

POLICY MEMORANDUM

To: Dr. John Yinger
From: Troy Parker
Subject: Ensuring NY State's Foundation Aid is Up to Date
Date: May 17, 2020

Introduction

The education of children is one of the primary duties and moral responsibility of a state. In April 2021, New York State (“NYS”) legislature issued a budget proposal committing an additional \$4.2 billion in education funding over three years for its residents.¹ This additional funding is to finally comply with NYS’s Foundation Aid studies and judicial obligations. However, this data is based on studies from the early 2000’s and is outdated to the current needs of the state. By making adjustments to Foundation Aid and mandating regular cost-study analysis, NYS can ensure it is adhering to its Constitutional duty for its youth and future.

Background

The New York State Constitution Article XI Section 1 states that all persons living in NYS shall have a “sound basic education”. In a 1995 decision by the New York Court of Appeals, the highest court in the state, Justice DeGrasse clarified that this means “basic literacy, calculating, and verbal skills for productive civic engagement” from kindergarten through the 12th grade.² In later proceedings, the Court stated that the New York Education Article also encompasses the need to supply students with the ability to obtain competitive employment or the ability to get a job, and support oneself.³

Following these decisions, came another landmark Campaign for Fiscal Equity (“CFE”) case in 2006. There the Court agreed with education advocates that New York City schools were underfunded by the state, and required the state to fully fund them.⁴ This decision revolutionized education funding in NYS, by confirming that advocates can bring claims in Court to force the state to better fund its public schools. In 2007, the NYS legislature and then-Governor Spitzer instituted the Foundation Aid formula- thereby enacting the CFE decision statewide. This promised 7 billion more dollars to education, as determined was the need by the NYS Department of Education.⁵ This program replaced the previous education funding strategy, with a data-driven study of where funding was actually needed across the state based on individual pupil need.⁶

Unfortunately, NYS never did fully fund its education system due to the 2008 recession. Instead, the state began cutting school funding to save costs and better balance its budget. After a slow recovery, the state never revisited the major gaps in education which by this point all three

¹ Mannion (2021).

² Campaign for Fiscal Equity v. State (2001).

³ Campaign for Fiscal Equity v. State (2003).

⁴ Campaign for Fiscal Equity v. State (2006).

⁵ Rebell (2021).

⁶ Spitzer (2017).

branches of government now recognized. Still, New York State currently has the highest per pupil spending than any other state. (See Appendix A)

How Foundation Aid Operates

Currently, NYS is still using the Foundation Aid system. This system accounts for about 39% of school districts budgets, with 57% coming from local tax collecting and 4% coming from the federal government.⁷ There are four main parts to NYS's Foundation Aid: 1) A state-specified per pupil expenditure, 2) a state-specified expected minimum local contribution, 3) the number of aidable foundation pupils- those with disabilities, and 4) the Foundation Aid Payable which adjusts the totals based on phase-in factors and minimum and maximum increases.⁸

The first part of this system is the Adjusted Foundation Amount ("AFA"), which gives a state-specified expenditure per pupil based off the calculated rate to provide a "sound legal education". The 2020-2021 AFA was \$6,714 per pupil, without adding in the regional cost index ("RCI") and the pupil need index ("PNI"). The RCI is a multiplier for a pupil need based on median salaries in profession occupations in ten NYS regions. The PNI is another multiplier to calculate for students with particular needs, such as English language learners, sparsity, and those who are live in poverty. If we include these multipliers, the average number changes to \$6,835 per pupil.⁹

The second part of Foundation Aid then requires a minimum local contribution, which local districts selected between two different options for how to calculate. The first considers the per pupil amount based on a computed tax rate, which utilizes the Income Wealth Index ("IWI"). This option sets a minimum of .65 and maximum of 2.0.¹⁰ As explained by David Friedfel, "an IWI of 3 means the district has AGI [adjusted gross income] per pupil three times the state average and would therefore be expected to contribute three times as much as the average district".¹¹ The other option uses a per pupil amount based on a sharing ratio, which provides four formulas for districts to calculate and take the highest one.

The third part of Foundation Aid adds the Selected Total Aidable Foundation Pupil Units ("TAFPU"). This section looks at average daily membership of students that meet certain guidelines, and adds a multiplier for students with disabilities. In 2021, the multiplier was 1.41.

The last part looks at Foundation Aid Payables, which is set restrictions on how much aid can increase or decrease in districts. Here, we find a hold-harmless policy, where schools essentially cannot be cut funding from Foundation Aid, because the previous year's funding is their new basis. Additionally, NYS Comptroller Tom DiNapoli announced that school districts property tax increases will be limited to 1.23% this year, due to the COVID-19 pandemic. Since 2012, the cap has been at 2% or the rate of inflation.¹² A district can exceed the caps with 60% of the voters' approval.¹³

⁷ State Education Department: Handbook (2020-2021)

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Friedfel (2016).

¹² Reisman (2021).

¹³ State Education Department: Primer (2020)

Status Update on Foundation Aid

In April 2021, the NYS legislature prevailed in committing an additional \$1.4 billion in the 2021-2022 budget proposal for education funding. This move honors the states commitment to education, and long overdue promise following CFE. Additionally, while it is not mandated, another \$2.8 billion over the next two years was announced, to total \$4.2 billion.¹⁴ If all three years of payments are made, this fully funds the required amounts based of the state's cost-study analysis from CFE.

This does not mean, however, that the barrage of litigation is over. Since, the state's reversal due to the 2008 recession, many advocacy groups and districts have continually sued the state, asking for their funding to provide a sound basic education. For example, the case of *Maisto* involves eight small city districts, with low property values and higher tax rates still struggling to fund their public education. Another case, *NYSER- New Yorkers for Student Education Rights*, is very similar to CFE arguing for many districts to get their fair share. Hopefully, the state's new commitment to funding will ease the litigation.

So, What's the Problem Then?

- 1) The data used by the NYS government to fully fund the education system in New York is based on the cost-study completed in 2006, after the CFE decision. Not only has the state demographics changed significantly since then, but there are also many new factors to consider if a cost study were to be done today. Examples of these new factors include identifying structural racism,¹⁵ utilizing new technologies- especially following the COVID pandemic,¹⁶ and new concepts to promoting efficiency. For an example of the demographic shifts in the state, the 2006 cost-study partly used census data from 2000 for its calculations. Then, the state's population was 18,976,457, with 13% of that population saying they speak English less than very well, and there were 3,584,279 children eligible for public schools- roughly 636,896 of them who live in poverty.¹⁷ As of the latest 2020 census release, NYS had 20,201,249 people.¹⁸ However, the state has lost about 300,000 students since 2000, and has 482,000 fewer white students, with increases in Hispanic (179,589) and Asian students (88,792).¹⁹ Additionally, there has been sharp decrease in Upstate New York communities, as school enrollment has dropped on average 13.1%.²⁰ (See Appendix B) Clearly the state has changed over the past 15-20 years and it is time to take note of it, when looking at education funding.
- 2) A second problem deals with the minimum local contribution prong of Foundation Aid. One can make the argument that letting school districts pick their formula for the local share is a benefit, because it gives schools more options. However, this leads to confusion and inequities across the over 700 public school districts in NYS.²¹ The differences in how district calculate their shares, in addition to the hold-harmless provisions in place, lead to

¹⁴ Rebell (2021).

¹⁵ Id.

¹⁶ EdTech (2021).

¹⁷ United State Census (2000).

¹⁸ United States Census (2020).

¹⁹ Domanico (2020).

²⁰ Id.

²¹ New York Education Department.

districts not contributing based on their ability to pay. This exacerbates the already large wealth disparity across the state. The lowest income districts tax themselves at double the rate of wealthier districts, and although the state gives nearly six times more aid per pupil to poorer districts, students in poor districts still only get about two-thirds of the spending per pupil than wealthier districts.²² (See Appendix C). This shows the inequities across the state in wealth, local contribution, and taxing disparities.

Recommendations

- 1) To address the first issue, NYS should make a mandate or establish an office to routinely perform a cost-study analysis for Foundation Aid, perhaps every five years. This cost-study will better allow the Education Department to reflect the changing demographics, changes in technology, and keep Foundation Aid up to date.
- 2) To address the local share contribution issue, the state should change the second prong of Foundation Aid and ask all districts to apply the same formula to their calculations. This should eliminate any disparities in what districts can pay and reduce administrative burden (and confusion). Additionally, this new formula should set a higher cap- or have no cap at all- for wealthier districts to contribute to the education funding of the state. This should increase the state's ability to help fund the less wealthy districts, and also reduce the tax burden on the poorest in our communities.

How To Get There

By removing the caps on local shares and requiring wealthier districts to pay more, the state should be better able to fully fund poorer districts. The extra funds the state will have will be used to fund the new office or entity to conduct the reoccurring cost-study. Further, New York should remove the hold harmless provisions in Foundation aid and implement a phase-out solution. The hold harmless provisions in Foundation Aid have led to NYS to pay 40% of its districts more than what it calculated they needed.²³ This will save the state money and make the NYS education system more equitable. The Upstate New York communities may be the most affected by this, because of their population decrease. Therefore, a phase out solution should be implemented to allow districts to adjust slowly to the new realities of their state funding. The phase-out should not begin until after the aftermath of the Covid pandemic is assessed, as many people have either moved or stopped sending their kids to school.²⁴ This may require the pause or removal of the 1.23% (regularly 2%) tax cap set by the state. Much of this depends on the results of the new cost-study analysis.

Admittedly, the political popularity and feasibility of making wealthier districts pay more to help offset costs in lower districts is not likely. Wealthier districts and communities just have more political power to influence these decisions. However, the argument should be made that the increase in local contributions is money that will stay within the districts. The change would just be from the state allocation amount. Obviously, money is fungible, but better funding all student is better for the entire state. It leads to higher chances for acquiring jobs, growing the economy, and living in a healthier, more engaged, society.

²² State Education Department: Primer (2020)

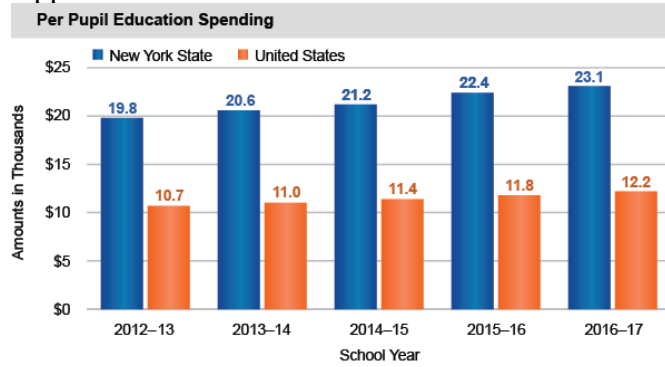
²³ Friedfel (2016).

²⁴ Presume (2021).

Conclusion

NYS's recent budget proposal to fully fund education is a huge win for education advocates. However, regularly conducting cost-study analysis will better allow the state to fund the changing needs of its youth in education. In addition, updating the local contribution share prong of Foundation Aid and ending the hold-harmless provision in New York, will ensure districts who have the ability to pay do indeed pay their share and give the state more flexibility for how to spend its education budget.

Appendix A



<https://www.osc.state.ny.us/reports/finance/2019-fcr/elementary-and-secondary-education>

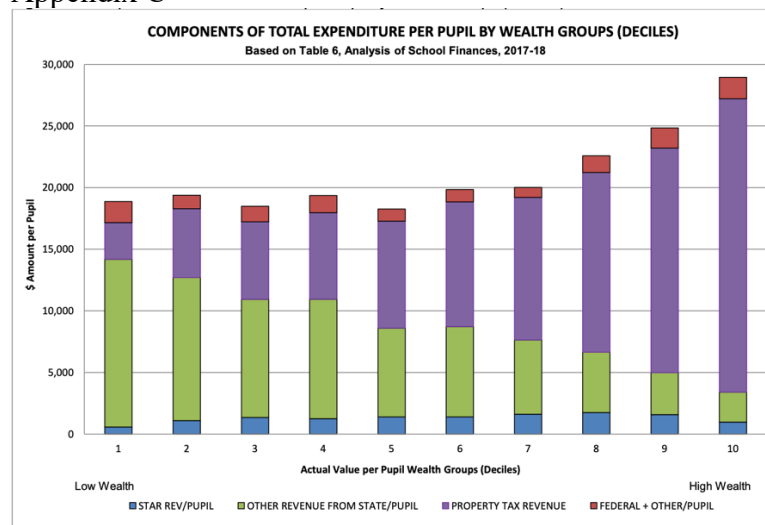
Appendix B

School Enrollment by Sector, New York State and New York City, 2001-19

School Year	District Schools: NYC	District Schools: Outside NYC	Charter Schools: NYC	Charter Schools: Outside NYC	Private Schools: NYC	Private Schools: Outside NYC	State Total: All Sectors
2000-01	1,066,516	1,792,614	1,821	2,528	291,723	235,398	3,390,600
2003-04	1,044,472	1,799,168	5,849	8,770	284,894	224,925	3,368,078
2006-07	999,150	1,767,825	15,639	11,512	276,710	207,537	3,278,373
2009-10	991,312	1,710,688	32,048	14,474	268,011	197,411	3,213,944
2012-13	985,388	1,641,891	58,493	19,463	267,938	193,877	3,167,050
2015-16	980,197	1,592,863	94,334	23,285	265,997	193,295	3,149,971
2018-19	948,047	1,558,235	118,997	28,460	256,678	185,916	3,096,333
Change 2001-2019	(118,469)	(234,379)	117,176	25,932	(35,045)	(49,482)	(294,267)
Percent Change	-11.1%	-13.1%	6434.7%	1025.8%	-12.0%	-21.0%	-8.7%

<https://media4.manhattan-institute.org/sites/default/files/statistical-profile-nyc-educational-sector-RD2.pdf>

Appendix C



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Domanico is a senior Fellow and director of education policy at the Manhattan Institute- a think tank to develop ideas of policy focused around free market ideals. Domanico has a MPP from Berkeley, has been a professor at Brooklyn College and Baruch College. Recently, he is working as the director of research for the NYC Independent Budget Office.

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This article was big part of my topic and deep dive into Foundation Aid. Michael Rebell is Harvard Law graduate and now professor of law at Columbia University. He is the Executive Director of the Center for Education Equity.

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