

**Testimony re: To examine the distribution of the Foundation Aid formula  
as it relates to pupil and district needs.**

Submitted to  
Standing Committees on Education and Budget and Revenues.

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Thank you, Chairwoman Mayer, Chairman Benjamin, and all other committee members, for taking the time to read the testimony drafted by the Hispanic Federation; a non-profit organization seeking to empower and advance the Hispanic community, support Hispanic families, and strengthen Latino institutions through direct service programs and legislative advocacy.

We firmly support and urge the legislature to fully fund the original Foundation Aid formula in their one house budgets and pressure the Governor to do the same. The judicial branch has already commented on this issue by finding that New York State has unconstitutionally underfunded schools through the annual budget by failing to “align funding with need” to determine the “actual cost” of providing a “sounds and basic education” to all students as promised in the State constitution.<sup>1</sup> It is now in the hands of the legislative and executive branches to uphold New York State’s constitution by fully funding a formula that provides financial resources to schools based on a per pupil need. Which is exactly what the original Foundation Aid formula accomplishes.

After the *Campaign for Fiscal Equity* (CFE) ruling by the State Court of Appeals in 2006, New York State committed to spend an additional \$5.5 billion on a new and transparent funding formula to be phased in over four years, starting in the 2007-08 budget.<sup>2</sup> For two years the phase in of original Foundation Aid formula was funded; expanding the Contract for Excellence programs, enabling schools to convert half-day pre-K to full-day, to open Saturday academies, and start programs for English Language Learners, shrinking the achievement gap.<sup>3</sup>

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<sup>1</sup> *Campaign for Fiscal Equity, Inc. v State of New York*, 29 AD3d 175 (2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Equity*, Alliance of Quality Education (2018); <https://www.ageny.org/equity/>; John Casey, Apurva Mehrotra, *Education Finance Equity For New York City Schools: The Long Haul*, Center for Nonprofit Strategy and Management in the School of Public Affairs, Baruch College (2011); <https://www.baruch.cuny.edu/mspia/centers-and-institutes/center-for-nonprofit-strategy-and-management/documents/EducationFinance-Full.pdf>.



However, the 2008 recession was devastating to the entire country, forcing all Americans to reconsider their fiscal priorities and make sacrifices in their budgets. New York State similarly had to make compromises and in 2009 froze the full funding of the Foundation Aid formula for two years, with plans to extend the phase-in from four to seven years.<sup>4</sup> Over the next ten years, New York State has only decreased education funding or severely underfunded what is necessary to provide a “sound and basic education” for our students, and minimally used the original Foundation Aid formula as designed.<sup>5</sup>

The original Foundation Aid formula was designed to require a two-step process. First, to calculate the cost of providing a “sound and basic education” to students based on their per pupil need; considering the needs of English Language Learners/Multilingual Learners, students with disabilities, students with food insecurity issues, and those live in high poverty areas by weighing their costs according to their additional financial needs. Second, the State would consider local school funding, by subtracting it from the per pupil cost calculated in the first step, finding the total the State should provide to school districts.

In addition to addressing the per pupil need, the original Foundation Aid formula was created to simplify the funding process and replace over 30 complicated formulas used across the state.<sup>6</sup> However, as the Senate Committees on Education and Budget and Revenues well know, the formulas used to calculate and disseminate education funding over the last several years has changed and been made more complicated annually through the budget. In fact, in the 2019-20 budget, what is referred to as the Foundation Aid formula requires a four-step process, that includes one step that demands districts to find which formula of 10 different tiers (A-J), provides them with the maximum funding.<sup>7</sup> In other words, there are 10 additional formulas districts have to parse through and determine which provides them maximum funding, which is only one of four steps of the so called current Foundation Aid formula.

This is a stark contrast from the year prior (2018-19) that at least considered a three-year phase in of Foundation Aid funding, even if it did not use the original formula, or include a sufficient amount to provide a “sound and basic” education.<sup>8</sup> Unfortunately, this leap between formulas is a direct result of the Governors 2019 legislative initiatives. During Governor Cuomo’s speech where he details his first 100 days and unveiled his 2019 Justice Agenda, he referred to foundation aid as being part of a “political game” and being a “ghosts of the past.”

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Marina Marcou-O’Malley, *Foundation Aid in Name Only: New York State Denying the Full Worth of Black and Brown Students*, Alliance of Quality Education, Public Policy and Education Fund of New York, (2019); [http://www.aqeny.org/wp-content/uploads/2019/10/FoundationAidNameOnly\\_final.pdf](http://www.aqeny.org/wp-content/uploads/2019/10/FoundationAidNameOnly_final.pdf).

<sup>7</sup> *2019-20 State Aid Projections*, New York State Education Department (2019)

<sup>8</sup> *Id.*

The tragedy lies in the fact that the Governor is right. The formula and funding that the State refers to as Foundation Aid has been used as a political bargaining chip over the last decade. Politicians from both sides of the isle have found means to benefit from the manipulation of the formula and advocacy of the funding. Further, the original Foundation Aid formula died in 2009 at the hands of the budget crisis.

However, the thing about ghosts of the past is, they come back to haunt you. This is apparent in the crises we are seeing across the state; particularly in Latino, Black, and impoverished communities. It is in these children, that over the last ten years and the decades and decades prior to the CFE ruling, that New York State has continually deprioritized these students' success and futures.

### **Multilingual Learner Crisis**

New York State is failing to graduate its Multilingual Learners (MLL), formally English Language Learners, at appropriate levels. In 2017, the four-year high school dropout rate for MLLs was at 30%; higher than the four-year MLL graduation rate of 27%.<sup>9</sup> By comparison, the four-year 27% graduation rate significantly lags behind the 80% four-year graduation rate of all students.<sup>10</sup> Moreover, the MLL population across the state is only growing larger.

Over the last decade, the MLL population across New York State has grown 20%, and now represents 9% of the overall statewide student population.<sup>11</sup> However, MLL populations are higher in the big five school districts (Syracuse, Buffalo, NYC, Rochester, and Yonkers), resulting in an average of 15% of the entire student population.<sup>12</sup>

Since 1990, New York State has reported a teacher shortage for certified bilingual teachers. It, along with Texas, are the only two states that have faced a shortage for the last quarter of a century.<sup>13</sup> According to a 2017 report by the New York State School Boards Association, over 10% of teachers in bilingual education classrooms in NYS, excluding New York City (NYC), were not certified.<sup>14</sup> In fact, in regions such as the Genesee-Finger Lakes area, uncertified bilingual education teachers in bilingual classroom settings were as high as 25%.<sup>15</sup>

### **Latinx College Completion Crisis**

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<sup>9</sup> 2019 *Investing in our Future: A Multilingual Learner Policy Agenda for New York State*, Latino Education Advocacy Directors Coalition (2019);

<https://static1.squarespace.com/static/5c3676da3e2d09759ab10f10/t/5c86dd27652dea82b0957191/1552342343369/Invest-In-Our-Future-002.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*

New York State is failing to graduate Latinx student's college and career ready, forcing them to leave high school unprepared for post-secondary success. From 2007-2017 in New York City, Latinx young adults ages of 18-24, have increased their college enrollment by 9%, from 29% to 38%.<sup>16</sup> However, nearly one in four Latinx young adults who are not enrolled in school are college non-completers.<sup>17</sup> In the same decade, the Latinx completion crisis has risen from 13% to 23%, demonstrating that young Latinx non-completion rate is growing faster than the increase of college enrollment.<sup>18</sup>

Further, young Latinx adults are disproportionately attending community colleges, which do not always provide the same guidance and support as four-year universities. In fact, at CUNY city universities alone, first time fall freshmen enrollment of Latinx students has decreased 5% from 2007 to 2017, making the total enrollment of Latinx students 12% at senior CUNY colleges.<sup>19</sup> Through research and focus groups with both Latinx college completers and non-completers, it was overwhelmingly found that these students were not given the proper education, experiences, and supports prior to college to be postsecondary ready.<sup>20</sup>

### **Sound and Basic Education**

The original Foundation Aid formula was not meant to be lost forever, merely frozen, to be resurrected once the budget crisis passed. As described, New York State never went back to the original Foundational Aid formula, nor was it ever fully funded. As a result of this lack of action, students across New York State have never seen what a "sound and basic" education, based on their needs, even looks like.

New York's highest court ruled in the Campaign for Fiscal Equity (CFE) case that the state has a constitutional obligation to provide every student the opportunity for a sound basic education, which it characterized as a "meaningful high school education." The Court and Regents have defined that education as one that will allow each student to meet a challenging set of academic standards and will prepare every high school graduate to be "college and career ready" and a productive civic participant. This means that each school must have adequate funding to provide students with the basic educational resources they need to meet New York State Learning Standards and diploma requirements.<sup>21</sup>

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<sup>16</sup> Unreleased study by LEAD Coalition and HERE to HERE on the Latinx College Completion Crisis. Plans to be released in the next couple of months. Please reach out to Maria Morrissey at the Hispanic Federation for more information: [mmorrissey@hispanicfederation.org](mailto:mmorrissey@hispanicfederation.org).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> The Campaign for Educational Equity, *Safeguarding Sound Basic Education: Constitutional Violations in New York State*, Teachers College Columbia University (2013);



Basic educational resources include, but is not limited to: (1) sufficient numbers of qualified teachers, principals, and other personnel; (2) suitable and up-to-date curricula; (3) adequate resources for students with disabilities and English language learners; and (4) appropriate class sizes.<sup>22</sup> The chart below compares what is promised to New York State students through the constitution and the reality of what has been provided.

SOUND AND BASIC EDUCATION	
Promised	Reality
(1) Sufficient numbers of qualified teachers, principals, and other personnel.	<p>1) NY, along with the nation, has been facing a teacher shortage for several years, causing larger class sizes and less qualified or uncertified teachers filling the gaps.</p> <p>2) There are districts in this state where counselors have over 400 students to provide services for. Counselors cannot possibly keep up with these many students causing students to fall through the cracks.</p> <p>3) Providing mental health professionals to every school is essential in keeping our students safe.</p>
(2) Suitable and up-to-date curricula.	All schools should offer college credit courses, but this is not the case in NYS. Coupled with the intense segregation of students in schools, students of color and those of poor economic status are hit by this the hardest.
(3) Adequate resources for students with disabilities and English language learners.	<p>Multilingual Learners, formerly known as English Language Learners, are most affected by the lack of Foundation Aid because:</p> <p>1) The teacher shortage--Multilingual Learners are sometimes taught by teachers without Bilingual or ESOL/ENL certification, providing them with a second-rate education.</p> <p>2) Districts do not always have the funding or resources to attain ESOL/ENL curricula that is relevant to the student, their dialect, or up to date.</p>
(4) Appropriate class sizes.	From pre-k to 12 <sup>th</sup> grade there are schools around that state with classroom sizes of over 30 students. Class sizes should never exceed 25 students and that is still a very high number. Smaller class sizes lead to significant improvements in learning, as well as student engagement, disciplinary referrals, teacher attrition, and high school graduation rates, particularly for disadvantaged students.

[http://www.centerforeducationalequity.org/publications/know-your-educational-rights/29767\\_Know\\_Your\\_Rights\\_128-\(1\).pdf](http://www.centerforeducationalequity.org/publications/know-your-educational-rights/29767_Know_Your_Rights_128-(1).pdf)

<sup>22</sup> *Id.*

Panel 5

It is important to acknowledge that the Senate One House Budget, amending the Governor's 2019-2020 Executive Budget submission, supported a three-year phase in of Foundation Aid funding even after the Governor publicly changed his position on the issue.<sup>23</sup> The Senate One House Budget suggested an increase of Foundation Aid by Increases Foundation Aid by \$1.2 billion (first year of phase in) and amendments to the formula with the intention of a more equitable distribution of funding to needy schools.<sup>24</sup>

As supporters of Foundation Aid and providing students with a “sound and basic education,” we urge the Senate Education and Budget committees to support the full funding of the original Foundation Aid formula to correct the unconscionable reality of New York’s inability to provide the bare minimum of a basic education to all students. Sadly, it is the students who are from the most vulnerable communities that are most affected by underfunding New York schools.

The current formula shares nothing in common with the original Foundation Aid formula. It reverse engineers’ multiple formulas to achieve a predetermined distribution between school districts; in essence, robs Peter to pay Paul.<sup>25</sup> New York does not need to find complicated ways to move around its limited funding, call it Foundation Aid, and not provide students with a “sound and basic education.”

At this point, discussing how the weights of the formula should be changed is merely a distraction from the real issue—New York has not funded its public education system based on a per pupil need and has not used the formula created to accomplish this constitutional promise. An educated child becomes an educated adult who contributes to and invests in our society. To prepare them for voting, to opening small businesses, joining our economy, and becoming legislators; the children of New York State must be provided with a “sound and basic education” to ensure a prosperous future for everyone.

Guaranteeing access to a proper education would alleviate many other issues New Yorkers face. Students who graduate with a “sound and basic education” are set up to succeed in the workforce and achieve postsecondary success; which will reduce the unemployment and homelessness rate, as well as increase the average income of New Yorkers addressing the issue of generational poverty. Further, a formal education creates a healthy society as many of the barriers that impoverished people face are removed when seeking healthcare or maintaining a healthy lifestyle. New York must fully fund the original Foundation Aid formula to make certain the success of the people who make up our society and shape our culture.

<sup>23</sup> Senate Resolution No. 672 (2019).

<sup>24</sup> *Id.*

<sup>25</sup> Marina Marcou-O’Malley, *Foundation Aid in Name Only: New York State Denying the Full Worth of Black and Brown Students*, Alliance of Quality Education, Public Policy and Education Fund of New York, (2019);

[http://www.aqeny.org/wp-content/uploads/2019/10/FoundationAidNameOnly\\_final.pdf](http://www.aqeny.org/wp-content/uploads/2019/10/FoundationAidNameOnly_final.pdf).