



Teachers College, Columbia University

ROCKEFELLER INSTITUTE PUBLIC HEARING ON FOUNDATION AID
JULY 16, 2024

REMARKS BY MICHAEL A. REBELL,
Executive Director, Center for Educational Equity,
Teachers College, Columbia University

I. Background

My name is Michael Rebell. I am a civil rights attorney and the executive director of the Center for Educational Equity at Teachers College. As many of you know, I was the attorney for the plaintiffs in *CFE v. State of New York*, a case that held that all students in the State of New York have a right under the state constitution to the opportunity for a sound basic education. The Court of Appeals, New York's highest court, also held in the *CFE* case that the state must ensure sufficient funding to guarantee all students that opportunity.

II. The Rockefeller Institute's Study Does Not Meet the Requirements of the *CFE* Decision and Education Article of the State Constitution.

The Rockefeller Institute has agreed to undertake a study of potential modifications to the Foundation Aid Formula for the next budget year, and I appreciate their inviting me to speak about that formula at today's hearing. What I want to emphasize today, however, is although the current state aid system certainly does need improvement, mere "modifications" are inadequate to rectify the problems with the current formula and to meet the requirements of the state constitution -- and the needs of our children. The present moment requires going beyond what the Rockefeller Institute will be doing; it calls for the development of a brand new constitutional school funding formula. Here is why:

A. The State's Current Approach to School Funding Is Unconstitutional

The Court of Appeals in *CFE v. State of New York* held that the State must determine the "actual cost of providing a sound basic education" and to establish a fair, need-based funding system that would ensure that "every school ... would have the resources necessary for providing the opportunity for [such an] education."

The foundation aid formula the state adopted in 2007 did that, but after the 2008 recession, the state unconscionably delayed providing the schools the full amounts that were required by the formula. The amount of state aid owed to New York State's school children was actually not fully paid out until last year (2023-24). It was Governor Hochul who finally brought the state into compliance with its 2007 school funding commitment. That was an important accomplishment.

After doing that, however, the governor took a big step backwards that essentially returned the state to the unconstitutional approach to school funding that the Court of Appeals had explicitly outlawed in its *CFE* decision.

The old foundation aid formula, enacted in 2007, is now 17 years old. Different student demographics, education needs, new technologies, education policy changes, and post-pandemic learning loss have made that formula dangerously outdated. To comply with *CFE* decision, last year the governor should have proposed a process for analyzing these current student needs and developing a new foundation aid formula. She did not do that. Instead, she proposed tweaking the old formula. For this year's budget, she and other political leaders reverted to the old back-room deal to determine the education budget—with no analysis of actual student need and no transparency for the public. The resulting budget did not even provide a sufficient increase to cover the full inflation in costs faced by school districts over the past year.

This kind of back room political manipulation that ignores actual student needs is exactly what the Court of Appeals held to be blatantly unconstitutional in the *CFE* decision.

B. The Constitution Requires the Development of an Entirely New Formula, Fully Responsive to Current Needs

At this point, “foundation aid” is not really a formula: it is a pastiche of an outdated methodology that has been tweaked, distorted, and compromised in a manner that in no way provides the “actual cost of providing a sound basic education” for all schools in the state. So, after the 2007 foundation aid formula was on schedule to be fully paid out, my organization, the Center for Educational Equity, called for an Independent Commission to develop a constitutional new formula. The governor and the legislature rejected that approach. The State Education Department (SED) proposed a reasonable plan for developing a new formula, which we supported, as did most of the education community and both houses of the legislature—but the governor essentially vetoed the funding for that approach.

Instead, the governor convinced the legislature to authorize the Rockefeller Institute to undertake a study of modifications to the existing “formula.”

The Rockefeller Institute’s mission is unconstitutionally limited in its scope. In addition, some of the specific language in the legislation that authorized the Institute’s study is unconstitutional on its face. For example, the law establishing this study says that “The foundation aid formula, as modified by the recommendations of the study, shall ‘be *fiscally sustainable* for the state, local taxpayers, and school districts’” (emphasis added). In fact, the New York Constitution and the *CFE* decision require the State to provide an opportunity for a sound basic education to all students and to ensure sufficient funding to fairly do that. The constitutional priority is meeting student needs for a sound basic education — not saving the state or school districts difficult decisions about education costs in the name of “fiscal sustainability.” Student needs and their educational rights must come first.

III. The Center for Educational Equity at Teachers College, Columbia University, Will Institute a Constitutionally Compliant School Funding Project

Because the constitution requires development of a new formula and the state has not begun to comply with this urgent mandate, the Center for Educational Equity at Teachers College will be engaging the American Institutes for Research (AIR), to undertake an independent study to begin the process of developing a new formula. AIR has extensive national experience in developing adequate and equitable state aid formulas. They will conduct initial technical studies needed to gather and analyze a broad range of data and undertake a preliminary cost analysis for a new formula.

This research will constitute Phase I of our independent effort toward the development of the new formula. In Phase II, we will seek substantial input from educators, fiscal experts, parents, students, and the interested public through professional judgement panels, public engagement meetings, and other mechanisms. We expect Phase I of the project to be completed by the end of this year, but Phase II cannot be completed until the end of next year.

The work we undertake with AIR in Phase I will provide data and analysis that will allow our Center, in consultation with education stakeholder groups, parents, students, and teachers, to develop positions and proposals on key issues relating to improving the state aid system that will be adopted next spring and put into effect for 2025-2026--hopefully pending the adoption of a constitutionally compliant new formula for 2026-2027.

We expect to be able to add important data to conversations about proposals the Rockefeller Institute will produce for 2025-2026, on issues like:

1. Accurately calculating poverty counts and regional cost adjustments
2. Fairly phasing out hold harmless provisions
3. Providing additional weightings for migrant and homeless students
4. Eliminating unnecessary state mandates
5. Fairly determining local shares by eliminating the current unconstitutional property tax cap and the unconstitutional floor and ceiling in the Income Wealth Index (IWI) calculation
6. Eliminating the unworkable "successful schools" methodology that is embedded in the current "formula."

As part of the budget discussions next winter and spring, we will continue to urge the governor and the legislature to initiate a process to complete the development of a constitutionally compliant new foundation aid formula for 2026-2027. They can do this by establishing an independent commission, providing SED sufficient appropriations to complete the task, establishing a legislative process, or otherwise. When this process begins, we will be pleased to collaborate with those undertaking an official foundation aid analysis, and share the independent studies and analyses that AIR will have completed in Phase I, so that the Phase II process can be completed promptly and effectively.