely that the appropriation for 2023-24 will be approved next April. The key question that now needs to be faced is, "What's next?" After the existing commitment is fulfilled, will all schools be fairly and adequately funded? How can we ensure the state government will honor students' constitutional right to a sound basic education in 2024 and the years to come? What can be done to ensure students and parents don't have to go to court every decade to force the state to meet its constitutional responsibility to children?

The increases in state school aid over the 16 years since the Foundation Aid Formula was adopted have truly made a difference in the lives of New York students. Today, New York City has a much more qualified teaching force (only 1% are uncertified compared with 17% when the *CFE* case went to trial). Graduation rates have increased from 50% to 81%.<sup>3</sup> Comparable gains have been realized in other parts of the state.

On the other hand, many challenges remain. Depositions taken in preparation for the *NYSER* trial revealed, for example, that the number of students classified as homeless in New York City has skyrocketed; class sizes remain unreasonably large; and many students living in poverty, students with disabilities, and students learning English as a new language are not getting the services to which they are entitled. Comparable problems exist in other parts of the state.<sup>4</sup> In short, the intermittent increases in funding for the Foundation Aid Formula made a difference, but the cutbacks and delays caused additional damage to the educational opportunities of vulnerable children, and millions of students throughout the state have been denied their right to the opportunity for a sound basic education.

Although the original Foundation Aid Formula had the potential for meeting student needs and complying with constitutional requirements, the current formula does not fulfill that purpose. Over the years, it has been manipulated and distorted. (See the appendix for a summary of these distortions.) Now the formula is also badly out of date. In the 16 years since the formula was adopted, there have been substantial changes in educational needs and educational practice that affect costs. Major new education policies like universal pre-K have taken effect. The demographics of the state's student population are dramatically different; poverty rates have increased throughout the state; since the pandemic, there have been enrollment declines; technology gaps have become evident; and many districts are dealing with the needs of migrant children, many of whom have never attended any school. In addition, the pandemic has had a

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<sup>3</sup> New York City Department of Education, *New York City Graduation Rates Class of 2021 (2017 Cohort)*, <https://infohub.nyced.org/docs/default-source/default-document-library/2021-graduation-rates---website-deck.pdf>. During the pandemic, the Regents cancelled the requirement that students must pass several culminating Regents' exams to graduate. The dropping of that requirement undoubtedly was a factor in the graduate rate increases for the past two years, but even in 2018-2019, New York City's graduation rate was 77%.

<sup>4</sup> The original *NYSER* complaint and pretrial depositions revealed similar problems in high poverty rural and small city districts. See also, *Maisto v. State* 196 A.D.3d 104 (3d Dep't., 2021) (finding excessive class sizes, and lack of sufficient academic intervention services, language services, extended learning opportunities and additional social workers in eight small city school districts throughout the state.)

profound impact on student learning and school functioning. All these changes have implications for fair funding that must be fully confronted.

Accordingly, planning must begin immediately for a fair new funding system that can safeguard students' educational rights against political and economic vicissitudes and ensure all New York students a sound basic education in 2024 and the years to come. The new system must: (1) account for current realities and current student needs; (2) be capable of responding on an ongoing basis to changing needs and costs; (3) be insulated from undue political influence; and (4) respond to the experience of education stakeholders, the people most affected by funding inequities and inadequacies.

The development of a fair new funding system is the constitutional right of New York State's students and the constitutional responsibility of the state's policymakers. The Court of Appeals ruled 20 years ago in *CFE v. State* that Article XI of the state constitution requires the state to "ascertain the actual cost of providing a sound basic education," develop an equitable formula "calibrated to student need," and "ensure a system of accountability to measure whether [the system] actually provide[s] the opportunity for a sound basic education."<sup>5</sup> This was not a one-time edict. These constitutional mandates obviously must apply on an ongoing basis for students' constitutional right to the opportunity for a sound basic education to be fulfilled in a meaningful way.

A new approach to state funding is needed that can meet these challenges.<sup>6</sup> We argue for the establishment of a permanent Sound Basic Education Commission whose charge would be to ensure the state's system for financing education (1) is equitable and provides the level of funding needed to provide all students a meaningful opportunity for a sound basic education; (2) monitors and reports to the public on implementation and proposes periodic formula modifications to meet changing needs; and (3) provides stability for effective, cost-efficient educational programming and planning. We further recommend that the Sound Basic Education Commission replace the outmoded methodology for determining actual educational costs that NYSED used in 2006 with a new cost methodology that comprehensively considers evidence of successful cost-effective practices in New York State, makes use of the expertise of distinguished New York educators, and complies with New York State's constitutional requirements.

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<sup>5</sup> *CFE v. State*, 100 N.Y. 2d at 929, 930.

<sup>6</sup> A recent report by the Citizens Budget Commission highlights the substantial increases in per-capita education funding that have occurred in New York City in recent years occasioned by the combination of the final payout of the Foundation Aid Formula and the substantial decline in student enrollment. The report concludes by stating:

With the 'phase-in' of Foundation Aid funding set to be completed after school year 2023-2024 and multi-billion-dollar budget gaps on the horizon, it is past time for the State's leaders to chart a path forward for sustainable and effective State education spending. This will require better targeting aid to districts with the greatest need, tracking their performance, and holding districts accountable for delivering high-quality education.

Patrick Orecki, *More Money, Little Accountability: New York Continues to Increase State School Aid* 11 (October, 2022), available at [https://cbcny.org/sites/default/files/media/files/CBCREPORT\\_School-Aid\\_10032022\\_0.pdf](https://cbcny.org/sites/default/files/media/files/CBCREPORT_School-Aid_10032022_0.pdf). This report, however, provides no specifics on how these tasks could be undertaken and who would take responsibility for doing them. We submit that only a permanent independent commission could actually take on and successfully deal with these and other current funding challenges.

In the next two sections of this report, we discuss how the Sound Basic Education Commission should be structured and describe the new comprehensive cost methodology for New York State that we recommend the commission adopt.

### **The Need for a Permanent Commission to Safeguard a Sound Basic Education**

Despite strong court decisions affirming students' educational rights and ordering adequate, needs-based school funding, New York children's educational opportunities continue to be compromised. As a result of economic ups and downs, political considerations, and inertia, it has taken 16 years and a second lawsuit to get the state to ramp up to full funding of the formula that it adopted in 2007 to implement the Court of Appeals' *CFE* decisions.

A standing commission that uses fair, objective procedures and operates transparently is the best way to protect students' basic educational rights. Such a commission should be established and funded by the legislature on an ongoing basis as a stable institution that can monitor state education funding, propose modifications as necessary to keep the system responsive to new needs, and promote cost effectiveness. Its membership should represent policymakers and the educational community, and it must have a professional staff.

Although ultimately the governor and the legislature have the legal authority to determine appropriations and enact and modify a funding formula, their decisions should be guided by the commission's deliberations, recommendations, and oversight. Such a commission would also bolster public confidence in and support for the maintenance of an equitable and adequate state education finance system.

#### *Precedents in Other States*

There are precedents in other states for such a commission. Most relevant is the Oregon Quality Education Commission. That commission was originally established in 1999 to develop a "Quality Education Model" that would estimate the level of funding required to operate a system of highly effective schools in the state. Every two years since then, the commission has submitted a report to the governor and legislature that sets forth the amount of money needed to maintain the state's "quality goals."<sup>7</sup> Over the years, the model has been improved by adding more and better data and by incorporating a growing body of empirical research on promising practices.

*Oregon Quality Education Commission.* To prepare each of its biennial reports, the Oregon Quality Education Commission's staff undertakes detailed analyses of new educational needs and also carries out specific research assignments regarding best practices and comparative costs for improving educational services.<sup>8</sup> For example, the commission's 2020 report set forth a

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<sup>7</sup> Oregon Revised Statutes §327.506 Although in years past, there had been large gaps between the commission's recommendations and the actual funding levels appropriated by the Oregon legislature, with the passage of the Oregon Student Success Act in 2019, actual appropriations for education began to hew more closely to the commission's recommendations. For the 2021-2023 biennium the differences between the commission's recommendation and the actual budget were reduced from over \$2 billion to \$557 million.

<sup>8</sup> See, Oregon Revised Statutes §327.506: "In determining the amount of moneys sufficient to meet the quality goals, the commission shall identify best practices that lead to high student performance and the costs of implementing those best practices in the state's kindergarten through grade 12 public schools. Those best practices shall be based on research, data, professional judgment and public values."

systemic quantitative analytic approach that provides tools and templates to help districts regularly compare their spending against spending in comparable districts and provides guidance on best practices for directing more money to the classroom and to productive use of support services.<sup>9</sup>

The Oregon Commission is chaired by a school district superintendent and its members include other superintendents, university and community college professors, the president of the Oregon Education Association, and research and policy experts from non-profit organizations. It is staffed by personnel from the state education department.

*Illinois Professional Review Panel.* In 2017, Illinois enacted the Evidence-Based Funding for Student Success Act in order to, among other things, “eliminat[e] the achievement gap between at-risk and non-at-risk students by raising the performance of at-risk students and not by reducing standards.”<sup>10</sup> It aims to ensure that by 2027 every school has sufficient funding to provide all students a “high quality education” and establishes an “evidence Based Funding Formula” (EBF) that calculates the precise amount of funding needed by each district to provide its students a “high quality education.”<sup>11</sup>

The Act also established a permanent Professional Review Panel “to study and review topics related to the implementation and effect of Evidence-based Funding.” The Professional Review Panel is chaired by the state superintendent of education and includes appointees recommended by state-wide organizations representing school district superintendents, school boards, school business officials, principals, teachers and parents, as well as independent experts recommended by public universities, collective impact organizations and the state superintendent. Additional ex-officio, nonvoting members are appointed by the legislative leaders and the governor.

Over the past five years, the panel has issued extensive, well-researched reports on topics such as teacher salaries,<sup>12</sup> trauma, poverty and student learning,<sup>13</sup> and equity aspects of dual

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<sup>9</sup> In its 2014 report, the commission discussed the first phase of the staff’s multiyear study of college and career readiness. The report contained a review of studies identified in the What Works Clearinghouse database maintained by the U.S. Department of Education, as well as a wide range of other national and international sources on best practices for improving high school graduation rates. The commission proposed a new student achievement model that would better promote high school graduation, as well as further cost-effectiveness studies that should be done, and then specified the amount of funding statewide that would be needed to implement its model fully over the next two years. The 2016 and 2018 reports followed up with case study analyses of successful Oregon schools and recommendations for systematic, sustainable processes for implementation of these best practices.

<sup>10</sup> 105 ILCS 5/18-8.15.

<sup>11</sup> The Act acknowledges that Illinois, prior to enactment of the EBF had “the most regressive school funding system in the nation” The Act requires the legislature to increase educational funding by at least \$350 million per year, which it has done every year since 2018 but one, and virtually all of this additional funding has gone to high poverty districts. To fully fund all Illinois schools at the stated EBF levels, however, would require, as of 2022, an additional \$7.2 billion or approximately cost approximately \$1.5 billion per year. See, Mary McKillip and Danielle Farrie, How Long Must Illinois Students Wait for Fully Funded Schools? (2022), available at [https://edlawcenter.org/assets/files/pdfs/publications/2022\\_ELC\\_IllinoisReport\\_Final.pdf](https://edlawcenter.org/assets/files/pdfs/publications/2022_ELC_IllinoisReport_Final.pdf)

<sup>12</sup> Illinois State Board of Education, Minimum Teacher Salary Report (January 31, 2020), available at <https://www.ilga.gov/reports/ReportsSubmitted/794RSGAEmail1691RSGAAttachMinimum%20Teacher%20Salary%20Report%20Professional%20Review%20Panel%20January%2031.%202020.pdf>

<sup>13</sup> 2021 Professional Review Panel Ad Hoc Committee Report (Dec. 2021), Appendix B, available at <https://www.isbe.net/DocumentsPRP/PRP-Essential-Elements-Review-Report.pdf>

language programs.<sup>14</sup> It has also recommended modifications of the adequacy target calculations and the EBF formula,<sup>15</sup> most of which have been accepted by the legislature.<sup>16</sup> In spring 2022 it issued an extensive Five-Year Evaluation Report that aimed at ascertaining whether the EBF formula is functioning as intended and effectuating its desired outcomes by issuing findings on research questions such as:

1. To what extent did the Evidence-Based Funding formula distribute new state funds equitably to school districts each year?
2. Did growth in student achievement and other student outcome measures occur from the baseline 2017-18 school year through the 2020-21 school year in Illinois public schools?
3. To what extent were the EBF cost factors reflected in district expenditures from SY 2017-18 to SY 2018-19?
4. Among schools that improved, which systemic and organizational change elements were used to improve student performance and close opportunity gaps?<sup>17</sup>

*Maryland Accountability and Implementation Board.* In Maryland, the legislature created an “Accountability and Implementation Board” in 2021 to develop a comprehensive implementation plan for the Blueprint for Maryland's Future. The Blueprint was adopted in 2019, based on the sweeping reform recommendations of the Commission on Innovation and Excellence in Education (known as the Kirwan Commission.) The Blueprint calls for, among other things, expanding prekindergarten programs, increasing funding for schools with higher concentrations of poverty, boosting pay and career opportunities for teachers, and providing more individualized instruction. Every unit of government responsible for implementing any part of the Blueprint for Maryland's Future, including each local school board, is required to submit its own implementation plan to the Accountability and Implementation Board for approval. The board may withhold funding to any agency without an approved implementation plan.

The board will evaluate the data submitted to it and assess how well the many components of the Blueprint for Maryland's Future are working to achieve its desired outcome of equal access to a high-quality education. By January 1 of each year through 2031, the board is to review the use of school-level expenditures, including poverty grants and special education funding, and monitor school system compliance with the requirements of the Blueprint. The board consists of seven members, appointed by the governor to six-year terms. The chair is designated by the governor, the senate president, and the house speaker.<sup>18</sup>

### *New York Commission Composition and Duties*

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<sup>14</sup> *Id.*, Appendix.

<sup>15</sup> Professional Review Panel recommendations (Nov, 2019), available at <https://www.isbe.net/Documents/PRP/Prof-Review-Panel-Rec.pdf>

<sup>16</sup> Telephone conversation with Ralph Martire, panel member, September 19, 2022.

<sup>17</sup> Illinois Professional Review Panel, Illinois Evidence-Based Funding Formula Five-Year Evaluation 5 (Spring, 2022), available at <https://www.isbe.net/Documents/PRP-5-Year-Eval-Study-Report-2022.pdf>

<sup>18</sup> See, Maryland Manual On-Line, Accountability and Implementation Board, available at <https://msa.maryland.gov/msa/mdmanual/25ind/html/01account.html>



For New York, we envision a 15-member commission, with members serving staggered three-year terms. Membership should include appointees of the governor, the legislative leaders, and the commissioner of education, as well as representatives of the major education and professional organizations, business leaders, advocacy groups, and parents. At all times, at least one member of the commission should be a person who has extensive professional knowledge of the educational needs of students learning English as a new language, at least one should have extensive professional knowledge of students with disabilities, and at least one with extensive professional knowledge and experience with students living in poverty and/or experiencing homelessness. The commission should be empowered to hire an executive director and staff and/or consultants with education finance expertise. Its staff should also be empowered to work with staff from NYSED and to draw on NYSED data and resources.

Consistent with precedents in other states, the commission could be established by the governor, the legislature, or the Board of Regents. One of the purposes of this paper is to begin a statewide discussion with each of these governmental entities and the interested public to determine under whose auspices such a commission could best be housed and where its independence, permanence, and financial support could best be assured.

The first duty of the Sound Basic Education Commission and its staff would be to develop and approve a methodology for determining the costs of providing all New York students a sound basic education. As discussed in the next section, we recommend that the methodology be grounded in evidence-based analyses of successful educational practices, relevant cost function analyses, and New York constitutional and statutory requirements, all as applied by distinguished panels of educators from throughout the state. Next the commission's staff would undertake detailed analyses of funding needs in accordance with that methodology and, after considering input from education stakeholders around the state, develop a corresponding new Foundation Aid Formula.

The commission should convene a series of regional public engagement sessions to provide education stakeholders around the state an opportunity to respond to the recommendations that emerged from the costing-out process. Such public involvement will expand the range of experience and perspectives considered in developing the new formula. It will also engage educators and the interested public in understanding the range of factors that need to be considered in a comprehensive fair formula and in supporting the budgetary appropriations that result from the process. The commission should make public detailed summaries of the concerns that emerged during the public engagement sessions and consider the input from these sessions in its final report to the governor and the legislature.

Once a final version of the new formula is adopted, the commission and its staff should monitor the implementation of the new system in regular two-year cycles, working with NYSED and/or independent consultants, as warranted, and suggest any necessary modifications. They should also undertake analyses of best practices and cost-effective alternatives in relevant areas. The recommendations that emerge from these analyses should again be subject to a public engagement process before being submitted in a biennial report to governor and the legislature with recommendations for current appropriation levels and necessary modifications of the formula.

The Regents should review and comment on the commission’s recommendations and the governor should base the executive budget recommendations on the commission’s research and recommendations. The legislature should also give due consideration to the findings of the Sound Basic Education Commission. To enhance accountability for fair funding, if the versions of the new Foundation Aid Formula that the governor recommends and the legislature finally adopts in 2024 deviate in any significant way from the commission’s recommendations, the governor and the legislature should be required to identify these changes in writing and set forth their reasons for rejecting commission’s recommendations. The governor and the legislature should also consider the commission’s recommendations for necessary formula modifications and appropriation levels in future annual budget processes and explain in writing any substantial differences between their appropriations and the commission’s recommendations.

### *Timeline*

If no new Foundation Aid Formula is adopted, the education budget for FY 2024-25 will likely be based on the current outdated funding approach (the failings of which are described in the appendix to this report). This would perpetuate inequities and impede NYSED and school districts from engaging in sound fiscal and educational planning at the very time that current post-pandemic federal aid is being phased out. To allow the governor to incorporate a proposal for a new formula in the Executive Budget for FY 2024-25, and the legislature to act on those recommendations when the budget is adopted in April 2024, the Sound Basic Education Commission would need be established early in 2023 and its recommendations prepared and presented by December 2023.

### **The Need for a New Comprehensive Cost Methodology**

The Sound Basic Education Commission’s first responsibility would be to approve a methodology for determining the annual costs of meeting New York students’ educational needs. The Court of Appeals made clear in *CFE v. State* and subsequent rulings<sup>19</sup> that the state constitution requires school funding to be equitable and adequate, and that the state’s funding system must be based on the “actual cost” of providing all students the opportunity for a sound basic education.<sup>20</sup> To determine the amount of funding needed to meet constitutional requirements and state learning standards, New York and many other states have in recent years undertaken cost studies based on several methodologies that have been developed by economists and fiscal policy experts. Over the past 40 years, more than 100 such studies have been undertaken in dozens of states.

### *Major Cost Analysis Methodologies*

Objective cost analysis helps to safeguard students’ educational rights against political and economic vicissitudes and makes education-funding decisions more objective, more transparent, and more needs-based. Virtually all these studies have been based on one or more of four established methodologies: professional judgment, evidence based, cost function, and

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<sup>19</sup> See, e.g. *Aristy-Farer v. State*, 29 N.Y.3d 501 N.Y. 2017); see also, *Maisto v. State*, [196 A.D.3d 104](#) (3d Dep’t, 2021).

<sup>20</sup> *CFE v. State*, *supra*, 100 N.Y. 2d at 930.

successful schools. Each cost-analysis methodology uses specific evidence and particular assumptions to develop estimates of the appropriate level of funding, as summarized below.<sup>21</sup>

- The **professional-judgment method** relies on representative panels of experienced educators, administrators, and business managers to determine through analysis and discussion the resources, services, and supports required for schools with different populations of students, the costs of which are then calculated by economists.
- The **evidence-based approach** uses educational research to develop models from which specific aggregate and per-pupil costs can then be calculated.
- The **cost-function method** uses statistical techniques to determine, based on past performance data, how many dollars a particular school district would need to spend per student, relative to the average district in the state, to achieve a specific performance target or targets, given the characteristics of the district and its student body.
- The **successful-schools approach** articulates criteria for defining a “successful” school or school district, identifies a number of schools or districts that meet these criteria, and then uses the average expenditures of these schools or districts as a foundation figure, with adjustments, to develop a statewide formula.

#### *Flaws in New York’s “Successful Schools” Study*

The New York State Education Department used a “successful schools” approach to determine the funding amounts required by the current Foundation Aid Formula. Over the past 16 years, however, researchers have exposed numerous flaws in this methodology.

Some economists have argued that this approach lacks validity and reliability. They point out that the methodology usually defines “success” in terms of a limited number of outcome measures and is agnostic to how the schools or districts identified as being “successful” achieved their results and whether or how places with different demographics or different educational challenges could replicate these outcomes.<sup>22</sup>

The successful schools’ approach adopted by NYSED in 2006 exposes several of these shortcomings. For example, NYSED defined a successful school district in terms of whether,

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<sup>21</sup> These methodologies are discussed in more detail in Michael A. Rebell, Professional Rigor, Public Engagement and Judicial Review: A Proposal for Enhancing the Validity of Education Adequacy Studies, *Teachers College Record*, Volume 109, Number 6, 1303-1373 (2007), and in Michael A. Rebell, Henry M. Levin Robert Shand, and Jessica R. Wolf, *A New Constitutional Cost Methodology for Determining the Actual Cost of a Sound Basic Education* (2016), available at <http://www.centerforeducationalequity.org/publications/safeguarding-students-educational-rights/Constitutional-Cost-Methodology-final-09-16.pdf>. See also, Anabel Aportela, Lawrence O. Picus and Allan Odden, *A Comprehensive Review of State Adequacy Studies Since 2003* (2014), available at [https://marylandpublicschools.org/Documents/adequacystudy/AdequacyReviewReport\\_rev\\_091214.pdf](https://marylandpublicschools.org/Documents/adequacystudy/AdequacyReviewReport_rev_091214.pdf)

<sup>22</sup> “Successful Schools (or districts) analysis simply involves taking the average expenditure of those schools or districts which currently achieve average outcomes that meet or exceed desired, perhaps adequate, levels. ... [T]he method is little more than a cost function a) without any controls for student characteristics, context or input price variation, and b) devoid of any sufficient controls for inefficiency or missing these controls altogether. Put bluntly, Successful Schools analysis, in its usual application, is of negligible use for determining costs” (Bruce Baker, and Jesse Levin, *Educational Equity, Adequacy, and Equal Opportunity in the Commonwealth: An Evaluation of Pennsylvania’s School Finance System* (2014). (emphasis added), available at <https://www.air.org/sites/default/files/downloads/report/AIR-EEAEO%20in%20the%20Commonwealth%20-%20Full%20Report%2010-09-14.pdf>

throughout the district and over a three-year period, an average of 80% of students achieved “level-3” scores (on a four-level scale) on the fourth-and eighth-grade English language arts (ELA) and mathematics exams and a 65 or more score on six different high-school Regents’ exams. It provided no support for the 80% figure or explanation of why the methodology used an average of 80% across all tests rather than on each test.<sup>23</sup>

Then, rather than using the average expenditures of these districts as a foundation figure, NYSED used an arbitrary “efficiency screen” to eliminate top-spending half of the school districts. It counted only the lowest-spending 50% when it created the final base-rate calculation. This “efficiency” adjustment was justified by an assumption that the higher spending successful schools were offering unnecessary “enrichment” offerings, yet no data were provided to confirm this. Nor were data offered to show that any of the higher- or lower-spending “successful” districts were, in fact, providing sufficient opportunities for their lower-performing students or whether they needed to provide additional services to afford all their students a sound basic education.<sup>24</sup>

Nevertheless, this base amount became the fundamental building block for the current funding formula. To determine other districts’ funding needs, the formula makes adjustments using poverty weightings and other factors. No information has been provided to show what specific resources and services the “successful” districts used to achieve their results or to support the assumption that the adjusted base amount will yield similar results with other student populations.

For all these reasons, we do not recommend continued use of the successful schools methodology. The new methodology we recommend incorporates the best features of the other three established methodologies into a new comprehensive methodological approach and utilizes New York experiences and New York state data in applying these methodologies, rather than national data, as some other state studies have done. This new comprehensive methodology should also include the constitutional requirements mandated by the Court of Appeals. This new methodology for New York State will enhance the rigor, validity, and legitimacy of the analysis.

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<sup>23</sup> The weakness of using arbitrary test scores to define “successful” school districts was further revealed after the state began phasing in the more rigorous student assessments based on the Common Core Learning Standards in 2012-13. NYSED had been updating its calculation of successful school districts every three years, but its 2015 calculation, based on the more demanding tests, resulted in substantially fewer school districts meeting the 80% threshold for student proficiency. This shorter list had a greater proportion of wealthier districts with few high-need students than did the list of districts identified in earlier years. Thus, the average per-pupil expenditures of the districts identified by the 2015 analysis were significantly higher than the average expenditures of the districts identified in the 2012 study. Because use of this shorter list would have resulted in a substantially higher base amount and then ultimately in a much higher foundation aid amounts, from 2015 through 2021, NYSED simply abandoned this aspect of formula updating and continued to define successful schools in accordance with the totally outdated 2009-2012 test scores. Affidavit of Danielle Farrie, dated March 19th, 2020, submitted in *NYSER v. State of New York*, Civ. No. 100274/2013.

<sup>24</sup> NYSED subsequently undertook an analysis that indicated that the higher spending successful school districts had greater average teacher salary costs, smaller class sizes, and provided more AP courses than did the lower spending successful school districts. See, *Regents 2007-2008 Proposal on State Aid to School Districts*, pp. 53-54. However, it did not ascertain whether, given the competitive salary levels in the local job markets and the needs of the students involved, these expenditures were necessary to provide all students in these districts the opportunity for a sound basic education or whether all students in the lower spending districts were receiving opportunities that met the state’s “college and career ready” standards and constitutional requirements.

This comprehensive cost methodology also has the potential to overcome certain shortcomings of existing cost-analysis methodologies. Like the other methodologies, the new cost methodology for New York State ultimately depends on the professional judgment of educators, finance experts, and policymakers, but it substantially constrains subjectivity and political manipulation by requiring adherence to state constitutional and statutory standards and by establishing sustained, objective, and transparent decision-making and monitoring procedures. It provides clear standards for both “input” and “outcome” criteria, taking full account of the needs of students living in poverty, students learning English as a new language, and students with disabilities. It also systematically considers cost effectiveness.

### *Cost-Analysis Protocols*

To ascertain the current cost of providing all New York students the opportunity for a sound basic education, we propose a process that begins with an analysis of the literature on successful, evidence-based practices in New York and other relevant jurisdictions and cost function analyses based on New York state data by commission staff and outside consultants. The commission would then form diverse professional judgment panels composed of outstanding teachers, administrators, and business managers from all parts of the state. Specific panel members should have expertise and experience in identifying the resources, services, and supports to meet the actual needs of students living in poverty, students learning English as a new language, and students with disabilities. These panels would be charged determining the types and amounts of resources, services, and supports needed in a range of prototypical school districts and schools with varying student demographics and student needs based on the relevant data contained in the evidence-based literature, relevant cost function studies and their own professional experience.

In addition, panelists would be required to take into account the educational parameters established by the state constitution, statutes, and regulations. In its *CFE* decision, the Court of Appeals defined the opportunity for a sound basic education to which all students are entitled as a “meaningful high school education” that will prepare students to

1. Function productively as civic participants with skills fashioned to meet a practical goal: meaningful civic participation in contemporary society, including voting and serving on a jury, and to
2. Compete for jobs that require a high level of knowledge, skill in communication and the use of information, and the capacity to continue to learn over a lifetime.<sup>25</sup>

Further, the courts held in *CFE* that the following resources are essential for meeting the stated outcome goals:

1. Sufficient numbers of qualified teachers, principals and other personnel;
2. Appropriate class sizes;
3. Adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum;

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<sup>25</sup> *CFE v. State, supra*, 100 N.Y.2d 893, 905-908 (NY 2003).

4. Sufficient and up-to-date books, supplies, libraries, educational technology and laboratories;
5. Suitable curricula, including an expanded platform of programs to help at-risk students by giving them “more time on task”;
6. Adequate resources for students with extraordinary needs; and
7. A safe, orderly environment.<sup>26</sup>

The use of constitutional standards and state requirements helps ensure that panelists will account for an appropriate range of resources to meet students’ needs and fulfill students’ educational rights. The seven essential resource areas that the New York courts have articulated provide a substantive framework that can help organize both the selection of professional-judgment panels and the range of evidence that they should consider in their deliberations.<sup>27</sup>

In determining student-outcome benchmarks for their deliberations, panels could consider outcome goals that focus on broader quantitative measures than math and ELA test scores as well as on qualitative measurements that evaluate broader dimensions of the educational experience. New York’s adoption of the comprehensive cost methodology would encourage educators and policymakers to develop and adopt a richer range of valid quantitative and qualitative assessments of relevant knowledge, skills, and attitudes.

The constitutional standards articulated by Court of Appeals to define the expected outcomes of a sound education provide a more comprehensive and accurate assessment of the expected results of public education than the standardized test-score-based outcomes utilized by other methodologies. The Court of Appeals’ emphasis on preparing students for civic participation and competitive employment reflects the enduring understanding of the basic purposes of education that date back to the 19th-century common-schools era and the adoption of compulsory education.

Reliance on a constitutional standard that focuses on civic functioning and employment skills makes clear that a sound basic education must deliver not only proficiency in reading and math, but also the broad range of knowledge and skills in history, civics, science, the arts, technology, and other areas, as well as critical-thinking, communication, problem-solving, self-management, interpersonal, and other skills and habits that students need to be successful in today’s dynamic, competitive world. These emphases also highlight the importance of experiential curricular and co-curricular or extracurricular activities, career and technical education, internships, and the range of other experiences that students need to become capable citizens and competitive workers.

#### *Extra Weightings for Students with Special Needs*

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<sup>26</sup> *CFE v. State of New York*, 187 Misc. 1, 114-115, aff’d 295 A.D. 2d 1, 10 (1st Dep’t, 2002), 100 N.Y.2d 893,932 (NY 2003).

<sup>27</sup> Some past studies have instructed professional-judgment panels to consider summaries of some of the state’s legal requirements but have not asked that they use them systematically. The comprehensive cost methodology we propose for New York relies on the full range of relevant legal requirements. The responsibility to ensure that resources in all of the seven basic categories are available to all students will compel panelists to consider in detail resource needs in each of these areas.

This new comprehensive cost methodology also guards against arbitrary weightings for students with special needs. It requires professional judgment panels with expertise to determine and cost out a range of specific resources, services, and supports to meet the actual needs of students living in poverty, students living in temporary housing, English language learners, and students with disabilities. Once these are fully considered, an appropriate weighting of the relationship between these costs and overall educational costs can be calculated and used in a final cost calculation formula.

Recognizing that, on average, students living in poverty, students living in temporary housing, students learning English as a new language, and students with disabilities need extra resources to obtain a meaningful opportunity to meet state learning standards, most cost studies attempt to take these at least some of these needs into account. However, these extra costs have generally been calculated without drawing adequately upon evidence relating the specific needs of these students and the actual costs of providing them.

Lacking sufficient data or experience, many studies simply utilize a percentage weighting or add-on figure taken from the literature or known to be used in other states, rather than examining the actual needs of the students or the applicable constitutional or statutory requirements. Evidence-based studies use weightings derived from a limited number of studies that had been done in other states, while cost-function studies are often plagued by data gaps and even where sufficient data seems to be available, have often used average input and outcome statistics for their analyses, without showing that the needs of each category of students are being sufficiently addressed by existing practices.<sup>28</sup>

The legal framework required by the NYS comprehensive cost approach compels professional-judgment panels to consider the costs of the full range of actual resources legally required to meet the needs of each type of students with extra needs. It also requires the panel members to include individuals with the appropriate expertise and experience for identifying and costing out the full range of resources, services, and supports that these students actually need.

The cost recommendations that emerge from the panel process would be analyzed by the commission staff and education economists who would prepare an all-encompassing formula based on the panels' input and submit the proposed formula proposals to the commission for their consideration and ultimate approval and/ or modifications

### *Cost-Effectiveness Analysis*

We also recommend that a specific method for cost-effectiveness analysis be built into the comprehensive cost methodology to control expenditures where possible without compromising students' rights. Most cost studies either neglect the issue of cost effectiveness completely or address it indirectly with little reliance on evidence. Professional-judgment panels are usually exhorted to be "prudent," but efficiency considerations are not systematically considered. Evidence-based approaches tend to focus on an assortment of studies of educational practices that some national studies indicate have had some degree of success, but not on whether these

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<sup>28</sup> State school finance formula weightings for English learners have varied from 6% in Arizona to 120% in Maryland, and supplemental support for students eligible for free or reduced-price lunch have ranged from 5% in Mississippi to 100% in Maryland (William Duncombe, and John Yinger, *How Much More Does a Disadvantaged Student Cost?* 24 Econ. Educ. Rev. 513 (2005)). Many of these weightings were originally derived from political compromises or consideration of the amount of funds that were available in a particular state at a particular time, rather than on the actual needs of students.



outcomes have been achieved cost-effectively. The cost-function methodology attempts to use variation in spending and student outcomes at the school or district level to ascertain the minimum level of spending required to achieve a certain outcome, but sufficient accurate data to undertake these studies is often not available, and much of the data used are obtained from unreliable administrative reports. Another challenge is distinguishing between differences in district efficiency levels and differences in desired outcomes and how they are measured.

We recommend that the Sound Basic Education Commission incorporate mechanisms for program effectiveness into the initial development of a new funding formula. Regular biennial reviews would then identify potential program improvements and cost efficiency methods on a systemic basis, as has been done successfully by the Oregon Quality Education Commission and the Illinois Professional Review Panel.

The commission's cost-effectiveness suggestions would not be binding, but nevertheless they would inform and influence the actual spending decisions of school boards, superintendents, and state policymakers. Moreover, biennial evaluations undertaken by the Sound Basic Education Commission could, as in Illinois and Maryland, specifically examine educational progress achieved in particular districts and the extent to which districts that are or are not making acceptable progress have utilized the cost component factors recommended and the best practices and that the commission had adopted

### **Conclusion: Toward a New Era for School Funding**

The goal of the establishment of a permanent Sound Basic Education Commission is twofold: (1) to develop a comprehensive new Foundation Aid Formula as the basis of a new school funding system that will provide adequate resources for all students throughout the state and (2) to ensure that implementation of the new funding system is monitored, modified as necessary, and maintains its integrity over time to guarantee New York students a meaningful opportunity for a sound basic education. With a permanent commission in place, parents and students won't have to resort to litigation to ensure students' educational rights are fulfilled in years to come.

The commission's use of a comprehensive cost methodology based on New York State evidence, needs, and legal requirements will enhance the rigor, validity, and legitimacy of the cost analysis process. It will ensure that the range and quantity of resources provided to students is consistent with their right to a sound basic education. Grounding cost analysis in state constitutional requirements and combining professional judgment with the use of relevant evidence and cost function data will curb subjectivity and political manipulation. The permanent nature of the Sound Basic Education Commission, and its ongoing monitoring of formula implementation, will raise public awareness of the workings of the system. The broad public engagement processes the commission would oversee will build understanding of and support for the commission's ultimate recommendations, which are, therefore, likely to gain the approval of the governor and the members of the Senate and the Assembly.



## APPENDIX

### DISTORTIONS IN THE EXISTING FOUNDATION AID FORMULA

The current Foundation Aid Formula has four basic components:

- a. *A base amount* per pupil reflecting the cost to educate students, as determined by the amount calculated using a “successful school district” cost analysis;
- b. *A pupil needs index* recognizing the added costs for providing extra time and extra help for students with special circumstances;
- c. *An expected minimum contribution* by the local community; and
- d. *A regional cost index* to ensure that state school aid can buy a comparable level of goods and services in different regions.

Over time the original intent and function behind the foundation aid concept and the actual adopted New York’s Foundation Aid Formula were altered by a series of distortions. We describe the issues that have arisen over the past 16 years that should be considered and avoided in designing and maintaining a fair and effective new funding system.

#### *Poverty Count*

The Foundation Aid Formula’s “Pupil Needs Index” provides extra funding to school districts based on the average number of students living in poverty. The formula arrives at its poverty count based on .65% of the number of students eligible for free and reduced-price lunches (FRPL), as calculated by the federal government, and for each child on the census count of students in poverty. The census-based portion of these poverty counts has been frozen at the numbers from the 2000 U.S. Census. This means that districts where poverty has gone up since 2000 are being denied funds to which they should be entitled. In addition, in recent years, new, more valid methods for calculating poverty that have been developed.

#### *Pupil-Need Weightings*

To allot more funding to districts for students with extra needs, the basic foundation amount that is the building block for the formula applies extra “weightings” for certain students. As indicated above, it applies a .65% extra weighting for each child in poverty as measured by FRPL and for each child on the census count of students in poverty, and also up to a 50% extra weighting for each English language learner. In addition, in the calculation of Average Daily Membership in determining the district’s Total Aidable Foundation Pupil Units (TAFPU), districts receive a 1.41% weighting for each student with disabilities, 50% extra weighting for each declassified pupil, and 12% weighting for each summer school student; rural districts also receive extra funding based on a “sparsity count.” The basis for establishing these weightings was never made clear, and even though the statute setting forth the foundation aid formula calls for reconsidering the disability weightings periodically, neither these weights nor any of the other weights have, in

fact been reconsidered in light of the changing needs of these student categories over the years.<sup>29</sup>

### *Income Wealth Index*

The current formula includes an Income Wealth Index (IWI) intended to drive more funding to districts whose average wealth is below the statewide average. However, the application of this index disadvantages the poorest school districts in the state. The index is capped at .65 of the wealth of an average district, so school districts having an Income Wealth Index below .65 (an average wealth school district) receive no more additional funding. There are approximately 300 school districts that have an IWI less than .65.

### *Local Tax Effort*

The current formula requires a local tax contribution from each school district, based on its relative wealth. The local amount, when combined with equity-based state aid contributions, should provide each district with the funding it needs to provide its students with the opportunity for a sound basic education. In practice, however, the local tax effort test is circumvented by allowing wealthier school districts to select from four tiers for the lowest possible local contribution, thus potentially denying their students the actual number of dollars that the formula had determined to be necessary for them to receive the opportunity for a sound basic education.

Local tax efforts are also skewed by the property tax cap that the state instituted after the 2008 recession, which is still in effect. The tax cap limits the annual budget increase any local school district can obtain from its voters to 2% (or the annual increase in the Consumer Price Index, if it's less) (plus or minus certain exclusions for each district), unless the voters approve a larger tax increase by a 60% or greater vote.<sup>30</sup> Budget proposals for property tax increases under the 2% cap received a 98% passing rate over the first eight years the cap was in effect; override attempts were rare and only approximately half of those succeeded. Because of the property tax cap, some school districts are effectively barred by law from raising the expected local contribution to which students are entitled under the Foundation Aid Formula.

### *Regional Cost Index*

The Regional Cost Index divides the state into nine regions and assigns each a cost index factor based on salaries earned by workers with credentials similar to teachers. This index is intended to reflect relative costs of living in different areas of the state. The index currently used in the formula is, however, based on 2006 figures. Some have also argued its regional groupings are outdated and unreliable and calculating relative costs of living by measures other than comparative labor costs would provide a better measure of comparative costs of living.

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<sup>29</sup> For an overview of current formula approaches for weightings and other formula adjustments for students with extra needs used in other states, see American Institutes for Research, *State Funding Formulas: A National Review (2020)*, available at [https://carsey.unh.edu/sites/default/files/media/2020/06/20-11882\\_7\\_primer\\_policyscan\\_v3.pdf](https://carsey.unh.edu/sites/default/files/media/2020/06/20-11882_7_primer_policyscan_v3.pdf)

<sup>30</sup> N.Y. Educ. Law § 2023-a. This provision does not apply to New York City, Buffalo, Yonkers, Syracuse and Rochester because, unlike every other district in the State, they are "fiscally dependent" on their municipal budgets and lack the authority to levy property taxes to support education on their own.

### *Categorical Funding Streams Outside of Formula*

The original Foundation Aid Formula consolidated approximately 30 prior formulas and categorical programs and was intended to include the vast majority of operating aid in one equitable and transparent funding stream. In recent years, however, new categorical funding streams have been created, changing impact of the basic formula. For 2007-08, Foundation Aid was 77% of total state school aid; by 2021-22, however, it accounted for only 68% of the budget and was one of 23 school aid formulas reported on aid runs produced by NYSED.<sup>31</sup> Categories of funding like library, textbook, and software aids that total over \$200 million annually remain outside the formula and provide the same amount of aid per student in every district, regardless of wealth or poverty. Another funding stream outside the Foundation Aid Formula is “High Tax Aid,” a formula that has not been reconsidered for the past 15 years and that for 2022-23 targeted over \$230 million in additional state aid mostly to certain wealthy districts based on their tax status in 2007.

A related problem is the use of “set-asides” that mandate that districts devote specific amounts or proportions of their foundation aid to identified purposes such as community schools, magnet schools, attendance, or teacher support. Set-asides limit school districts’ choices about how their funds are used.

### *Hold Harmless*

Another distortion has been the state’s pattern in recent years to “hold harmless” or guarantee no reduction of the previous year’s funding levels for districts that have lost population or otherwise would be slated for less aid in the current year by the normal workings of the formula. In 2020-21, 283 districts, or 42.1%, benefitted from the hold-harmless provision. The total value of hold-harmless funding was \$355 million.<sup>32</sup> For 2022-23, all districts are guaranteed a minimum 3% increase, even if they have already reached their maximum entitlement under the formula. Although many of those being held harmless are small rural districts that have had substantially reduced student enrollments, their needs would be better met using up-to-date poverty counts and unimpeded wealth indices, and other appropriate mechanisms that would not distort the overall functioning of the formula.

### *Shares Agreement*

Combined with formula distortions has been the perpetuation of a “shares agreement” that directly violated the Court of Appeals’ mandate that school funding must be determined through a needs-based analysis of “actual dollars” required to provide all students the opportunity for a

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<sup>31</sup> New York State Council of School Superintendents, Policy Report: Resurrecting the Promise of Foundation Aid (Sept. 2021), available at [https://www.nyscoss.org/nyscossdocs/Advocacy2122/2109\\_Foundation\\_Aid\\_Report\\_FINAL.pdf](https://www.nyscoss.org/nyscossdocs/Advocacy2122/2109_Foundation_Aid_Report_FINAL.pdf).

<sup>32</sup> *Id.*

sound basic education.<sup>33</sup> After the state abandoned the phase-in of the Foundation Aid Formula following the 2008 recession, for eight consecutive years, from 2012-13 to 2019-20, each year's increases in "computerized aids"<sup>34</sup> (which account for the vast majority of state aid to school districts) were apportioned through a series of complex and ever-changing formulas to deliver precisely 38.86% of the annual increases to New York City, and 12.96% to the school districts on Long Island, regardless of actual and changing student needs during these years. The allocations for all other districts were then calculated through state aid runs using combinations of guaranteed minimum increases over prior year aid, and phasing-in of amounts due under the full formula through complicated mechanisms that had no rationales other than to drive certain amounts of money to specific districts or types of districts. For 2019-20, for example, Foundation Aid calculations were based on using the amount of aid each district had received in 2018-19, plus the most favorable of 10 options, including one guaranteeing an increase of at least 0.75% over its 2018-19 aid.

As the following table indicates, the "shares" agreement was implemented for each of these eight years with great precision.

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<sup>33</sup> The "shares" system violated both the Court of Appeal's order and the trial court's its specific finding that the "shares" approach was unconstitutional:

Even if the State aid formulas were designed to allocate education aid more fairly, it would be difficult to change the orientation of State education funding because any annual *increase* in State aid has historically been divided without reference to the formulas. The evidence at trial demonstrated that the formulas and grant categories are not allowed to operate neutrally but rather are manipulated during the State's annual budget negotiations by State officials to produce consistent funding allocations of aid increases among school districts around the State. The evidence at trial demonstrated clearly what the State Comptroller has found:

It is well known that the formulas are annually "worked backwards" until the politically negotiated "share" for the City schools is hit in the calculations. In this context, the data feeding into the school aid formulas for New York City is really of no practical consequence whatsoever—the City will get the negotiated share of aid regardless of what data they report.

CFE v. State of New York, 187 Misc. 2d 1,88 (S. Ct. N.Y. Co, 2001)

<sup>34</sup> The term "computerized aids" is used in school finance discussions in and around the New York state government to refer to the subset of state school aids that are listed and reported on in the "combined aids" computer runs produced by NYSED in conjunction with each year's executive budget and with each year's enacted budget. It includes Foundation Aid plus several other formula aids. While the school aid database is maintained by NYSED produces the school aid runs for each year's executive budget and for each year's enacted budget, the format and the aids included in the executive budget runs are set by the governor (through the Division of the Budget) and the format and the aids included in the enacted budget are set by the legislative leaders. Although most funding streams and categorical aids are included in these runs, some are not; the list of "computerized aids" varies from year to year. NYSED has never explained why some categories are included in these state-aid runs and some are not. Thus, there is no precise accounting for how much funding each district is projected to receive each year. Furthermore, there are no state aid runs that show at the end of the year how much total state aid each district received and expended.

### New York City and Long Island Shares of Statewide Increase in Computerized School Aids, by Year<sup>35</sup>

School Year	New York State (NYS) Increase	New York City (NYC) Increase	Long Island Increase	NYC Increase as a % of NYS Increase	Long Island Increase as a % of NYS Increase
2012-2013	\$751,757,712	\$292,115,340	\$97,406,995	38.86%	12.96%
2013-14	\$936,612,835	\$363,969,752	\$121,404,869	38.86%	12.96%
2014-15	\$1,120,092,936	\$435,268,557	\$145,168,906	38.86%	12.96%
2015-16	\$1,299,892,119	\$505,118,787	\$168,516,936	38.86%	12.96%
2016-17	\$1,350,095,997	\$524,678,132	\$174,974,364	38.86%	12.96%
2017-18	\$995,399,787	\$386,813,329	\$129,005,229	38.86%	12.96%
2018-19	\$859,146,418	\$333,864,592	\$111,345,571	38.86%	12.96%
2019-20	\$960,891,607	\$373,383,595	\$124,579,172	38.86%	12.96%

The “shares agreement” has a disproportionate impact on students in poverty, students with disabilities, English language learners, and students of color. For example, using any true needs-based formula, New York City, which has over 40% of the public school students in the state, and a student body with over 76% of its students economically disadvantaged, would receive substantially more than 38.86% of total state aid and of the annual increase in state aid to education.<sup>36</sup> The shares approach also drove a consistent 12.96% share to Long Island as a whole, without considering whether the allocations were distributed to high poverty school districts in accordance with their relative needs.

#### *Other Distortions in Recent Years*

For the past two years, as the full foundation aid amounts have been paid out, New York City’s percentage share of all computerized aids increased to 43% in 2021-22 and then plummeted to 22.8% for 2022-23,<sup>37</sup> while Long Island’s share substantially increased to 13.63% in 2021-22 and 21.96% in 2022-23. These large swings reflect that, in years past, larger proportions of

<sup>35</sup> This data is taken from the annual “enacted budget” school aid runs produced by NYSED for the years indicated.

<sup>36</sup> New York State Education Department, NYC Public School Data 2020-21, available at <https://data.nysed.gov/enrollment.php?year=2021&instid=7889678368>.

<sup>37</sup> In 2020-21, the first year of the pandemic, there was virtually no increase in state aid and, therefore, no “shares” to report.

foundation aid were directed to New York City and lesser shares were directed to many of the poor Long Island districts to maintain the shares agreement; the commitment to pay-out the remaining amounts of foundation aid due each district in the past two year superseded the shares agreement and resulted in these exceptional figures.<sup>38</sup>

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<sup>38</sup> New York State also denies school districts equitable access to fair funding through its STAR program. STAR provides homeowners an exemption from a portion of the value of their house that lowers or eliminates the property taxes paid to the district by a homeowner. (In recent years, some of these exemptions have been provided to homeowners in the form of income tax credits.) The STAR program is highly inequitable for two reasons: first, it favors school districts with high home ownership rates (e.g., wealthy suburbs) over districts with high renter populations (e.g., cities) that generally have high poverty rates and high student needs; second, the exemption amount is adjusted to account for local home sales prices, with increased exemption amounts in counties with above-average prices (i.e., more wealthy school districts). These STAR payments amount to several billion dollars per year, amounts would more fairly and more effectively be utilized if distributed directly through the Foundation Aid.