



A PROJECT OF



Statement of Campaign for Fiscal Equity

to the

NY Education Reform Commission

By

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On behalf of New York’s schoolchildren, the Campaign for Fiscal Equity (“CFE”), a project of the Education Law Center (“ELC”), requests that the Commission address in its recommendations two reforms that are essential to improve student achievement: adequate and equitable school funding; and universal high-quality preschool.

ELC has recently undertaken CFE’s core mission of advancing the legal rights of New York school children to the opportunity for a sound basic and quality education, under state and federal law. ELC has substantial expertise in the representation of school children to secure fair and equitable school funding, other critical resources, and equal educational opportunities. ELC’s extensive experience includes serving as counsel in New Jersey’s path-breaking Abbott v. Burke case.

In the landmark CFE decision, New York’s highest court defined a constitutionally “sound basic education” as “a meaningful high school education, one which prepares [students] to function productively as civic participants.” (100 N.Y.2d at 908). The Court of Appeals then ordered the State to ascertain the cost of providing a sound basic education, and enact reforms that ensure that “every school in New York City would have the resources necessary for providing the opportunity for a sound basic education.” While the Court did not order statewide school funding reform, as this case centered on New York City schoolchildren, it noted that the “State may of course address Statewide issues if it chooses.” (100 N.Y.2d 928).

As we explain, the State did enact, in 2007, a statewide school funding reform to provide the funding necessary to afford all children in the state a constitutionally adequate education, but has failed to implement that enactment and honor its historic commitment to the CFE ruling.

I. Putting School Funding Back on Track

In CFE, the Court of Appeals ruled that New York City children were not receiving a constitutionally adequate education because the State provided inadequate resources for their schools. Consequently, the schools were unable to provide critical resources, including certified teachers, reasonable class size, and textbooks, technology and other instrumentalities of learning. The Court found that “tens of thousands of students are placed in overcrowded classrooms, taught by unqualified teachers, and provided with inadequate facilities and equipment. The number of children in these straits is large enough to represent a systemic failure.” (100 N.Y.2d at 914)

The Court further recognized the obvious: “improved inputs yield better performance,” making clear the causal link between increased funding and improved student performance. (100 N.Y.2d at 919)

This constitutional standard must inform the work of this Commission in its analysis of the state's education system and in the formulation of recommendations to improve

performance in the classroom to ensure all New York's students are fully prepared upon graduation from high school.

Not only does the CFE ruling establish the constitutional standard for the level of education required to properly prepare students for their futures, it also compels the State to promptly implement the single reform central to achieve this mandate: adequate and equitable school funding.

New York will simply be unable to meet the goal of preparing students for citizenship, college and career if it does not ensure all schools have the basic resources to provide them with the opportunity for a meaningful high school education. We cannot close the achievement gap if we fail to close the resource gap.

New York's Statewide Funding Reform

The Court of Appeals in CFE II identified in stark terms the major flaw in the New York's school funding system: "The political process allocates to City schools a share of State aid that *does not bear a perceptible relation to the needs of City students.*" (100 N.Y.2d at 930)(emphasis added). In April 2007, the Legislature passed historic school finance reform intended to remedy that flaw and meet the state's constitutional obligation to provide all children in New York State with a "sound basic education." Although the CFE decision focused on New York City, the State, in 2007, recognized that its constitutional obligation to provide a "meaningful high school education" extends to all children across the state.

The new finance system, the Foundation Aid Formula, established a relationship between state aid, the needs of the students in a school district, and a district's ability to raise revenue. This formula moved New York away from its previous system of allocation of state school aid based on political maneuvering toward a system that responded directly to the needs of students and the wealth of the district. The Foundation Aid formula was to be phased in over four years, reaching full-funding levels and, thereby, meeting the state constitutional mandate in the 2010-2011 school year.

As the Attorney General has recognized in the school funding case currently pending on behalf of New York State's Small City School Districts, Hussein v. State, the State's 2007 Foundation Aid formula represents the minimum level of funding needed to provide the opportunity for a sound basic education to all the state's public school children.

Dismantling the 2007 School Funding Reform

Despite its commitment to adequate and equitable funding in the 2007 Foundation Aid formula, the State has reneged on its constitutional duty. In the first two years, the Legislature provided installments of the Foundation Aid, totaling \$2.3 billion. However, in 2009, aid was frozen at 37.5% of the four-year target, and aid was cut by 2.7 billion in 2010 and 2011.

Moreover, the Legislature has instituted mechanisms that undermine the State's ability to fully fund the formula. These mechanisms also have the effect of cutting and distributing aid regressively, i.e. depriving lower wealth/higher need districts of much-needed educational aid while directing more money to higher wealth/lower need districts. Three of these major mechanisms are: The Gap Elimination Adjustment (GEA), the Personal Income Growth Index (PIGI) Cap and the Tax Levy Cap.

The Gap Elimination Adjustment, the cuts to education aid in order to reduce the overall state budget deficit, balances the state budget on the backs of schoolchildren, especially children in the poorest districts. The biggest negative impact of the GEA falls on the poorest districts, those districts with no reserve funds to cushion the blow.¹ Thus, the cuts made by the GEA translate directly to staff and program cuts in the schools. Those cuts are devastating. In 2010-2011, the GEA cut totaled \$2.14 billion; in 2011-2012, the cut was \$2.56 billion. In those years, some of the cuts were offset by federal stimulus money; money which is no longer available. For the 2012-2013 year, the GEA cut is 2.2 billion dollars.

The PIGI cap renders it impossible for the state to recoup the massive cuts to education aid, as it effectively restricts state aid to an arbitrarily low level. The PIG index from 2006 -2011 was only approximately 0.5%.

The cuts from PIGI have a greater impact on a lower wealth school district because the amount the poorer district must recoup represents a larger portion of the local education budget than that of a wealthier district.

The dire predicament of our poorest districts is aggravated by the Tax Levy Cap, which limits to 2% any local school district levy increase. While negatively affecting almost all districts, the tax levy cap disproportionately impacts high poverty districts. If the local tax revenue is low, as it is with high poverty districts, then the 2% increase will also be low. While there is an override provision in the cap, experience from other states tells us that the override provision disproportionately benefits higher wealth districts.²

In addition, STAR aid, representing a full 15% of state school aid, has consistently driven more education dollars to wealthier districts.³

1 Timbs, R., "State Aid Formulas & NY Senate Not Making the Grade for Our Schools, Children & Communities" Statewide School Finance Consortium, Dec.1, 2011.

<http://library.constantcontact.com/download/get/file/1107312969070-13/SSFC+State+Aid++Senate+Report-1DEC11+FINAL.pdf>

2 Baker, B., "School Funding Fairness in NY State" October 1, 2011.

<http://www.monticelloschools.net/District/News/pdfs/FoundationAidStudyRutgers2011.pdf>

3 Baker, B., "School Funding Fairness in NY State" October 1, 2011.

<http://www.monticelloschools.net/District/News/pdfs/FoundationAidStudyRutgers2011.pdf>

Because these mechanisms cut Foundation Aid and drive more educational resources away from higher poverty districts toward lower poverty districts, they have converted the Foundation Aid Formula from a predictable needs-based funding system back to a regressive and unfair system for allocating education dollars.

So in just five years, school funding in New York once again bears “no perceptible relation” to student need. It’s no surprise that our funding system is rated among the most inequitable and regressive in the nation, ranking 7th from the bottom in fairness of distribution of state school funds.⁴

The recently enacted 2012-2013 budget widens the gap between what should be a fully funded formula and actual state funding for New York’s schools. This shortfall now tops \$5.5 billion. The budget also exacerbates the regressive nature of school funding in New York. Of the \$805 million increase in the state education budget for 2012-2013, only \$111.54 million is an increase in Foundation Aid. Thus, only 1/7th of the increase in state school aid is arguably related to student need. The remainder of the aid follows the same regressive pattern that directs more aid to low poverty school districts and less to high poverty districts, where student needs are greater.

The Effects of Under-Funding on New York’s Schools

The cuts to the 2007 Foundation Aid formula have a direct and negative impact on the very inputs the Court of Appeals in CFE held to be vital to student achievement. A new White House report noted that in New York City, the number of elementary school students in classes of 30 or more has tripled in the last three years. Currently, 31,079 students in first through fifth grade were now in large classes, compared with 9,756 in the 2008-09 school year.⁵ The New York State School Boards Association reported that 64% of districts plan to cut teaching positions in 2012-13. One-quarter of districts already cut more than 20 teaching positions in the last two budget years, some cutting more than 100 teaching positions. One quarter of districts will cut programs to provide extra help to students those students most at-risk of academic failure. Almost half of New York’s districts plan to cut electives and extra-curricular activities. And more than half will again increase class size.

When viewed the lens of the State’s “new” accountability system, “priority schools,” or those schools with the lowest rating on the new metrics, are the lowest in income wealth, and also the schools with the largest funding shortfall; i.e. the gap between the state funding they

4 Baker, B., Sciarra, D., Farrie, D., “Is School Funding Fair? A National Report Card,” Second Edition, June 2012. Education Law Center and Rutgers Graduate School of Education
http://www.schoolfundingfairness.org/National_Report_Card_2012.pdf

5 “Investing in Our Future: Returning Teachers to the Classroom,” Executive Office of the President, August 2012
http://www.whitehouse.gov/sites/default/files/Investing_in_Our_Future_Report.pdf

currently receive and the funding they would have received had the Foundation Aid Formula been fully funded.⁶

The State's under-funding of its schools reaches a crisis of constitutional proportions. New York's small cities, for example, are experiencing severe cuts that impact their children's education and academic performance dramatically. Indeed, the funding and programmatic deficits are the impetus driving their pending lawsuit against the State. As Justice Ciparik noted in the Court of Appeals' Hussein decision in June allowing this case to proceed to trial, the fact that the State may be violating the constitutional rights of yet more children should be cause for greater vigilance. (19 N.Y.3d 899)

The evidence is clear that New York's current funding scheme deprives hundreds of thousands of children, or more, of basic educational inputs necessary for a sound basic education. The failure to fully fund the Foundation Aid formula has a direct and devastating effect on student achievement, especially for those districts with the neediest children. Without adequate educational resources, these schools cannot provide each child with a meaningful high school education. The Legislature recognized its constitutional obligation to all of its children in 2007. We cannot wait for the Hussein case to make its way through New York's courts, where we will find that the State is again violating the constitutional rights of its children to an adequate education.

This Commission has the opportunity to take a courageous stand for our school children. We urge the Commission to, at a minimum, recommend that the 2007 Foundation Aid formula be put back on a four-year cycle to fully phase-in and restore the shortfall, which is at least \$5.5 billion. Our school children are constitutionally entitled to receive this aid under the CFE standards.

II. Advancing High Quality Early Education

In addition to adequate and equitable school funding, we also urge this Commission to recommend a bold plan to ensure universal, high-quality preschool, particularly for children from low income families and children living in high poverty communities.

We're all aware of the overwhelming research: high-quality early childhood education programs produce long-term educational and societal benefits, and far outweigh any cost of the programs.⁷ Thus, providing universal, high-quality preschool is essential to preparing all

6 Baker, B. "Ed Waivers, Junk Rating Systems & Misplaced Blame: Case 1-New York State," School Finance 101, August 31 2012 <http://schoolfinance101.wordpress.com/2012/08/31/ed-waivers-junk-rating-systems-misplaced-blame-case-1-new-york-state/>

7 Barnett, W. S. (1995, Fall/Winter). Long-term effects of early childhood programs on cognitive and school outcomes. *The future of children: Long-term outcomes of early childhood programs*, 5(3), 25-50 http://www.princeton.edu/futureofchildren/publications/docs/05_03_01.pdf; Camilli, G., Vargas, S., Ryan, S. & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *Teachers College Record*, 112, 3, pp. 579-620.

children for success in school and in life. No other reform is as universally recognized to close achievement gaps as high-quality early education. Put simply, the achievement gap will not be closed, or even narrowed, unless children attend high quality preschool, starting at age 3.

Decades of research demonstrate that children who begin kindergarten without a high-quality preschool experience score lower on assessments of reading, math, fine motor skills and other cognitive indicators. For children who start behind in kindergarten, it is extremely difficult, and costly, to close the gap in later grades.⁸

New York's Universal Pre-K program ("UPK") is far from universal, serving only forty three percent of four-year olds. Seventy-five percent of those children attend half-day programs. UPK was flat funded in the 2010-2011 school year and in the previous year, with only districts having established programs eligible for funding. As a result of flat-funding, five districts were forced to discontinue their preschool programs.

According to the National Institute for Early Education Research, ten years ago, New York was ranked 5th in the nation for access to preschool for four-year-olds and 11th in the nation for state resources spent per pupil. This ranking has dropped dramatically. Currently New York is ranked 9th for access and 24th for resources. From 2009 to 2011, enrollment of four-year-olds in preschool in New York has dropped.⁹ In a nation that has come to recognize the importance of preschool in increasing achievement, New York is moving in exactly the opposite direction of where it should be heading.

High-quality universal preschool can and must be achieved. Look no further than New Jersey's acclaimed Abbott preschool program, recognized as the best in the nation. Over ten years, New Jersey successfully developed a "diverse delivery" system, tapping into existing Head Start providers, community-based child care providers and preschools, and ensuring that they all meet the same quality standards. Each district must choose a developmentally appropriate curriculum, linked to the States' K-12 academic standards, and monitors the

http://spot.colorado.edu/~camillig/Papers/38_15440.pdf Heckman, J, Masterov, D. The Productivity Argument for Investing in Young Children, Committee for Economic Development, 2004.

http://jenni.uchicago.edu/Invest/FILES/dugger_2004-12-02_dvm.pdf; Committee for Economic Development, "Unfinished Business: Continued Investment in Child Care and Early Education is Critical to Business and America's Future.", June 2012, <http://ced.org/images/content/issues/earlyeducation/UnfinishedBusinessLO.pdf>

8 Denton Flanagan, K., and McPhee, C. (2009). *The Children Born in 2001 at Kindergarten Entry: First Findings From the Kindergarten Data Collections of the Early Childhood Longitudinal Study, Birth Cohort (ECLS-B) (NCES 2010-005)*. National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC. <http://nces.ed.gov/pubs2010/2010005.pdf> ; Committee for Economic Development, "Unfinished Business: Continued Investment in Child Care and Early Education is Critical to Business and America's Future.", June 2012, <http://ced.org/images/content/issues/earlyeducation/UnfinishedBusinessLO.pdf>; Burkam, D. and Lee, V., *Inequality at the starting gate: Social background differences in achievement as children begin school*, Economic Policy Institute, 2002. http://www.epi.org/publication/books_starting_gate/

9 Barnett, W.S., Carolan, M.E., Fitzgerald, J., & Squires, J.H. (2011). *The state of preschool 2011: State preschool yearbook*. New Brunswick, NJ: National Institute for Early Education Research. <http://nieer.org/yearbook>

program to ensure school readiness upon entry to kindergarten. Research has confirmed the success of the Abbott preschool program, with learning gains evident throughout the early elementary school years.¹⁰

Based on the Abbott model, we strongly urge the Commission to not just recommend expanding access to New York's existing program, but to substantially upgrade the quality of all programs by adoption of a stringent set of standards and program components. These standards must include:

1. Class size of no more than 15 children;
2. A developmentally appropriate curriculum linked to state educational standards;
3. Teachers certified in preschool-3rd grade education;
4. A full day/school year program;
5. Multi-year phase-in to enroll all three and four year old children in high poverty communities, and low income children in districts across the state;
6. Direct monitoring of preschools by local district, with the State providing professional development, technical assistance, evaluation and support;
7. Adequate and stable State funding, blended with available child care and federal Head Start funding, to provide for the actual cost of program delivery;
8. Adequate facilities;
9. The provision of transportation, health and other related services; and
10. Outreach to parents and the community.

The evidence is indisputable that the investment in high quality preschool yields benefits that far outpace the cost, in increased academic achievement, decreased rates of special education services, increased earning potential, decreased incarceration rates and more. Experts estimate at least a 16% long term return on every dollar spent on preschool.¹¹ Conversely, we cannot seriously move the needle on achievement without high quality universal preschool.

Thank you for the opportunity to present this statement to the Commission. Please contact us if you have any questions about the issues raised in our testimony. We stand ready to work with the Commission to advance its recommendations on school funding and high quality preschool.

10 Mead, S., Education Reform Starts Early: Lessons from New Jersey's PreK-3rd Reform Efforts, New America Foundation, 2009. <http://fcd-us.org/sites/default/files/Education%20Reform%20Starts%20Early%20New%20Jersey.pdf>; Frede, E., Jung, K., Barnett, W.S., Lamy, C.E., & Figueras, A. (2007). A brief overview of the Abbott Preschool Program Longitudinal Effects Study (APPLES). <http://nieer.org/resources/research/APPLES.pdf>

11 Heckman, J, Masterov, D. The Productivity Argument for Investing in Young Children, Committee for Economic Development, 2004. http://jenni.uchicago.edu/Invest/FILES/dugger_2004-12-02_dvm.pdf