



A PROJECT OF



January 22, 2013

*By Fax and Regular Mail*

Dr. John B. King, Jr.  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue  
Albany, New York 12234

**Re: Withholding State School Aid from New York City**

Dear Commissioner King:

We write on behalf of New York City school children concerning the New York State Education Department's ("State") implementation of 2012 Sess. Law News of N.Y. Ch. 57 (A. 9057-D) (McKINNEY'S) Part A §1. Pursuant to this statute, the State has notified the New York City Department of Education ("City") that it will withhold a \$240 million increase in foundation aid for 2012-13 as a result of the City's failure to adopt a new protocol for teacher evaluations by January 17, 2012. As explained below, the State must also take affirmative steps to ensure the City, in adjusting its budget in response to the withholding of state aid, does not reduce instruction, programs, staff and other services essential to the delivery of a sound basic education to the City's school children under the Education Clause of the New York Constitution.

The withholding of 2012-13 foundation aid occurs against the stark backdrop of mounting evidence documenting the lack of critical staff, programs, staff and other services in the City's schools. The vast majority of schools report increased class size, with the number of classes of thirty students or more having tripled over the last three years. Moreover, class sizes in the early grades are the largest in fourteen years. Fifty-six percent of schools have reduced academic intervention services, and a fifth of schools report reducing programs for English Language Learners. Schools have lost art, music and core science classes, and lack sufficient teachers in core subject areas such as: ELA, math, science and social studies. Too many City schools lack adequate access to library-media specialists, internet access, and basic classroom supplies.

These and other deficiencies in the City's schools represent the core resources determined in the CFE rulings to be essential to enable New York school children to achieve a meaningful high school education, the benchmark for a constitutionally sound basic education.

Moreover, the State, since 2009, has failed to provide the City's school children the level of aid prescribed by the 2007 foundation formula enacted by the Legislature to address the constitutional mandates established in the Court of Appeals ruling in Campaign for Fiscal Equity v. New York, 100 N.Y.2d 893 (2003). See also 2007 Sess. Law News of N.Y. Ch. 57 (S. 2107C) (McKINNEY'S)(enacting 2007 foundation aid formula). Specifically, the State imposed a foundation aid freeze in 2009 and then subsequently reduced state aid. As a result of these actions, the City's foundation aid is at least \$2.5 billion below the level required by the 2007 foundation formula.

The State's decision to withhold an additional \$240 million halfway through the 2012-13 school year will, therefore, reduce foundation aid further below the levels legislatively determined to be needed to provide a constitutional education to City school children.

In CFE, the Court of Appeals made clear that the State not only has the constitutional responsibility to provide sufficient funding to deliver a sound basic education to City school children. The Court of Appeals also emphasized that the State has an affirmative responsibility to ensure the City, as an agent of the State, properly manages and utilizes its funds to support the staff, programs and services deemed essential for a sound basic education in all City schools and to enable all school children to achieve a meaningful high school education. C.F.E. v. State, 100 N.Y.2d 893,922(2003).

Accordingly, we request that the State immediately direct the City to prepare and submit a detailed plan for the mid-year reductions in budgetary expenditures necessitated by the withholding of foundation aid under 2012 Sess. Law News of N.Y. Ch. 57 (A. 9057-D) (McKINNEY'S) Part A §1, subject to State review and approval prior to implementing any expenditure reductions. Further, the State's directive should include appropriate guidance to ensure the City does not reduce instruction, programs, staff and other services essential to provide a sound basic education to children attending the City's schools, but instead reduces administration, central office, consultant services, and other non-essential expenditures.

The City's school children are already experiencing serious deprivation of those resources determined essential for a sound basic education and a meaningful high school education under the New York constitution. These children must not experience even further disruption of their education, midway through the current school year. It is imperative, therefore, that the State, as the ultimate guarantor of the education rights of City school children, take immediate and necessary steps to ensure the City acts within established constitutional parameters when implementing any mid-year reductions to its 2012-13 budget.

Thank you for your prompt attention to this matter. Please do not hesitate to contact us if we can be of assistance in addressing the urgent issues set forth above.

Sincerely,

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cc: Hon. Michael R. Bloomberg  
Chancellor Dennis Walcott  
Hon. Robert Jackson  
Hon. Christine Quinn