



A PROJECT OF



February 15, 2012

By Fax and Regular Mail

To: The Honorable Andrew Cuomo, Governor of New York,
The Honorable Dean Skelos, Majority Leader, New York State Senate,
The Honorable Sheldon Silver, Speaker, New York State Assembly
The Honorable John Sampson, Minority Leader, New York State Senate,
The Honorable Brian Kolb, Minority Leader, New York State Assembly

Re: Executive FY13 School Funding Budget Proposal

On behalf of New York's schoolchildren, the Campaign for Fiscal Equity ("CFE"), an initiative of Education Law Center ("ELC"), writes to bring your immediate attention to serious concerns regarding the proposed Executive Budget for fiscal year 2013 (FY13). As we explain below, the Executive Budget proposal appears to conflict with the New York Court of Appeals rulings in the landmark Campaign for Fiscal Equity litigation requiring the State to enact "[r]eforms to the current system of financing school funding" to ensure all students "the resources necessary for providing the opportunity for a sound basic education." See Campaign for Fiscal Equity v. State, 100 N.Y.2d 893, 930 (2003) ("CFE II").

As a preliminary matter, ELC has recently been authorized by the Board of Directors of CFE to undertake 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 Abbott v. Burke case.

In the CFE rulings, the Court of Appeals found the then-current state education finance system to be unconstitutional, noting that "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." CFE II, at 930. The Court required that the State increase funding to New York City schools to provide the opportunity for a sound basic education. CFE v. State, 8 N.Y.3d 14, 29 (2006) ("CFE III"). The Court also made clear that the State could enact a new funding system that not only provides a constitutionally sufficient level of

funding for students in New York City schools, but also for students in all public schools throughout the state. CFE II, at 928.

In response to these directives, the Legislature in 2007 enacted a new, statewide funding formula -- the Foundation Aid program -- explicitly designed to deliver, over time, the level of funding necessary to meet the State's constitutional obligations under CFE for all New York students. Through the Foundation Aid program, the State committed to provide a state share of \$5.5 billion in additional funds to school children in districts statewide, to be phased-in over a four year period.

In 2007 and 2008, the Legislature provided the first two installments required under the Foundation Aid program, totaling \$2.3 billion. In 2009, the Governor and the Legislature enacted a one-year freeze in Foundation Aid, followed by aid cuts of \$2.7 billion in 2010 and 2011. Thus, the backdrop for consideration of the FY13 Budget is a substantial statewide deficit in the Legislature's 2007 commitment to provide increased state funding through the Foundation Aid program to satisfy the State's constitutional obligations, as established in the CFE rulings.

For the first time since 2008, the Executive Budget proposes an increase in state school aid totaling \$805 million to be allocated as follows: \$265 million to reimburse expenses such as transportation and BOCES aids; \$290 million in "general support;" and \$250 million in "competitive grants" to be awarded to select districts. Thus, only \$290 million or 36% of the \$805 million proposed increase can be considered as being used towards addressing the State's substantial unmet obligations under the Foundation Aid program. Further, the \$290 million in general support will be distributed in manner that prioritizes high need districts and, therefore, is consistent with the Foundation Aid program. If the Legislature shifts the proposed competitive grants to this distribution formula, it would nearly double the increase in operating support for high need districts across the state.

In contrast to the Executive Budget proposal, the Board of Regents has proposed to "restart" the CFE-driven Foundation Aid program and has also included the allocation of \$53 million to pre-kindergarten programs. The Regents' approach represents an important initial step towards placing the State once again on a path towards constitutional compliance.

It is important to note that the constitutional underpinnings of the Foundation Aid program have been underscored in Hussein v. State, the pending school funding challenge brought by parents and students in the Small Cities school districts. In that case, the Attorney General, representing the State, wrote to the court as follows:

In response to this Court's decisions in CFE, the State enacted state-wide reforms in its education funding scheme, substantially increasing the resources available to school districts to provide an opportunity for all students in New York to receive a sound basic education. Chapter 57 of the Laws of 2007, now codified in Education Law § 3602, overhauled the

State's methodology for calculating and providing state aid to public school districts, consolidating 30 pre-existing programs into new Foundation Aid. Foundation Aid for each district is now determined according to a formula developed by the Board of Regents which, with minor variations, tracks the formula that this Court found rational in CFE III.

It is plainly evident that the Executive proposed FY13 Budget fails to "substantially increas[e] the resources available to school districts to provide an opportunity for all students in New York to receive a sound basic education." It is imperative, therefore, that the Legislature take prompt action to bring the FY13 budget into compliance with the State's constitutional obligation, as established in the CFE rulings, by fully prioritizing Foundation Aid.

Please contact me if you need additional information or wish to discuss further our concerns about the Executive Budget's proposed changes in state school funding. I can be reached at 973-624-1815, ext. 16 and dsciarra@edlawcenter.org.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "David Sciarra".

David Sciarra
Executive Director

A handwritten signature in blue ink, appearing to read "Molly A. Hunter".

Molly A. Hunter, Esq.
Acting Director, CFE Initiative

cc: The Honorable Eric Schneiderman, Attorney General, State of New York
Mylan Denerstein, Counsel to the Governor
All Members of the New York State Legislature