POLICY REPORT

A Sustainability Agenda for New York's Public Schools

JANUARY 2018

New York's state constitution promises "…a system of free common schools, wherein all the children of this state may be educated." Due in part to actions being taken by the federal government, the state's fiscal outlook now is exceptionally uncertain. More than ever, New York's public schools need action on an agenda to promote a more financially sustainable future and to enable them to fulfill the promise of our constitution.

A sustainability agenda should comprise:

1. ***Foundation Aid:*** Update and phase-in the Foundation Aid formula.
2. ***Property Tax Cap:*** Adjust the cap to give school districts more predictability in this major revenue source.
3. ***Maximizing Resources:*** Change laws and regulations to help schools reduce or control costs and maximize the benefit for students from existing resources.
4. ***Reserves:*** Give schools access to reserves comparable to those already available to municipalities.

Doing less on any of the items would require doing more on others. For example, failing to act on changes to the tax cap or state-driven costs would require doing more on state aid. Part of THE COUNCIL'S message is *change the rules or fund the rules*.

Background

Each summer for the past seven years, THE COUNCIL has surveyed superintendents on financial concerns. Our findings can be summed up simply:

- Recent relatively strong increases in state aid have helped some districts begin to restore and even improve services for students.
- But the gains are fragile, by no means universal, and pessimism is widespread among district leaders about future financial prospects for the schools they serve.
- New York State needs an agenda to assure a financially sustainable future for its public schools.

Our 2017 survey requires adding one more highlight: superintendents and other educators are increasingly worried for the children coming to their schools.

THE COUNCIL'S 2015 survey marked a turning point. That year, for the first time, more superintendents told us their district's financial condition had improved rather than worsened. That trend continued in 2016 and again in this year's survey. But the gains are tenuous, in part because the damage to many schools in the aftermath of the Great Recession was so deep.

A closer look at our results reveals that in none of the seven years has more than a third of superintendents ever reported that their district's financial condition had improved over the prior

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year. For example, in this year's survey, 24 percent reported improvement, 62 percent reported worsening, and 13 percent reported no change.

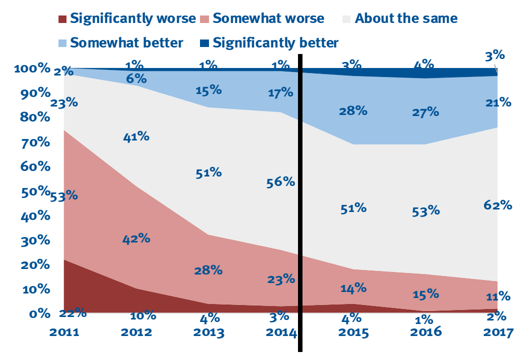
So while many districts have begun restoring or improving services for their students, many others suffered great harm around the turn of the decade and have seen little recovery in the years since.

We also asked superintendents how optimistic or pessimistic they are about their district's ability to fund services adequate to the needs of their students, looking forward three years. Only 29 percent professed optimism. Seven percent answered that their schools are unable to support adequate services now, the equivalent of 50 or so districts in a state of educational insolvency. These districts are predominantly small, rural and poor.

Again, the survey was conducted in late July through mid-August. With the steady flow of worrisome state budget news in ensuing months, a survey done more recently might yield even greater pessimism.

Asked what factors cause concern in considering the financial prospects of their schools, five items stand out among all the superintendents' responses – inadequate state aid, the tax cap, increasing student needs, expected increases in fixed or hard to control costs such as pensions and health insurance, and costs arising from state or federal mandates, each chosen by at least 70 percent of superintendents.

Compared to one year ago, how has the financial condition of your district changed, in terms of its ability to fund services meeting expectations of parents in the community?

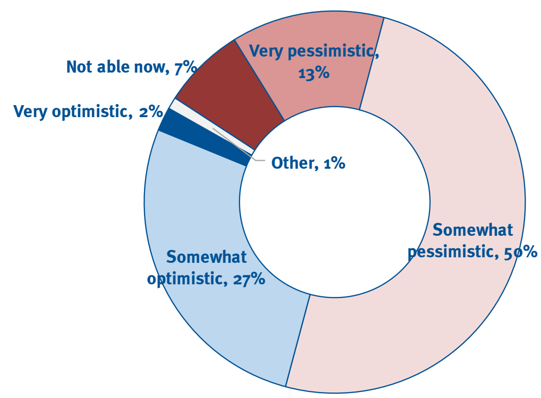


2015 was the 1st year that more superintendents responded "better" than "worse."

Continued this year.

But no more than 31% have ever reported improvement in any year

Thinking ahead 3 years or so, how optimistic or pessimistic are you about whether your district will be able to fund programs and services adequate to the needs of your students?



Only 29% of superintendents are optimistic about the financial outlook for their schools

7% of superintendents say their districts cannot offer adequate services now
≈ About 50 districts
– 68% rural
– 80% serve <2,500 students

Which issues cause concern in thinking about the financial outlook for your district?

	A concern	Greatest concern
Inadequate state aid	90%	50%
The tax cap	81%	16%
Increasing needs of students	83%	15%
Expected increases in fixed or hard to control costs (e.g., pensions, health insurance)	84%	11%
Declining student enrollment	48%	5%
Other (Please specify)	10%	2%
Additional costs arising from state or federal	70%	1%
Increasing student enrollment	7%	0%
Costs due to students enrolling in charter schools	10%	0%
Poor or uncertain community support for schools	7%	0%

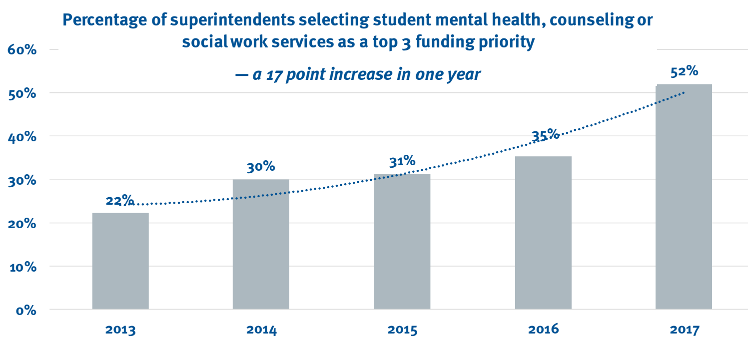
A Capital Region Superintendent: *We are still recovering from the 2008 economic downturn where staffing and programmatic cuts were extremely deep. We are trying to add back a little each year, but still well below where we were in 2008. This has created huge inequities in available student opportunities compared with our wealthier suburban neighbors. While we are getting by financially, we are not back to pre-2008 staffing levels, even ten years later with enrollment levels remaining roughly the same. This opportunity gap is a loss for our students and their futures.*

Asked to name the one factor evoking the greatest worry, 50 percent of superintendents cited the prospect of inadequate state aid, followed by the tax cap, chosen by 16 percent. The share citing "increasing student needs" as their greatest concern grew by half over the past year, from 10 percent to 15 percent.

More than any purely financial issue, however, what is most striking in all the findings from THE COUNCIL'S 2017 survey is evidence of mounting worry among superintendents over the children their schools serve. Those concerns are echoed by colleagues working with teachers and principals.

For example: in a single year, the share of superintendents indicating that improving student mental health services is a priority for their schools climbed by 17 points, from 35 percent in 2016 to 52 percent this year. Also, "capacity to help students with non-academic needs, including health and mental health" was cited by 45 percent of superintendents as a significant problem for their schools – more than any other issue.

Concern over student needs is growing – especially mental health needs



A Mohawk Valley Superintendent: *While the funding and educational models of our schools have largely stayed the same, the needs of students and communities have continued to increase. We cannot simply maintain the status quo due to the increasing mental health, special education, and ELL [English Language Learner] needs while the fiscal conditions and employment prospects of our communities continue to worsen.*

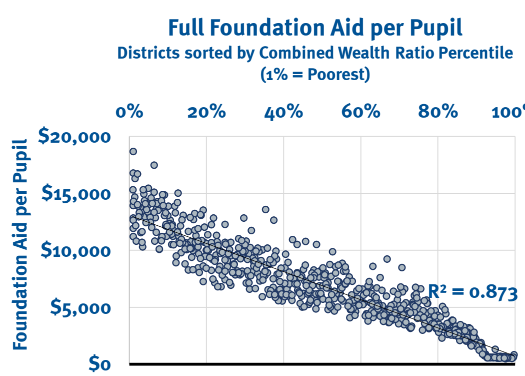
Phase-in and Update Foundation Aid

A financial sustainability agenda for our schools begins with a commitment to phase-in and update the Foundation Aid formula.

Enacted in 2007 as part of the effort to resolve the Campaign for Fiscal Equity's successful challenge to the constitutionality of the state's education finance system, the formula was a significant accomplishment in public policy:

- It generally drove the greatest aid per pupil to the neediest districts – and still does.
- It promised more predictability in aid for all districts going forward.
- It used elements with a basis in facts – a per pupil amount tied to the cost of providing general education in successful schools, for example. That can make state funding decisions more transparent and decision-makers more accountable.

Foundation Aid generally directs the greatest aid per pupil to the poorest districts



The Combined Wealth Ratio measures district property wealth and resident income per pupil (each weighted at 50%) compared to state averages

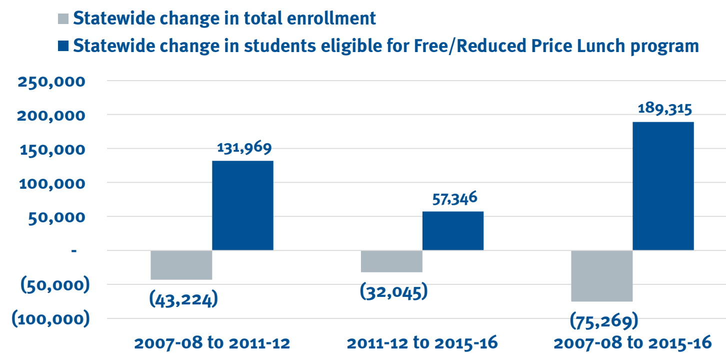
SOURCE: Council analysis of NYSED School Aid data

The state is now $4.2 billion behind in phasing in the 2007 formula. Even leaving aside arguments over what is required of the state from the CFE rulings, however, something resembling the Foundation Aid formula is desirable in its own right as a cornerstone in building a school finance system that supports more effective multi-year planning. Schools in other states have this, and ours once did.

Updating the formula is essential. For too many districts, it is not working now, including 48 percent of average need districts and 44 percent of high need rural districts on save-harmless – receiving more aid in 2017-18 than the fully phased-in formula would actually generate.

The formula was neglected for several years – frozen for three years (2009-10 through 2011-12) and minimally increased in a few subsequent years. Even as enrollment has declined in many districts, the needs of the students they serve have surged. Had the state and nation not endured fiscal trauma during the Great Recession and its aftermath, the Foundation Aid formula would have been adjusted to reflect growing student needs. Some districts on save-harmless now would not be.

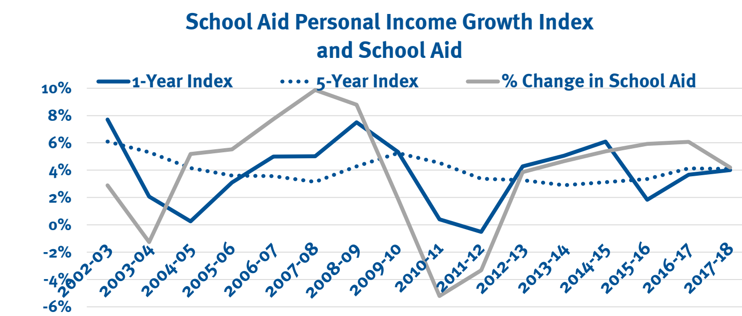
Student poverty has grown faster than total enrollment has declined



SOURCE: Kids' Well-Being Indicator Clearinghouse, NYS Council on Children and Families, Web. 28 September 2017

Since taking office, Governor Andrew Cuomo has sought to cap growth in School Aid and Medicaid, the two largest expenditures in the budget. Medicaid growth is tied to a 10-year index of medical costs, but the School Aid cap is based on one-year change in statewide personal income. THE COUNCIL opposes a cap on School Aid as an obstacle to assuring the state fulfills its promise of a sound basic education for all students. But if there is to be a cap, it should use a longer timeframe, like that for Medicaid, smoothing peaks and valleys in aid, enabling better multi-year planning by school district leaders.

The Council opposes capping School Aid. But a cap based on 5-year average change in statewide personal income would support planning better than the current 1-year figure



SOURCE: Compiled by the Council from U.S. Bureau of Economic Analysis data and N.Y.S. Division of the Budget Description of New York State School Aid Programs (annual). Certain federal aids excluded from School Aid figures.

The persistence of regional share targets in annual School Aid negotiations is one further obstacle to a fully functional state aid system. Here is a simple test of fairness: Are districts with similar characteristics treated similarly in the distribution of state aid? The fixation on shares means that similar districts can receive vastly different aid allocations, if they are in different regions.

The machinations required to hit share targets each year also preclude a fully operating formula that continues from one year to the next, as is common in other states. That imperative also impedes addressing other funding priorities, such as supporting career and technical education – any funding to be added for programmatic purposes must fit within the total sum available and be allocated to help satisfy percentage aid targets set for each region.

As called for by the New York State Educational Conference Board, the state should:

- Commit to a firm timeline to fully phase-in the Foundation Aid formula; and
- Commence studies to update or restructure elements of the formula, including the weightings used to account for pupil needs, the index used to account for regional cost differences, and the per pupil amount needed to prepare students for success.

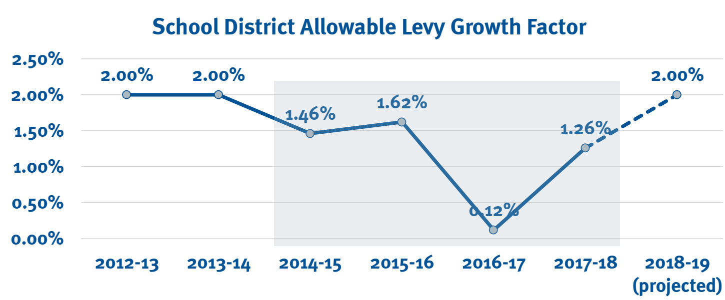
Adjust the Tax Cap

When enactment of a property tax cap was being debated in New York, Massachusetts was cited as a model to emulate for the benefits a cap could yield. But New York's tax cap is far more restrictive than our neighbor's version.

In Massachusetts, communities may increase their tax levy by up to 2.5 percent without obtaining – or even seeking voter approval – and over-riding the cap may be done with support from a simple majority of voters. In our state, the starting cap is the "allowable levy growth factor" – the lesser of 2 percent or the average monthly change in the Consumer Price Index. Then the cap may be adjusted either up or down for an individual district as various exclusions from the cap are applied.

Over-riding New York's cap requires approval by 60 percent of school voters; approving a budget within the cap requires a simple majority. Either way, if voter approval cannot be obtained, districts are not permitted to increase their tax levy over the prior year at all – in effect, a zero percent tax cap. Thus, over-riding the cap in New York is both more difficult in New York than in Massachusetts, and riskier too.

A 2 Percent Tax Cap?
The base for the cap was below 2 percent four years in a row



SOURCE: Office of the Comptroller data and estimate by the Council

Commonly advertised as a "2 percent tax cap," the starting point of the cap – the "allowable levy growth factor" – has been less than 2 percent each of the last four years. For the 2016 -17 fiscal year, that factor was 0.12 percent. It is doubtful anyone contemplated the possibility of a near zero tax cap.

State aid has become unstable and unpredictable; the complex and volatile methodology for computing the property tax cap has made that revenue source harder to plan on as well. It has also raised the stakes over state aid distribution. When the tax cap is very low, affluent districts for whom state aid had been nearly an afterthought in budgeting now need large percentage increases in state support to make up the local revenue they can no longer raise. These tensions could be amplified by the federal tax legislation – the hardest direct hit from its limitation state and local tax deductions will fall upon those same communities.

To support more effective multi-year financial planning by schools, state government should:

- Make the base for the school property tax cap a fixed 2 percent, rather than the lesser of 2 percent or the change in the Consumer Price Index over the prior calendar year (this change would not have an immediate impact, major economic forecasts project inflation will be 2 percent or greater annually for the next several years);

- Enact a more workable "carryover" provision, giving districts an incentive to hold tax increases below 2 percent in years when they can and reserve the savings for use in tougher years;
- Provide an exclusion for pension costs when they increase by more than 2 percent, rather than the current two percentage points
- Eliminate negative tax caps;
- Exclude from their tax cap calculation expenses for shared Board of Cooperative Educational Services (BOCES) capital costs, just as district capital costs are excluded; and
- Include properties covered by payments in lieu of taxes (PILOTs) in the tax base growth factor, just as properties covered by taxes are included, so that districts may receive revenue to fund demands for services that tax base additions create.

Bills to enact the final two items above were unanimously approved by both the Assembly and Senate but vetoed by the Governor. If a change to the tax cap will not be made, some other means of financing BOCES capital projects will need to be found.

Help Schools with Costs

Repeatedly, we are told that New York spends more per pupil on its public schools than any other state. Why do New York schools spend as they do? There are multiple reasons.

We are high cost in many things, not just education. We are part of a high cost region, along with our northeastern neighbors. We have some of the absolute best public schools in the nation and the opportunities they provide their students are expensive. We more fully fund our pension obligations than most other states.

Another factor is that New York schools operate under rules not found in other states, like extensive special education requirements and the Triborough law which mandates that salary "step increases" continue even under an expired contract (other states do have laws requiring that benefits continue).

Debates over mandate relief are nearly always contentious and usually futile. There is an inescapable reality: any action which saves money for taxpayers must cost money for someone else. Potential benefits are spread over millions of taxpayers, while negative consequences are concentrated. With that dynamic, those who might be hurt will always be more vocal advocates than those who are helped.

But to criticize school spending while taking no action on mandates that drive those costs is like tying a runner's shoes together, then complaining he or she doesn't run fast enough. If the state is not going change rules that drive up costs while constraining the ability raise local revenues to meet those costs, then it must fund the rules – going beyond phasing-in and updating the Foundation Aid formula.

Prospects for meaningful help to schools in constraining costs and maximizing resources are poor, at least in the near-term. Here are some worthwhile steps to deliver smaller scale assistance:

- Observe a voluntary moratorium on unfunded mandates, both statutory and regulatory. A law to prohibit unfunded mandates can be undone by a new law. But all that is needed to halt unfunded mandates is to simply stop approving them.
- Provide that any new mandate imposing new costs cannot take effect until the next local fiscal year succeeding its adoption.
- Eliminate the requirement for an internal audit capacity for all districts.

- Make regional collective bargaining agreements practical by streamlining requirements.
- Modify Part 154 (English Language Learner) regulations to address certification and staffing concerns.
- Authorize regional high schools.
- Authorize transportation "piggy-backing," allowing a private bus contract to serve multiple districts.
- Eliminate the requirement to include a school psychologist on a Committee on Special Education (CSE), once an initial evaluation is complete.
- Provide that a parent challenging a decision of the CSE shall have the burden of proof and limit the statute of limitations.
- Shift liability for tax certiorari claims from school districts to the municipality responsible for assessment.
- Increase one-time exemption from voter approval for small capital projects from $100,000 to $250,000.
- Use a calendar year Consumer Price Index calculation for transportation contract renewals.
- Allow schools to conduct instructional days during the last two weeks in August.

To set the stage for greater long-term impact, state government should:

- Discourage imposition of new unfunded mandates, by calling on the State Comptroller to compile and publish an annual report card on mandates enacted and repealed.
- Require the Public Employment Relations Board to produce an annual report on local collective bargaining outcomes using standardized measures to allow the public to compare the costs of the settlements. Comparable data on administrative compensation has been published since the 1990s.
- Create a statewide joint labor-management committee to explore strategies to achieve savings in health insurance costs for both school districts and their employees and retirees. Personnel costs typically comprise about three-quarters of total school spending. Reducing health care costs could be one way to save money in personnel without taking from employees and retirees.
- Commission a respected independent entity to conduct a study of how New York's special education policies and practices compare with those of other states. New York devotes a very high share of its high overall school spending to special education. It cannot be that we are the only state striving to do right for children with disabilities. Some other states do achieve better outcomes.

Give Schools Access to Reserves Available to Municipalities

The final component in a financial sustainability agenda is to give school districts access to reserves like those already available to the state's municipalities.

We read the State Comptroller's audits concluding some districts have more money in reserve than law allows. The Comptroller is doing his job, conducting audits in accordance with requirements prescribed by law and accounting standards. But not all the requirements make sense and the Comptroller's Office has supported legislative proposals to allow school districts more ways to put funds into reserve.

School districts are limited to an unrestricted fund balance equal to no more than 4 percent of budgeted appropriations. Municipalities have no such limit and the national Government Finance Officers Association recommends a 10 percent unrestricted fund balance for school districts.

Municipalities may set aside funds for pension obligations on behalf of all their employees. Schools may do so only for the roughly 20 percent who are covered by the Employees Retirement System (ERS), but not for the teachers and certified administrators in the Teachers Retirement System. Yet schools are subject to more disclosure requirements and a tougher tax cap.

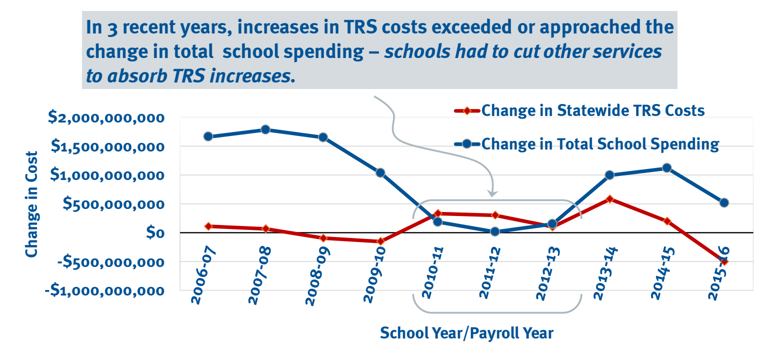
Twice in recent years, increases in district costs for TRS contributions exceeded their overall increase in spending, meaning that districts had to cut all other costs, on balance, in order to absorb rising pension costs. In October, TRS announced that the employer contribution rate against 2018-19 salaries will rise after three years of declines, going from 9.80 percent to between 10.50 and 11.00 percent.

The tax cap has changed how district leaders think about reserves – they are one tool still available to exert some control over the financial future of their schools.

The state should:

- Allow school districts to establish a reserve for future TRS obligations. We endorse the proposal drafted by the Teachers Retirement System which would limit how much districts could put into the reserve each year and how much could be accumulated in total (S.4563—Golden/A.7353A—Buchwald).

A TRS reserve would help schools protect programs and jobs the next time there is a sharp increase in the mandated contribution rate



Employer Contribution Rate	8.60%	8.73%	7.63%	6.19%	8.62%	11.11%	11.84%	16.25%	17.53%	13.26%

SOURCE: Compiled by the Council from Office of the State Comptroller school district financial data and NYS Teachers Retirement Administrative Bulletins. Figures do not include New York City, which has its own teachers retirement system.

A Western New York Rural Superintendent: *We have lost the ability to do any meaningful long-term financial (or programmatic) planning. The tax cap strangles us, we are very dependent upon state aid, and we have to keep within 4% in reserves... These are challenging parameters as mandates, health insurance costs, and TRS payments increase or change annually, but we find a way to do it and then subject our efforts to a public vote.*

A Lower Hudson Valley Superintendent: *The lack of certainty for annual budget development ... is like playing "Wheel of Fortune". We don't know what the tax cap and/or state aid will be entering the budgeting process and whether we will "lose a turn" or hit a high dollar number on the wheel.*

A Southern Tier Superintendent: *Students coming to kindergarten are bringing significant levels of need both academic and social/emotional. The lack of mental health services in counties has put the burden of provision of these services on the schools and we are ill prepared to deliver the level of service children and families need. As a result, students fail to perform and lag academically and soon enough exhibit significant deficits in achievement that make them qualify for special education services which is burgeoning and very expensive. Add to that the difficulty in finding qualified and capable teachers with the right certifications and we are heading for a crisis.*

A Long Island Superintendent: *So much of what residents will experience in taxes and program is now out of our control.*

A Central New York Superintendent: *Holding onto existing programs has become the measuring bar of a budget win. Status quo cannot become the norm. Our students face a world that requires a new generation of learning opportunities that flat funding won't support.*