



TESTIMONY OF EDUCATION LAW CENTER
SENATE STANDING COMMITTEE ON EDUCATION
PUBLIC HEARING ON THE FOUNDATION AID FORMULA

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Senators Mayer and Benjamin, thank you for convening this meeting on the vital issue of New York's school funding formula and for the opportunity to address the Committee.

I am Wendy Lecker, a Senior Attorney at Education Law Center ("ELC"). ELC is the nation's legal defense fund for public education rights and, in 2011, assumed the core mission of the Campaign for Fiscal Equity ("CFE") organization. Since then, ELC has worked to advance the right of all school children to a sound basic education as guaranteed by the New York Constitution.

ELC also served as co-counsel in the small cities school funding litigation, and we are currently co-counsel, with Michael Rebell and others, in the pending "NYSER" school funding litigation.

We thank you and your fellow senators for your commitment to efforts to secure full funding of the 2007 Foundation Aid Formula ("Formula"). We also support your commitment to revisit the Formula to evaluate whether it reflects the cost of providing a sound basic education under current academic standards, changes in student demographics and need, and the fiscal capacity of districts to raise local revenue.

First and foremost, it is imperative that the Legislature move swiftly to fully fund the Formula, even as you consider improvements to the cost and financing structure of the Formula itself. As we know too well, the State's chronic failure to fully fund Foundation Aid for a decade has caused harm to generations of school children, especially students in our high-need districts. Lacking sufficient funding, these districts constantly struggle to provide the qualified teachers, support staff and student supports essential to deliver a

sound basic education. As you have repeatedly heard, district leaders have no alternative but to engage in “educational triage,” the unacceptable practice of making choices about the use of limited funding, such as whether to offer needed after-school programs or hire teachers; or add preschool classrooms on one hand or support services for immigrant, homeless or foster care students on the other.

Forcing districts to choose which needs to address deprives all students of the resources required to succeed in school. But chronic and severe underfunding of the Formula also prevents the Regents, state and local education officials, and the Legislature from undertaking a long overdue review to assess if the Formula, enacted in 2007, is presently working to deliver a sound basic education. When districts are triaging resources under crisis management conditions, it is difficult to evaluate whether the Formula’s base cost, student weights and revenue components are responsive to the State’s current academic standard for a “meaningful high school education,” that is, preparing all students for college and careers.

Maryland faced a similar circumstance, where a decades-old formula had neither been fully funded nor updated to address new education standards, mandates and goals. Rather than ignore this urgent need, Maryland revisited its school funding formula by commissioning an independent, education cost study in 2016, carried out by Augenblick, Palaich and Associates (“APA”), a firm with decades of experience and expertise in this field.

As a starting point, APA assumed “adequacy” or full funding of the existing formula before considering the new conditions that warranted formula revisions.

Maryland and other states, such as Massachusetts and New Jersey, that have revisited their funding formulas provide some helpful lessons and guideposts on how to proceed to revisit New York’s Formula.

1) Revisit the Base

Before costs and weights for students in poverty, English language proficiency status, disability or other special needs can be examined, a crucial first step is to re-evaluate the Formula’s base cost, or “foundation amount,” necessary to provide a rich and rigorous curriculum (“general education”) for all students. The base amount represents the foundation upon which to determine the additional costs and funding required to address student poverty and other additional student needs.

In Maryland, APA found that the formula’s base amount required a sizable increase as a result of two key factors: a) the state’s more rigorous academic standards, proficiency requirements and new program mandates in the intervening years since the formula’s enactment, and b) the increased needs of most, if not all, students requiring a more intensive general education program.

APA also found that these changed conditions impacted all districts, not just high-need districts. And the experts found that an across-the-board increase in the base amount was required to provide the resources necessary for all districts, schools and students. Some of the required educational resources driving the increased base amount included:

- Small class sizes;
- Staffing to support (but not limited to) the following areas:
art, music, physical education, world languages, technology, career and technical education, and advanced courses;
- Significant time for teacher planning, collaboration, and imbedded professional development;
- Additional instructional staff, including instructional coaches and librarians/media specialists;
- High levels of support, including counselors, nurses, behavior specialists, and social workers, for all students;
- Administrative staff to provide instructional leadership, data-based decision-making, and evaluation.

New York districts are experiencing the very same conditions found in Maryland by the APA analysis. These conditions formed the basis for the APA recommendation to substantially increase the base amount in the state's funding formula.

New York's standards, requirements and mandates have also increased significantly since 2007. As in Maryland, New York districts consistently point to the dire need for support services for all children. In a survey by the New York State Council of School Superintendents ("NYSCOSS") released just this past Monday, 67% of superintendents cited student mental health as the highest priority for new funding – a jump from 56% in 2018. Rising mental health needs have been a priority for New York superintendents for the past three years. Moreover, 62% of superintendents in needy districts cited their inability to provide students with non-academic supports as a significant concern.

In addition, 65% of superintendents cited concern with their reliance on reserves or fund balances to pay recurring costs. This percentage is double what it was a year ago. Districts across the board need financial assistance from the state. As the NYSCOSS survey reveals, inadequate state aid is the most prevalent cause of concern among superintendents.

It should also be noted that the base amount in the Formula is derived by using the average expenditures of a group of "successful" and "efficient" school districts. APA, which developed this method, has since abandoned the successful schools methodology

because it failed to accurately assess the level of funding required for an adequate education under state academic standards for all students.

The other serious concern with New York's successful schools approach is that the selection method yields a pool of districts that are predominately White and low poverty, excluding from consideration the many high poverty, majority Black and Latinx districts impacted by the State's underfunding of the Foundation Aid Formula over the last decade.

Furthermore, New York's current base or foundation amount of \$6,714 using the successful schools method has only increased by approximately \$1450 per pupil since 2007. The APA cost study recommended Maryland increase its base formula amount by over \$4,000 per pupil from the 2015 amount, the year prior to the study.

2) Revisit Impact of Special Education

A key cost driver impacting New York school districts is the increased cost of special education for a growing number of students with disabilities. In fact, 56% of New York superintendents cited rising special education costs as a significant concern in this year's NYSCOSS survey, just as they have for several consecutive years. This is particularly true among superintendents in underfunded districts, where 83% cited rising special education costs as a significant concern.

Federal and state law require that students with disabilities be provided with programs and services to ensure a "free and appropriate education" with their non-disabled peers, whenever possible. Thus, if special education is underfunded, districts have no alternative but to divert funds from their general education program.

Simply put, if the State's formula shortchanges districts on special education funding, districts then "reallocate" funds from the general fund budget to cover the shortfall, leaving both general education and special education students underserved. It's yet another form of State-compelled "education triage."

Even worse, funding reallocated from the general fund often leaves districts unable to provide research-proven programs and services that could actually reduce special education placements and cost, including high quality preschool, smaller class sizes, and early interventions for struggling students, such as Response To Intervention ("RTI").

3) Revisit the Weights for Student Poverty and English Language Learners

In addition to revising the base Formula amount, it is imperative to evaluate the cost of additional programs and services needed today for students in poverty and English language learners, and to adjust Formula weights to reflect the funding required to effectively serve these at-risk student populations.

The CFE precedent firmly establishes that the State must fund an expanded platform of programs and services for "at-risk" students to ensure them a constitutional, sound basic

education. This expanded platform includes an array of both academic and non-academic supports. The recent Maryland study found that quality preschool is a necessary component of this expanded platform for at-risk students. New Jersey has long recognized preschool as an integral part of a constitutionally adequate education. The supports needed to provide the expanded platform must be costed out and must form the basis of any new weights.

In revising weighted funding for student poverty, it is important to carefully consider how poverty is measured in the formula. Massachusetts abandoned the use of Free and Reduced Price Lunch ("FRPL") status as a measure of poverty in favor of other measures, including eligibility for Medicaid, Temporary Assistance for Needy Families ("TANF"), Supplemental Nutrition Assistance Program ("SNAP") and foster care. This change resulted in a significant undercounting of both the poverty rate and the number of poor students. Massachusetts jettisoned this approach in newly-enacted changes to their formula, reinstating the use of the FRPL rate of 185% of the federal poverty level. It should also be noted that any cost assessment must include a study of the impact of concentrated district poverty on the costs of providing adequate staff, programs and services.

4) Use Non-Partisan Experts and Proven Evaluation Methods

A re-evaluation of the Formula's base amount, special education costs, and at-risk student costs and weights requires an independent, expert-driven process, insulated from political considerations. A solid body of research on education costs in relation to state academic standards, performance benchmarks and accountability measures is now readily available and has guided formula revision efforts in New Jersey, Maryland, Massachusetts, Kansas, North Carolina, and other states.

Conclusion: Fully Fund Foundation Aid, Then Revisit Formula

As mentioned, the Legislature's first order of business over the next two to three years is to achieve full funding of the current formula by appropriating the \$3.6 billion outstanding shortfall in state foundation aid.

Full formula funding then sets the stage for a much-needed review and reexamination of the various formula components and a recalibration of those components in light of current standards, requirements, goals and objectives for students and districts.

In undertaking this effort, it is critical not to start out with the assumption that the existing statewide funding level is adequate and simply needs to be shifted among districts, schools or students, creating a new set of "winners and losers." New revenue will likely be necessary.

Just last week, Massachusetts enacted the Student Opportunity Act, a formula revision that will require an additional \$1.5 billion in school funding targeted to high-need districts. Massachusetts faces a similar challenge to New York, namely, significant disparities in

funding between high and low need districts. Instead of taking the easy path, the Massachusetts Legislature considered the findings of the state's Foundation Budget Review Commission, and courageously increased overall state education funding – an increase required to keep pace with more demanding standards and increased student need.

Raising the level of school funding has been shown to improve the academic and life outcomes of public school students, particularly poor students. Nationwide evidence has established not merely a correlation, but a causal connection between increased school funding and improved student outcomes, raising graduation rates, increasing wages and reducing poverty. Adequate school funding will have concrete and lasting positive impacts on the lives of our state's most vulnerable students.

New York should follow the course charted by Massachusetts, Maryland, New Jersey, and other states: ensure our funding formula is up-to-date, based on an accurate assessment of what our students, teachers and schools need today, and fully funded.

Thank you.

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