

 The **Campaign** for **Educational Equity**

TEACHERS COLLEGE COLUMBIA UNIVERSITY

**STUDENTS' CONSTITUTIONAL RIGHT TO A
SOUND BASIC EDUCATION:
NEW YORK STATE'S UNFINISHED AGENDA**

Part 4.

Ensuring Resource Accountability

November 2016

STUDENTS' CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION: NEW YORK STATE'S UNFINISHED AGENDA

- Part 1. A Roadmap to Constitutional Compliance Ten Years after *CFE v. State*
- Part 2. Filling the Regulatory Gaps
- Part 3. Utilizing a Constitutional Cost Methodology
- Part. 4. Ensuring Resource Accountability

ABOUT THE CAMPAIGN FOR EDUCATIONAL EQUITY

The Campaign for Educational Equity is a nonprofit research and policy center at Teachers College, Columbia University that champions the right of all children to meaningful educational opportunity and works to define and secure the full range of resources, supports, and services necessary to provide this opportunity to all children. CEE pursues systems change through a dynamic, interrelated program of research, legal analysis, policy development, coalition building, curriculum development, and advocacy dedicated to developing the evidence, policy models, curricula, leadership, and collaborations necessary to advance this agenda at the federal, state, and local levels.

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**STUDENTS' CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION:
NEW YORK STATE'S UNFINISHED AGENDA**

Part 4. Ensuring Resource Accountability¹

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¹ This is the fourth in a series of reports that are the culmination of two years of research by the Campaign for Educational Equity, a policy and research center at Teachers College, Columbia University, and significant input from the Safeguarding Sound Basic Education Task Force, a statewide group made up of representatives from New York’s leading statewide education associations, parent organizations, school business officials, and advocacy groups (see appendix in the overview report for membership). The series includes an overview entitled, *A Roadmap to Constitutional Compliance Ten Years after CFE v. State*, and three specific proposals: *Filling the Regulatory Gaps*, the revisions to education regulations needed for constitutional compliance; *Utilizing a Constitutional Cost Methodology*, an innovative new method for calculating education costs; and the present report, *Ensuring Resource Accountability*, the mechanisms needed to monitor and enforce the provision of constitutionally required educational resources. The Campaign for Educational Equity is grateful to the Booth Ferris Foundation and the Robert Sterling Clark Foundation for their support of this research. Although this report was prepared with guidance from the Safeguarding Sound Basic Education Task Force, the views and conclusions expressed here do not necessarily reflect those of task force participants or of Teachers College.

EXECUTIVE SUMMARY

In 2003, New York State’s highest court ruled in *Campaign for Fiscal Equity v. State of New York* that the state’s school-funding system violated students’ rights under the education article of the state constitution. It held that New York City’s 1.1 million public school students were being denied sufficient funding to provide them the “opportunity for a sound basic education.”

The court ordered the state to remedy this violation of students’ rights. It directed the state government to take three actions: (1) determine the actual cost of providing a sound basic education; (2) reform the system of school funding and managing schools to ensure that all schools have the resources necessary to provide a constitutionally adequate education; and (3) develop “a new ... system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.”

In other words, according to the court, the constitution obligates the state government to ensure sufficient funding is made available for public education, but the state’s responsibility does not end there. The state must also ensure that funds are properly allocated to all schools and that the essential educational resources necessary to provide the opportunity for a sound basic education—such as qualified teachers, appropriate class sizes, instructional materials, and adequate facilities—are *actually available in each school in accordance with the needs of students*.

While New York State made some policy changes in response to the *CFE* decision, these changes stopped short of fulfilling this requirement that sufficient educational resources be available *in every school*. Because the composition of school populations differs from school to school, the amount of funding and set of resources that are necessary to meet students’ needs in any given school can vary widely. Moreover, as a result of the way public education is financed, school districts’ capacity to provide these resources also differs considerably, depending on district wealth, and students of color and students from families in living in poverty are more likely to be affected by educational resource inadequacies.

Moreover, when the state experienced the tough economic times of the recent recession, it dramatically reduced education aid, affecting the educational opportunities of hundreds of thousands of students. The economic recovery has not reached all classrooms. Today, full access to meaningful educational opportunities continues to elude hundreds of thousands of New York students. These students, mostly children of color and children from families living in poverty, still attend school in overcrowded classrooms with inappropriate facilities; inexperienced

teachers; limited course offerings; insufficient books, supplies, labs, libraries, and technology; and deficient academic, career, and social supports.

New York State is in need of a stronger set of policies to enforce constitutional compliance, guarantee all of its public school students the educational opportunities to which they are legally entitled, and ensure that students' educational rights are sustained even in tough economic or political times. One of the most important missing policy tools is a system of accountability that guarantees the provision of the adequate and appropriate educational resources required by the state constitution.

The federal education law, the Every Student Succeeds Act (ESSA), now requires all states to rethink their education accountability systems with extensive engagement of researchers, education stakeholders, and the public at large. The New York Board of Regents and the New York State Education Department, inspired by growing stakeholder activism, have indicated a new interest in addressing many of the inadequacies of the state's public education system. New York's current ESSA policy development can help the state move toward compliance with the *CFE* decision and its promise of a meaningful educational opportunity for all New York children, as long as it is undertaken with careful attention to the court's rulings. To aid the state in this work, this paper provides background information on the legal context, outlines the broad set of state policy changes that are needed to guarantee students' educational rights,² describes the current national education-accountability context, sketches out the requirements of a constitutional education-accountability system for New York, and provides detailed recommendations for creating accountability for the essential resources of a sound basic education.

Resource accountability is a vital piece of the new education-accountability system that New York State needs to adopt in order to provide educators, policymakers, and the public the information needed to enforce students' educational rights and support continuous improvement within schools and districts. In addition to resource-adequacy indicators, such a system must also include broad student-outcome measures, school-process indicators, and student-engagement measures. This complement of information will help to illuminate relationships between resources and results in the educational system and to create ongoing accountability for constitutional compliance.

The Campaign for Educational Equity at Teachers College developed these recommendations based on our own research and legal analysis. We vetted this work and its conclusions with a statewide task force that includes many of the stakeholders on the front lines

² See part 1 of this series, *A Roadmap to Constitutional Compliance Ten Years after CFE v. State*, for a summary of the full set of policy recommendations developed by the Campaign for Educational Equity to help guide elected officials, the Board of Regents, and the New York State Education Department in moving New York toward providing all children the essential educational opportunities guaranteed by state law.

of New York’s public schools, as well as with academics and other experts; however, the conclusions expressed are our own.

Based on relevant legal requirements, applicable research, and effective practices adopted in other states, we posit that a system of accountability for resource adequacy in New York requires the following:

- (1) specific sound-basic-education resource requirements;
- (2) school-level self-assessment and complaint procedures;
- (3) district- and state-level monitoring of resource adequacy in districts and schools;
- (4) regular collection, analysis, and transparent reporting of data on the availability of these essential resources; and
- (5) improved enforcement mechanisms.

We also believe that education stakeholders and other community members have an essential ongoing role to play in monitoring and creating accountability for resource adequacy.

1. Clear Articulation of the Resource Requirements for Providing a Sound Basic Education

New York State has not yet undertaken the foundational task of determining whether the state’s education statutes and regulations are consistent with the Court of Appeals’ *CFE* rulings. Based on such a review, state education law must clearly detail the basic set of resources that, at a minimum, must be available in each school in order to provide all of their students the opportunity to meet the New York State Learning Standards and to be on track to attain a meaningful high school education that prepares them for capable civic participation and competitive careers.

2. School-Level Self-Assessment of Resource Adequacy, and Public-Complaint Procedures

The school community is best positioned to monitor school-level resource adequacy. Parents, students, teachers, and other staff members should be well informed about resource-adequacy requirements, afforded regular opportunities to participate in ongoing monitoring of the extent to which their school is able to comply with them, and have easy access to necessary relevant data.

This review should be shared with the school community, the district, and the state education department. New York State must also develop public-complaint procedures that allow parents, teachers and other school staff, students, administrators, and community organizations with evidence of resource-adequacy deficiencies to inform the school principal and other officials as necessary that the school is not meeting sound-basic-education resource standards. Procedures should provide complainants with the option of anonymity.

3. District and State Monitoring of School- and District-Level Resource Adequacy

The superintendent should annually conduct an audit that assesses the adequacy of resources at each school (taking into account, among other things, the results of the school’s self-assessment review), as well as of the district’s own resources and capacity to meet schools’ sound-basic-education needs. Findings regarding school- and district-level resource adequacy or resource gaps should routinely and publicly be reported to the school board (or, in New York City, to the Community Education Council (CEC)). The report should include proposed remedies that can be carried out with the district’s available resources and/or an explanation of the resource gaps that must be remedied with additional state aid. The report should be filed with the state and clearly posted on the district’s and state education department’s websites.

The New York State Education Department should establish its own procedures for monitoring resource adequacy in the schools. It should use a differentiated system that prioritizes more frequent and intensive reviews of resource adequacy for schools with weak student outcomes (either for the school as a whole or for any relevant subgroups of students) and a lighter touch for schools where student outcomes are consistently strong. Monitoring should include the examination of school and district resource-adequacy data, equity audits, and onsite inspections by expert teams. The state commissioner of education should report annually to the governor, the legislature, and the Board of Regents on the extent to which all schools in New York State are in compliance with the state constitution and are able to provide all of their students the opportunity for a sound basic education.

4. Regular Collection, Analysis, and Reporting of Data on the Availability of Essential Resources at the School Level

At the district and state levels, there are numerous sources of data that relate to school-level resource adequacy. However, New York has no systemic mechanism for compiling these disparate data sources into information tools that could monitor constitutional compliance and guide state or district decision-making. The state must develop systems for collecting and sharing data aligned with sound-basic-education resource-adequacy standards. To assess adequacy, these should include both district- and school-level data on funding and district- and school-level data about resources, services, and supports, including necessary personnel data.

The Board of Regents and the New York State Education Department are required by state law to submit an annual report on the “educational status of the state’s schools” to the governor and the legislature. The “Chapter 655” report, which used to be an accessible two-volume annual publication with a range of resource data, currently consists of webpages

providing data on "enrollment trends; indicators of student achievement in reading, writing, mathematics science, and vocational courses; graduation, college attendance and employment rates; ... (and) information concerning teacher and administrator preparation, turnover, in-service education and performance."

This report should be a user-friendly, single compilation, in web and/or hard copy form, that is easily accessible. The report should be expanded to include data on resource adequacy that correspond with the resource-adequacy requirements described above.

5. Improved Enforcement Mechanisms

To ensure that all students, and particularly those who have been historically disadvantaged, receive the resources to which they are entitled, improved enforcement mechanisms are needed. The state must make enforcement of appropriate school-level budgeting and spending to ensure resource adequacy in each school the explicit responsibility of school-district officials. It must also specify by statute that enforcement of district-level resource adequacy is among the explicit responsibilities of the state commissioner of education. Where schools lack adequate funding for resource adequacy, the commissioner must determine whether localities are paying their expected local share of foundation funding and have the authority to enforce appropriate local funding requirements. In school districts where localities are paying their share of foundation funding and the school district is unable to meet resource adequacy requirements in every school, the commissioner must petition the legislature for necessary additional funding. If the legislature does not allocate sufficient resources, then citizens will have cause to ask the courts to step in to enforce constitutional compliance.

Ongoing Public Role in Resource Accountability

Even with school, district, and state monitoring, education stakeholders and the public at large will need to assume an ongoing role in assuring resource adequacy. CEE has proposed convening an annual sound-basic-education summit involving stakeholders, advocates, and researchers that , it would establish an important new public-accountability mechanism to monitor progress toward school-funding adequacy and equity, engage city and state officials, and bring media attention and public scrutiny to this issue.

INTRODUCTION

It has been ten years since the New York Court of Appeals, the state's highest court, issued its final ruling in *Campaign for Fiscal Equity (CFE) v. State of New York*. This historic case clearly affirmed the state's obligation to provide all of its students the opportunity for a sound basic education that prepares them for civic participation and competitive employment. Although some progress toward educational equity has been made since that time, full access to meaningful educational opportunities continues to elude hundreds of thousands of New York students, who are primarily children of color and children from families living in poverty. These students still attend school in overcrowded classrooms with inadequate facilities; inexperienced teachers; limited course offerings; insufficient books, supplies, labs, libraries, technology; and deficient academic, social, and emotional supports.

Today, New York needs a stronger and more comprehensive set of policies to move the state swiftly toward constitutional compliance and to safeguard, against future economic and political shifts, students' right to the opportunity for a sound basic education. One of the most important missing policy tools is a system of accountability to guarantee the provision of the adequate and appropriate educational resources required by the state constitution.

Because the composition of school populations differs from school to school, the amount of funding and set of resources that are necessary to meet students' needs in any given school can vary widely. Moreover, as a result of the way that public education is financed, school districts' capacity to provide these resources also differs considerably, depending on district wealth, and students of color and students from families in living in poverty are more likely to be

affected by educational resource inadequacies.³ The *CFE* decision requires the state to ensure that *every school* has adequate resources to meet the needs of its students; therefore, accountability for a sound basic education must entail the assessment, monitoring, and enforcement of school-level resource adequacy

The federal Every Student Succeeds Act (ESSA) now requires all states to rethink and retool their education-accountability systems with extensive engagement of researchers, education stakeholders, and the public at large.⁴ New leadership in the New York Board of Regents and at the New York State Education Department, and growing activism among students, parents, and educators, have sparked renewed interest in addressing many of the current inequities and inadequacies of the state’s public education system. New York’s current ESSA policy development can help the state move toward compliance with the *CFE* decision and its promise of a meaningful educational opportunity for all New York children, as long as it is undertaken with careful attention to the court’s rulings. This report provides analysis and recommendations to help ensure that the state’s ESSA planning aligns with requirements of *CFE* and the education article of the state constitution.

We begin with some additional context for our discussion of resource accountability: we describe the legal context and background of *CFE* and situate the discussion within a broader set of policies we believe New York needs to adopt to guarantee students’ educational rights and comply with the *CFE* decision. We then describe the contemporary education-accountability

³See, e.g., U.S. Department of Education. Office of Civil Rights. (2016). 2013-14 Civil Rights Data Collection (CRDC). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>; Reardon, S., Kalogrides, D., & Shores, K. (2016). *The geography of racial/ethnic test score gaps*. Center for Education Policy Analysis, Stanford University. CEPA Working Paper No. 16-10. Retrieved from <https://cepa.stanford.edu/sites/default/files/wp16-10-v201604.pdf>.

⁴ 20 U.S.C.A §6301 et seq.

context under ESSA, which requires all states to revise their education-accountability systems and provides for the adoption of a much broader set of measures through which to understand, evaluate, and improve schools. Continuing on, we detail our recommendations for a constitutional education-accountability system to guarantee adequate resources in every New York school. Finally, we highlight data-collection and accountability-system precedents from several other states that New York could adapt to satisfy its unique sound-basic-education accountability needs.

As we will argue, resource accountability is a critical piece of the next-generation education-accountability system that New York State needs to adopt in order to provide educators, policymakers, and the public the information needed to enforce students' educational rights *and* support continuous improvement. In addition to resource-adequacy indicators, such a system will need to include student-engagement measures, school-process indicators, and broad student-outcome measures. This complement of information will help to illuminate relationships between resources and results in the educational enterprise and to create accountability for constitutional compliance.

Based on the legal requirements of the *CFE* decision and our research on effective implementation of those requirements, we argue that the necessary components of resource accountability are as follows: (1) articulating specific sound-basic-education resource requirements, (2) school-level self-assessment and public complaint procedures, (3) district- and state-level monitoring of resource adequacy in districts and schools, (4) the regular collection, analysis, and transparent reporting of data on the availability of essential resources; and (5) improved enforcement mechanisms. In addition to the school, district, and state monitoring of the availability of the essential resources for a sound basic education in every school, public

awareness about students’ educational rights and collective public monitoring of progress toward upholding students’ educational rights will be a critical component for achieving and sustaining a sound basic education for all New York students. To be effective in monitoring and enforcing resource adequacy at the school level, accountability must be both distributed (that is, situated throughout the system) and differentiated (that is, responsive to the differing conditions and needs of schools).

LEGAL CONTEXT AND BACKGROUND

In 2003, New York’s highest court held in *CFE v. State of New York* that New York City’s 1.1 million public school students were being denied sufficient funding to provide them the “opportunity for a sound basic education.” It held that this violated students’ rights under the education article of the state constitution. The court defined a sound basic education in terms of the knowledge and skills students need in order to be prepared for productive civic participation and competitive employment, and it determined that these outcomes required that students have the opportunity to complete a “meaningful high school education.”⁵

The court ruled that the state must remedy this violation of students’ rights. Specifically, it ordered the state to (1) determine the actual cost of providing a sound basic education; (2) reform the current funding and management structures to ensure that *all schools* have the resources they need to provide a constitutionally adequate education to all students; and (3) develop “a new ... system of accountability to measure whether the reforms actually provide the opportunity for a sound basic education.”⁶

⁵ *CFE v. State of New York*, 100 N.Y. 2d 893, 908 (NY 2003).

⁶ *Id.* at 930 (emphasis added).

In other words, according to the court, the constitution obligates the state government to ensure sufficient funding is made available for public education, but the state’s responsibility does not end there. The state must also ensure that funds are properly allocated to all schools and that the essential educational resources necessary to provide the opportunity for a sound basic education—such as qualified teachers, appropriate class sizes, instructional materials, and adequate facilities—*are actually available in each school in accordance with the needs of students*. While New York State did make some policy changes in response to the *CFE* decision, these changes stopped short of fulfilling this requirement that sufficient educational resources be available *in every school*.

To comply with the *CFE* decision, on April 1, 2007, the state legislature enacted the Education Budget and Reform Act. This law committed the state to increase annual state funding for New York State's public schools by over \$7 billion, to be phased in over the next four years and allocated to school districts based on student need through a new funding system. The law also established some specific new accountability measures, known as the Contract for Excellence (C4E), though they covered only some school districts.

The new accountability requirements applied to school districts receiving increases of 10% or \$15 million in state aid (including New York City and its community school districts). These districts were required to develop a C4E plan detailing how they would use the bulk of their additional funding to benefit student learning. Under the legislation, C4E funds had to “supplement, not supplant” funding provided by the school district⁷ and had to be spent on specified types of new or expanded programs, including “class size reduction, programs that increase student time on task, teacher and principal quality initiatives, middle school and high

⁷ N.Y. Educ. Law § 211(d).

school restructuring, and full-day kindergarten or prekindergarten.”⁸ A sixth category for spending on programs for English language learners was added in 2008. New York City was also required to develop a five-year plan for reducing class sizes.

School districts were supposed to direct the new funding and these programs to students with the greatest educational needs: English language learners, students in poverty, students with disabilities, and students with low academic achievement or at risk of not graduating. And they were required to provide an opportunity for parents, students, and other community members to understand and weigh in on their district’s plan. Finally, the law required each district’s C4E plan to be approved the New York State Commissioner of Education. It also set some accounting and auditing requirements to monitor the implementation of these changes.

However, after the first two years of the phase-in of new funding, recession set in. Concerned about deficits, the state first froze and then slashed state aid for education. Since then, school districts have not received the full amount of funding called for in the foundation-aid formula, the core funding mechanism of the funding system adopted in the wake of the *CFE* decision.⁹ Although the promised new funding to support new C4E initiatives has still not been forthcoming, the affected school districts have still been required to comply with the law’s spending and public-engagement requirements.

Throughout this time, the state provided no analysis of the effect of its noncompliance on schools’ ability to provide a sound basic education to all of their students or on students’ educational opportunities. Studies conducted by the Campaign for Educational Equity at Teachers College, Columbia University (CEE), and others provide evidence of violations of

⁸ N.Y. Educ. Law § 211(d) 3.a. Up to 15% of these funds could be spent on an “experimental program” approved by the commissioner.

⁹ For a discussion of the history of the state’s failure to implement fully the foundation formula called for in the 2007 Budget and Reform Act, see Rebell, M.A. (2012). Safeguarding the right to a sound basic education in times of fiscal constraint, *Albany Law Review*, 75 (4), 1855-1976.

students' rights.¹⁰ Research consistently shows that inequities and inadequacies in basic educational resources are much more likely to affect students of color and students living in poverty.¹¹

BROAD STATE POLICY CHANGES NEEDED TO GUARANTEE STUDENTS' EDUCATIONAL RIGHTS

Campaign for Fiscal Equity (CFE) v. State of New York made clear that the state constitution entitles all students the opportunity for a sound basic education and that state funding was not adequate to meet its constitutional obligations to its public school students. In spite of this ruling, when New York experienced the recent recession, the state dramatically reduced education aid, affecting the educational opportunities of hundreds of thousands of students. Ten years after *CFE*, many schools in New York still lack adequate funding to provide their students the essential resources of a sound basic education.

The state is in need of a stronger set of policies to enforce constitutional compliance, guarantee all New York public school students the educational opportunities to which they are legally entitled, and ensure that students' educational rights are sustained even in tough economic or political times. Grounded in our research and analysis, and with extensive input, expertise, and feedback from a broad statewide task force of education stakeholders, we have developed a

¹⁰ Rebell, M.A, Wolff, J.R., & Rogers, J.R., Jr. (2012). *Deficient resources: An analysis of the availability of basic educational resources in high needs schools in eight New York State school districts*. New York, NY: Campaign for Educational Equity; Johnson, G., Subramanian, S., & Wilks, A. (2013). *Availability and distribution of selected program resources in New York City high schools*. New York, NY: New York City Independent Budget Office; New York State Council of School Superintendents. (2014). *Not out of the woods: A survey on school fiscal matters*. Albany, NY: NYSCOSS.

¹¹ See, e.g., Johnson, Subramanian, & Wilks, 2013.

set of policy recommendations to help guide the state in adopting appropriate procedures for complying fully with *CFE* requirements.

Through our work with the task force, we have produced a series of reports. The first provides an overview or roadmap of the full set of necessary state policy actions; the second analyzes New York’s current laws detailing what schools must provide students against the education essentials required by the state constitution, and it discusses the types of regulatory revisions necessary to fill those gaps. The third sets out a new constitutional cost methodology for determining the actual cost of a sound basic education and regularly assessing the funding adequacy. The fourth, this present report, complements these components by outlining a strategy for developing a system of accountability for the essential resources of a sound basic education.

Developing accountability for sufficient and appropriate resources in every school is necessary for two critical different but related purposes: *oversight* and *improvement*. In New York State (and other states with a constitutional mandate to provide adequate resources for quality schooling), resource accountability mechanisms are needed to monitor whether state and school districts are successfully meeting their obligation to honor students’ right to a sound basic education. In addition, resource-accountability mechanisms provide information that is vital to developing an understanding of the relationship between inputs and outcomes—that is, between resources and results. Understanding the complexities of this relationship is necessary for the continuous improvement of schooling, as well as for expanding our collective knowledge about how best to provide a sound basic education for all children and, if necessary, recalibrating the state’s sound-basic-education resource standards.

Indeed, in a decision issued in September 2016, the Appellate Division of the New York State Supreme Court held that “the adequacy of the state’s education funding accountability mechanisms is directly related to the State’s funding duty.” Moreover, the court specifically held that plaintiffs in a pending litigation brought to enforce the *CFE* rulings may proceed to present evidence to challenge “the adequacy of [New York State’s] education funding accountability mechanisms.”¹²

THE CONTEMPORARY SCHOOL ACCOUNTABILITY CONTEXT

In the wake of problems encountered in implementing the No Child Left Behind Act (NCLB), many education researchers, policy analysts, school officials, lawmakers, and public school parents are committed to moving beyond the overly simplistic conception of school accountability that has been enforced because of the federal legal requirements over the past 15 years. This model entailed setting strict and narrow student performance goals, measuring outcomes largely through standardized test scores, and being agnostic about, or turning a blind eye to, the conditions under which schools were required to meet those targets. Many researchers and stakeholders now seek a more comprehensive system of educational accountability, whose primary purpose is to provide useful information to educators, school officials, policymakers, and the public, and motivate the development of better educational approaches rather than simply punish or reward.¹³

¹² *New Yorkers for Students Educational Rights (NYSER) v. State of New York*, ___ N.Y.S.3d ___, 2016 WL 4699191 (1st Dep’t. 2016).

¹³ Council for Chief State School Officers. (2011). *Roadmap for next-generation state accountability systems*. Washington, DC: CCSSO; Alliance for Excellent Education. (2015). *Data dashboards: Accounting for what matters*. Washington, DC: AEE; Darling-Hammond, L., Wilhoit, G., & Pittenger, L. (2014a). *Accountability for college and career readiness: Developing a new paradigm*. Stanford, CA:

New Initiatives and Research in Education Accountability

Resource accountability is one part of the broader education-accountability system needed to monitor and ensure constitutional compliance, to support the effective provision of a high-quality education for all, and to provide the data necessary to enable continuous improvement in schooling. As Stanford University professor Linda Darling-Hammond and colleagues have argued, such a system needs to collect, analyze, and make use of meaningful indicators of student learning and other student outcomes, of professional capacity, and of resource adequacy and school-level use of resources.¹⁴

Darling-Hammond and her colleagues have been at the forefront of a recent and influential push for this “new paradigm” of education accountability. Citing the greater demands of states’ newfound commitment to college and career readiness, they argue that today’s education-accountability systems must provide educators and policymakers with more useful and usable information than did the NCLB-enforced system of test-score targets and sanctions.

Accountability tools must address the barriers to good education that exist not only within schools and classrooms, but at the district, state, and national levels as well. ... [T]he structuring of inequality in learning opportunities occurs outside the school in the governmental units where funding formulas, resource allocations, and other educational policies are forged. ... [F]ederal, state and local education agencies must themselves meet certain standards of delivery, while school-based educators and students are expected to meet certain standards of practice and learning.¹⁵

Stanford Center for Opportunity Policy in Education; Elgart, M.A. (2016). *Designing state accountability systems for continuous school improvement: A call to action*. Alpharetta, GA: AdvancED.

¹⁴ Darling-Hammond et al., 2014a.

¹⁵ Darling-Hammond et al., 2014a, p. 8.

Supporting schools in preparing students for college, careers, and civic participation requires a system that is “reciprocal and comprehensive,” focused on building capacity, and “committed to problem solving and improvement.”¹⁶

Resource accountability is a key element of such a system. Darling-Hammond and colleagues write,

In a country where school funding inequities are severe, inadequate resources deny genuine accountability to many families. If we really expect all children to achieve college and career-readiness, governments at all levels must be accountable for fairly allocating and wisely using resources—dollars, curriculum and learning tools, well-qualified educators, time, and safe, healthy environments for learning—to accomplish these goals. Measures of resource adequacy must become part of the accountability system, along with indicators of system performance that allow the public to understand what is being invested and with what results.¹⁷

They call for resource standards that “allocat[e] adequate resources in relation to students’ learning needs.”¹⁸ In New York, such resource standards must be aligned with the court rulings in *CFE*, and ensure, among other things, equitable access to up-to date curricula, instructional materials, adequately trained teachers, reasonable class sizes, and additional supports for students with particular needs.

The call for “next-generation” accountability systems is not new.¹⁹ Darling-Hammond, Richard Elmore, Richard Rothstein, Jeannie Oakes, and many other researchers have been

¹⁶ Darling-Hammond, L., Wilhoit, G., & Pittenger, L. (2014b). *Accountability for college and career readiness: Developing a new paradigm*. Stanford, CA: SCOPE Policy Brief, pp. 2-3.

¹⁷ Darling-Hammond et al., 2014b, p. 4.

¹⁸ Darling-Hammond et al., 2014b, p. 4.

¹⁹ The Education Commission of the States (ECS) formulated the term “next-generation accountability.” ECS describes next-generation accountability models as improvement-focused systems whose purpose is to improve teaching and learning; include all levels of the education system—state, district, school and classroom; and hold adults in the system accountable for student performance. See, e.g., Cohen, M. (2002, May). Emerging issues in the design of next generation accountability models. *ECS Briefing*

arguing for a richer approach to data collection and education accountability since the late 1980s.²⁰ This would entail, among other things, more comprehensive system of indicators, including measures of “school resources and offerings, teacher availability and qualifications” would allow “unintended side effects to be monitored and appropriate changes to be made in order to pursue the genuine goals of policies.”²¹

At the 2004 symposium of SED’s Education Finance Research Consortium, Anthony Cresswell and Sharon Dawes of the Center for Technology in Government at the State University of New York/Albany discussed the importance of New York collecting this type of information post-*CFE*. They wrote:

Prior to the CFE decision, the main state-level educational policy and financing issues revolved around the school aid formula. . . . By contrast, the decisions implied by CFE pertain directly to the ways in which school financing impacts both student achievement and school performance. If a financing system is to meet the criteria implied in CFE, it must therefore deal in some way with the relationships among:

- Definition, measurement, and evaluation of student achievement, school performance, and long-term educational outcomes,
- State-level financing policy decisions and allocation schemes,
- Local funding levels and allocation schemes,

Paper; Education Commission of the States. (1998). *Designing and implementing standards-based accountability systems*. Denver, CO: ECS.

²⁰ See, e.g., Abelman, C., & Elmore, R. (1999). When accountability knocks, will anyone answer? *CPRE Research Reports*. Retrieved from http://repository.upenn.edu/cpre_researchreports/7; Elmore, R. F. (2003). *Doing the right thing, knowing the right thing to do: School improvement and performance-based accountability*. Washington, DC: National Governors Association Center for Best Practices; Oakes, J. (1986, October). *Educational indicators: A guide for policymakers*. New Brunswick, NJ: Rutgers University, Center for Policy Research in Education; Oakes, J. (1989, Summer). What educational indicators? The case for assessing the school context. *Educational Evaluation and Policy Analysis*, 11 (2), 181-199; Rothstein, R., Jacobsen, R., & Wilder, T. (2008). *Grading education: Getting accountability right*. New York, NY: Teachers College Press.

²¹ Darling-Hammond & Ascher, 1991; McDonnell, L., & Oakes, J. (1988). Creating responsible and responsive accountability systems. *Report of the OERI Study Group on State Accountability Reporting*. Santa Monica, CA: RAND Corporation.

- Decisions and practices that determine the educational content and methods used in schools, and
- How the allocation and use of resources impact academic achievement, performance and outcomes.²²

Without such information, outcomes cannot be fairly compared, and the education enterprise is, in effect, flying blind. As Lawrence Picus and colleagues wrote more recently,

Collecting ... information on resource use is important because teaching and learning occur at the school-level and a goal for researchers and policymakers is to tie educational resource patterns and strategies to school-based strategies linked to student learning. Even today, most fiscal reporting systems mainly provide district-level data....²³

Even states like Wyoming that provide the most school-level detail on resources and staffing, Picus and colleagues contend, do not provide sufficient information to allow the analysis of “how schools use resources to improve student learning.”²⁴

What Is Different This Time Around?

Two important developments make “next-generation” accountability systems, and resource-accountability standards, more feasible and plausible than in the 1990s: (1) the new accountability policies of the federal Every Student Succeeds Act (ESSA)²⁵ and (2) the increased number of state constitutional mandates for education defined by the state courts in educational-equity and adequacy cases over the last 20 years, including the *CFE* case in New York.

The Every Student Succeeds Act (ESSA)

ESSA has the potential to promote more balanced and effective accountability systems by giving states more flexibility than did NCLB, its predecessor. ESSA gives states primary

²² Cresswell & Dawes, 2004, pp. 2-3.

²³ Picus, L. O., Odden, A., Aportela, A. Mangan, M.T., & Goetz, M. (2008). *Implementing school finance adequacy: School level resource use in Wyoming following adequacy-oriented finance reform*. North Hollywood, CA: Lawrence O. Picus & Associates, p. 6.

²⁴ Picus et al., 2008, p. 7.

²⁵ 20 U.S.C.A §6301 et seq.

responsibility for designing the system by which they will hold their public schools accountable and by which they will identify and support the lowest-performing schools. It requires states to use multiple measures of student academic performance, and permits the inclusion of at least one measure of “school quality or student success,” such as “student engagement, educator engagement, student access to and completion of advanced coursework, postsecondary readiness, school climate and safety.”²⁶

The downside of ESSA’s flexibility, however, is that the new version of the federal law also does not mandate that states meet specific achievement targets for students. Unlike NCLB, which set the (albeit narrow and unrealistic) goal of all students reaching proficiency on state math and reading tests, ESSA allows states to determine what outcomes students and schools are expected to achieve. In the absence of federally mandated targets, state-court decisions that define the level of education, the types of outcomes, and the resources that states are obligated to provide for their students take on even more centrality and importance. In New York State, students’ constitutional right to the opportunity for a sound basic education as defined by the *CFE* decisions creates a legally binding standard, a foundation for New York education accountability generally and resource accountability specifically.

MOVING TOWARD CONSTITUTIONAL SCHOOL ACCOUNTABILITY

As the New Hampshire Supreme Court stated in its *Claremont* decision, "If the State cannot be held accountable for fulfilling its duty, the duty creates no obligation and is no longer a duty."²⁷

Accountability means that the State must provide a definition of a constitutionally adequate education, the definition must have standards, and the standards must be

²⁶ 20 U.S.C.A. §6311(c) (4) B (VI).

²⁷ *Claremont Sch. Dist. v. Governor (Claremont IV)*, 794 A.2d 744, 751 (N.H. 2002).

subject to meaningful application so that it is possible to determine whether, in delegating its obligation to provide a constitutionally adequate education, the State has fulfilled its duty.²⁸

Many years after *CFE*, New York State does not yet have an education-accountability system in place that fulfills these criteria. This is constitutionally unacceptable.

To meet the accountability requirements of *CFE* and ESSA and to give educators, policymakers, and the public the information necessary to ensure constitutional compliance and support continuous improvement, New York State needs to adopt a fundamentally new approach to education accountability. Such a system should include resource-adequacy indicators, school-process indicators, student-engagement indicators, and student-outcome measures. A number of states, often in response to court orders in education-adequacy cases, have implemented many innovative and promising accountability mechanisms that provide important examples and precedents for New York. As this paper will highlight, states such as Arkansas,²⁹ California,³⁰ and New Hampshire³¹ have made useful strides, and, in light of the increased opportunities for

²⁸ *Ibid.*

²⁹ Under legislation put in place to comply with the state supreme court's adequacy ruling, the legislature's education committees must assess the state's education finance system to "Assess, evaluate, and monitor the entire spectrum of public education across the State of Arkansas to determine whether equal educational opportunity for an adequate education is being substantially afforded to the school children of the State of Arkansas and recommend any necessary changes." ARK. CODE ANN. § 10-3-2102(a) (2012).

³⁰ California's Local Control Funding Formula (LCFF), enacted in 2013, requires all districts and charter schools to adopt and annually review and update a Local Control Accountability Plan (LCAP) as part of a system to create more effective educational accountability and improved transparency. This system requires planning, data collection, and progress in eight state priority areas. Progress is required on multiple measures of student outcomes and also measures of engagement (including parent involvement, pupil engagement with schooling, and school climate) and conditions of learning (including access to fully certified and appropriately assigned teachers, appropriate instructional materials, facilities in good repair, and access to courses in all required areas of study). 5 CCR § 15497.5.

³¹ New Hampshire has 48 "minimum standards for school approval," adopted in March 2014, that all schools must meet and on which they are evaluated every five years through the state's School Approval System. These standards detail what schools must provide in such areas as required curriculum, facilities, instructional resources, school health services, psychological services, staff qualifications, class size, extended learning opportunities, and professional development. In addition to this requirement, in order to

creating next-generation accountability systems provided by ESSA, many other states are exploring movement in this direction. In the congressional discussions that led to enactment of ESSA, a number of senators and representatives advanced additional forward-thinking ideas that, although not ultimately included in the law, also provide additional insights relevant to New York State's current constitutional needs.³²

demonstrate through the input-based system that they provide the opportunity for an adequate education, New Hampshire schools must show they meet 12 specified adequacy standards, a subset of the state's existing school approval standards (see New Hampshire Input Based School Accountability System, http://education.nh.gov/instruction/school_improve/account_sys_input.htm).

³² Senators Jack Reed and Sherrod Brown and Representative Marcia Fudge cosponsored an amendment to ESEA, the Core Opportunity Resources for Equity and Excellence (CORE) Act, (<https://www.congress.gov/114/bills/hr193/BILLS-114hr193ih.pdf>) that sought to establish accountability requirements that “compel states and school districts to give all students equitable access to the resources necessary to achieve college and career readiness by high school graduation.” Supporters of the act included Linda Darling-Hammond, the Coalition of Community Schools, the American Library Association, the American Federation of Teachers, and the First Focus Campaign for Children.

Though it was not adopted as a federal mandate, the proposed CORE Act also provides useful concepts that should be considered by states like New York whose constitutions do mandate adoption of accountability standards of this kind. The CORE Act would have required state accountability systems to include measures of fair and equitable access to the “core resources for learning” and to develop plans for identifying and addressing any inequities in access to them. It would have required state and district report cards to include information about access to these basic educational resources. For school districts identified for improvement under ESEA, the state would have had to identify gaps in access to the core educational resources and develop an action plan in partnership with the local school district to address those gaps. As an enforcement mechanism, states failing to make progress in eliminating disparities for two or more consecutive years would be ineligible to participate in competitive grant programs authorized under ESEA.

CORE identified core resources for learning, including

- High quality instructional teams, including licensed and profession-ready teachers, principals, school librarians, counselors, and education support staff;
- Rigorous academic standards and curricula that lead to college and career readiness by high school graduation [and are accessible to all students, including students with disabilities and English learners];
- Equitable and instructionally appropriate class sizes;
- Up-to-date instructional materials, technology, and supplies, including textbooks, computers, mobile devices, and access to broadband;
- Effective school library programs;
- School facilities and technology, including physically and environmentally sound buildings and well-equipped instruction spaces, including laboratories and libraries;
- Specialized instructional support teams, including school counselors, school social workers, school psychologists, school nurses, and other qualified professionals involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services

Adequate funding and appropriate school resources are necessary but not sufficient to ensure school improvement and student success. Although in this report we emphasize the importance of resource adequacy, it also is critical that schools, districts, and the state have the capacity to capture and analyze data that describe “what goes on in the school environment to use those resources”—that is, the “decisions and practices that determine the educational content and methods used in schools.”³³ Like information on resources and inputs, data on school processes are helpful for understanding of student performance data.³⁴ Process measures capture the aspects of schooling over which educators and school officials can exercise direct control.

Monitoring school processes, policies, and practices in a manner that is not punitive or unnecessarily time-consuming or administratively burdensome can help to make connections between resources and results. In addition to the important role this type of information plays in improving instruction, it also is necessary to refine our understanding of what resources students need to be successful in school, and to improve cost effectiveness in the use of resources.³⁵

For these reasons, the state and school districts should collect and analyze a broad set of student outcomes, including, but not limited to test scores in academic subjects. These should include valid indicators of students’ progress toward the set of educational objectives delineated by the state courts in education adequacy cases in order to prepare students for capable

(including related services [under IDEA]) as part of a comprehensive program to meet student needs; and

- Effective programs for family and community engagement in education.

³³ Cresswell & Dawes, 2004, pp. 2-3.

³⁴ Scheerens, 1991.

³⁵ Bernhardt, V.L. (2013). *Data analysis for comprehensive school improvement* (3rd ed.) New York, NY: Routledge; Madaus, G., Kellaghan, T., Rakow, E., & King, D. (1979). The sensitivity of measures of school effectiveness. *Harvard Educational Review*, 49 (2), 207-230; Porter, A.C. (1991). Creating a system of school process indicators, *EEPA*, 13(1), 13-29. Scheerens, J. (1991). Process indicators of school functioning: A selection based on the research literature on school effectiveness. *Studies in Educational Evaluation*, 17, 371-403.

citizenship and competitive employment. Multiple measures should be used to assess not just students' academic knowledge but also their higher-order thinking skills, creativity, social skills, and civic dispositions and other evidence of preparation for civic participation, career readiness, and college readiness.³⁶ They should also include indicators of student engagement such as measures of tardiness, attendance, course completion, chronic absenteeism, suspensions and expulsions, and parent/family involvement.

The state education department, in consultation with stakeholder members of the State Committee of Practitioners and an “ESSA Think Tank,” has issued guiding principles for New York State’s public-school-accountability system that provide an important recognition of the need for appropriate resources, at least in schools that are not meeting state learning standards. The principles include the statement that New York State “will establish opportunity to learn standards that must be implemented in schools identified for support and improvement.”³⁷

Opportunity to learn (OTL) standards, sometimes also known as school-delivery standards, spell out the resources, services, and supports that schools must be able to provide in

³⁶A recent Center for American Progress report includes an analysis of indicators used in school accountability systems in every state in the nation (Martin, C., Sargrad, S., & Batel, S. (2016). *Making the grade: A 50-state analysis school accountability systems*. Washington, DC: Center for American Progress (see Appendix B). In addition to student achievement in ELA, math, writing, science, and social studies, states collect data on English language acquisition, attendance, chronic absenteeism, whether students are on track to graduate, graduation rates, dropout rates, the reengagement of dropouts, advanced coursework participation and performance, SAT participation and performance, CTE participation and performance, post-secondary enrollment, arts and physical fitness, school climate and culture, student and parent engagement, promotion of extracurricular activities, truancy reduction, educator effectiveness, staff retention, participation or achievement in other courses, such as world languages, physics, and the percentage of students with disabilities served in general education environments for more than 80% of the day. A 2011 study of 20 states by the RAND Corporation found a wide variety of input measures on state or district school report cards derived solely from administrative data. Schwartz, H.L., Hamilton, L.S., Stecher, B.M., & Steele, J.L. (2011). *Expanded measures of school performance*. Santa Monica, CA: Rand Corporation.

³⁷New York State Education Department. (2016, July 11). *Update on the Every Student Succeeds Act (ESSA)*. Retrieved from <http://www.regents.nysed.gov/common/regents/files/716brd1.pdf>.

order to ensure that students are able to meet the standards that have been set for them. Such standards should be implemented in all schools and not only in schools after they have been “identified for support and improvement.”

New York’s existing “OTL standards” are spelled out in the commissioner’s regulations that describe minimum requirements that *all schools* must meet.³⁸ To be effective in improving school quality, however, the current commissioners’ regulations need to be revised to directly and fully comply with the state constitution, implemented effectively in relation to students’ needs, and supported by a robust system of education accountability, including resource accountability.

The establishment of workable resource-accountability measures should be the first priority in the development of a next-generation accountability system in New York State. Adequate resources are essential in establishing effective school processes, engaging students, and achieving desirable outcomes, and *CFE* requires the state to assess whether all schools have adequate resources to meet constitutional requirements. The remaining section of this report detail the recommendations for resource-accountability mechanisms that we developed through research and legal analysis and vetted with a statewide task force that includes many of the stakeholders on the front lines of New York’s public schools, as well as with academics and other experts. The conclusions expressed are our own.

³⁸ 8 NYCRR, Part 100.

RESOURCE ACCOUNTABILITY FOR NEW YORK STATE

As stated above, based on relevant legal requirements, applicable research, and effective practices adopted in other states, we believe that a system of accountability for resource adequacy in New York requires: (1) articulating specific sound-basic-education resource requirements, (2) school-level self-assessment and complaint procedures, (3) district- and state-level monitoring of resource adequacy in districts and schools, (4) the regular collection, analysis, and transparent reporting of data on the availability of these essential resources; and (5) improved enforcement mechanisms. We also believe there is an important role for independent public accountability forums. In the sections that follow, we will describe each of these components and identify relevant precedents from other states' accountability practices.

1. Articulating the Resource Requirements for Providing a Sound Basic Education

The U.S. Department of Education's Equity and Excellence Commission wrote in its 2013 report that the articulation of specific sound-basic-education resource requirements was a primary building block for an effective education-finance system.³⁹ Such requirements would need to detail the essential resources, services, and supports that schools must provide to their students. These requirements are also fundamental to ensure accountability for adequate resources.

³⁹ Equity and Excellence Commission. (2013). *For each and every child: A strategy for education equity and excellence*. Washington, DC: U.S. Department of Education. Retrieved from <https://www2.ed.gov/about/bdscomm/list/eec/equity-excellence-commission-report.pdf>.

As we discuss in part 2 of this series, *Filling the Regulatory Gaps*,⁴⁰ New York has not yet analyzed its current education statutes and regulations to determine whether they are consistent with the Court of Appeals' *CFE* rulings. After that foundational step, the state must specify the core educational program necessary to provide all students the opportunity for a sound basic education. State education law must detail the basic set of resources that, at a minimum, must be available in each school in order to provide all of their students the opportunity to meet the New York State Learning Standards and to be on track for and to attain a meaningful high school education that prepares them for capable civic participation and competitive careers.

In accordance with applicable constitutional requirements in New York State, resource requirements should be specified in at least the following categories: personnel; class size; curriculum; extracurricular opportunities; instrumentalities of learning (books, technology, supplies, and other instructional materials); appropriate resources for students with disabilities and English language learners; an expanded platform of services for students who are struggling academically; a safe, orderly environment; and facilities.⁴¹ These requirements should carefully consider the additional programs and resources needed to provide “an expanded platform of services” for schools serving large numbers of students who are below grade level and/or in poverty.

⁴⁰ Campaign for Educational Equity. (2016, November). *Students' constitutional right to a sound basic education: New York State's unfinished agenda. Part 2. Filling the regulatory gaps*. New York, NY: Campaign for Educational Equity, Teachers College, Columbia University

⁴¹ See *CFE v. State of New York*, 187 Misc. 1, 87 (S. Ct. N.Y. Co, 2001), *aff'd* 100 N.Y.2d 893 (N.Y. 2003).

2. School-Level Self-Assessment of Resource Adequacy and Public Complaint Procedures

The school community has the best vantage point for and greatest stake in monitoring school-level resource adequacy. Parents, students, teachers, and other staff members should be well informed about resource-adequacy requirements, afforded regular opportunities to participate in ongoing monitoring of the extent to which their school is able to comply with them, and have easy access to necessary relevant data. The state should supply school leaders (or other representative individuals or teams) with user-friendly adequacy metrics and/or rubrics, relevant data, and necessary training to carry out or update a school-level resource-adequacy review each year. This self-assessment would evaluate the extent to which the required sound-basic-education resources are available and accessible to all students in the school; it should be shared with the school community, the district, and the state education department.

In addition, New York State should develop public complaint procedures that allow parents, teachers and other school staff, students, administrators, and community organizations with evidence of resource-adequacy deficiencies to inform the school principal that the school is not meeting SBE resource standards. Complainants should have the option of anonymity. If the principal and the district superintendent agree that there is a resource deficiency but that the district does not have sufficient resources to remedy the problem, the complaint should be filed with the state and posted on the district's and state education department's websites. Appropriate internal appeal procedures should also be established.

New Hampshire requires schools and districts to complete a self-assessment to identify how each school meets the input-based adequacy requirements. School principals and district superintendents must submit evidence of adequacy in various resource areas through an online

survey.⁴² In California, school districts must perform an annual self-assessment of resource adequacy in each school.⁴³ The annual school improvement plan required in Vermont must include information about whether the school has sufficient resources to meet state standards substantially.⁴⁴ States like California and Kentucky have established public-complaint procedures through which the school community can officially report evidence of school-level resource deficiencies or other violations of the law.⁴⁵

New York has some useful local mechanisms on which the state could build. In New York City, for example, public schools conduct self-evaluations prior to their school quality reviews. Currently, these require schools to reflect primarily on school practices such as how teachers are supported, how staff uses data to inform instruction, and how expectations for students are communicated. The same quality-review process could incorporate, and would usefully be informed by, a school-level self-assessment of resource adequacy.⁴⁶

3. District and State Monitoring of School- and District-Level Resource Adequacy

The school district and the state have important roles to play in monitoring school- and district-level resource adequacy. School-level assessments of resource gaps should be investigated and validated by the superintendent and a member or members of the school board

⁴² See http://education.nh.gov/instruction/school_improve/account_sys_input.htm.

⁴³ See <http://www.cde.ca.gov/ta/ac/sa>.

⁴⁴ [16 V.S.A. § 165](#) (3).

⁴⁵ Under California's Uniform Complaint Procedure (UCP), parents can submit a written or verbal complaint—for example, “my children don't have textbooks for their math classes”—that must be remedied within 30 days. UCP also provides rules and deadlines for responding, remedying, and escalating issues. UCP forms must be translated into multiple languages. Kentucky's Office of Education Accountability (OEA) has maintained a toll-free hotline service since 1991 to receive concerns and complaints from citizens, parents, school district employees, and others. A complainant's identity remains confidential regardless of whether contact information is provided, unless the complainant authorizes its release.

⁴⁶ See the School Self-Evaluation Form in the 2016-17 Quality Review Documents for Schools, available at <http://schools.nyc.gov/Accountability/tools/review/SchoolResources/Overview/default>.

(or, in New York City, community education council, community school district, and, ultimately, the NYC Department of Education). These school officials must examine data and make inspections to validate the findings. The superintendent should also annually conduct an audit that assesses the adequacy of the district's own resources and capacity to meet schools' sound-basic-education needs. The superintendent should routinely and publicly report the findings, regarding school- and district-level resource adequacy or resource gaps, to the school board (or, in New York City, the appropriate entities mentioned above). The report should include proposed remedies that can be carried out with the district's available resources and/or an explanation of the resource gaps that must be remedied with additional state aid. For transparency and accessibility, the report should be filed with state and clearly posted on the district's and state education department's websites.

The New York State Education Department should establish procedures for monitoring resource adequacy in the schools. We recommend a differentiated system that would prioritize more frequent and intensive review of resource adequacy for schools with weak student outcomes (either for the school as a whole or for any relevant subgroups of students) and a lighter touch for schools where student outcomes are consistently strong. Monitoring should include the examination of school and district resource-adequacy data, specific equity audits, and on-site inspections by expert teams. The state commissioner of education should report annually to the governor, the legislature, and the Board of Regents on the extent to which all schools in New York State are in compliance with the state constitution and are able to provide all of their students the opportunity for a sound basic education.

Many states, including Arkansas, New Hampshire, Massachusetts, California, and Washington, have mechanisms that provide some degree of regular district and/or state

monitoring of resource adequacy in their public schools. These mechanisms include regular school-accreditation or school-approval reviews, site visits, audits, and/or explicit adequacy reviews, the maintenance of data systems and publication of resource data on “school report cards.”⁴⁷ “Equity audits” are another promising monitoring practice used by some districts and states that could be adopted or adapted by New York State education officials.⁴⁸ Finally, in 2011-

⁴⁷ In Arkansas, the state department of education annually reviews all school accreditation reports and investigates any suspected deficiencies in meeting resource standards, as well as investigates all written complaints charging violations of standards. The state education department is also required to make site visits to a selected number of school districts each year to review the schools for compliance with the standards (Arkansas Department of Education. (August 2015). *Rules governing standards for accreditation of Arkansas public schools and school districts*. p. 27 Retrieved from http://www.arkansased.gov/public/userfiles/rules/Current/FINAL_Standards_for_Accreditation.pdf). The state education commissioner in New Hampshire annually reviews each school’s education adequacy report, and the state education department conducts on-site reviews of a percentage of all schools each year to verify the information in their self-assessments (New Hampshire Statutes. *Chapter 193-E: Adequate public education*. Retrieved from <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XV-193-E.htm>) The Washington State Board of Education collects information online from each school district annually to monitor and enforce “basic education” requirements (Washington State Board of Education. *Basic education compliance*. Retrieved from www.sbe.wa.gov/compliance.php#.WAKOR_krKUK). In Massachusetts, the Center for District and School Accountability (CSDA) is required to audit no less than 40 school districts each year, 30 lower-performing and peer districts serving similar students, and ten random or higher-achieving districts. These audits are comprehensive and review school and district finances, curriculum, professional development, overall student achievement, MCAS support and improvement plans, management, and governance (<http://children.massbudget.org/center-district-and-school-accountability>).

California’s Local Control Funding Formula (LCFF), enacted in 2013, includes the requirement that all districts adopt and annually review and update a Local Control Accountability Plan (LCAP). This requires planning, data collection, and progress in eight state-determined priority areas that include resource areas like facilities, instructional materials, course offerings, and class size. Districts must perform an annual self-assessment of resource adequacy in each school and relevant data about access to required resources, including data on teacher misassignments, facilities conditions, and textbook insufficiencies, must be included in the annual School Accountability Report Cards (see <http://www.cde.ca.gov/ta/ac/sa>). In addition, districts are required to hold annual public hearings to provide stakeholders information on resource adequacy and the available data collected by the education department—the number of complaints, the number of insufficiencies, the condition of facilities that fail to meet the “good repair” standard, the number of qualified teachers. County administrators must conduct facilities audits and other resource audits (see <http://decentsschools.org/settlement/WilliamsReportWeb2005.pdf>).

⁴⁸ See, e.g., Childress, S.M., Doyle, D.P., & Thomas, D.A. (2009). *Leading for equity: The pursuit of excellence in Montgomery County Public Schools*. Cambridge: Harvard Education Press; Groenke, S.L. (2010). Seeing, inquiring, witnessing: Using equity audits in practitioner inquiry to rethink inequity in public schools. *English Education*, 43(1), 83-96; Mitchell, J. K., & Poston, W. K. (1992). The equity audit in school reform: Three case studies of educational disparity and incongruity. *International Journal of Educational Reform*, 1(3), 242–247; Skrla, L., Scheurich, J. J., Garcia, J., & Nolly, G. (2004). Equity

2012, the New York State Education Department itself conducted quality reviews that monitored certain resource areas. The reviews included sections on, for example, “facilities and resources” and “infrastructure for student learning.”⁴⁹ The state should build on its experience conducting these quality reviews to create effective state monitoring of school- and district-level resource adequacy.

4. Regular Collection, Analysis, and Reporting of Data on the Availability of Essential Resources at the School Level

There are numerous sources of data at the district and state levels about program offerings, personnel, facilities, and other indicators that relate to school-level resource adequacy. However, there is no systemic mechanism for compiling these disparate data sources into information tools that could help monitor constitutional compliance and guide state or district decision-making. New York State must develop systems for collecting and sharing data aligned with sound-basic-education resource-adequacy standards. These should include both district- and school-level data on funding and district- and school-level data about resources, services, and supports, including necessary personnel data to assess adequacy. The state should consider including other indicators beyond adequacy requirements as necessary to, as Oakes has written,

audits: A practical leadership tool for developing equitable and excellent schools. *Educational Administration Quarterly*, 40(1), 133-161; Skrla, L., McKenzie, K. B., & Scheurich, J. J. (2009). *Using equity audits to create equitable and excellent schools*. New York: SAGE Publications.

A Georgia State University research team conducted an equity audit for the Atlanta public schools to understand resource variation among schools and to assess equity of access to science labs, playgrounds, teacher quality, academic programming, and other resources (Fortner, C.K., Faust-Berryman, A., & Keehn, G. T. (2014). *Atlanta Public Schools equity audit report*. Atlanta, GA: Georgia State University). The Iowa state education department conducts annual equity audits, in combination with other school quality monitoring and improvement efforts, to ensure that all subgroups of students are receiving equal educational opportunities and that schools and districts are complying with all related federal and state laws

(<http://www.educateiowa.gov/sites/files/ed/documents/IowaEducationalEquityReviewProcess2013-2014.pdf>).

⁴⁹ New York State Education Department, Office of Accountability. *Differentiated Accountability - School Quality Review (SQR) School Quality Review Report* (http://www.p12.nysed.gov/accountability/School_Improvement/SQR.html).

“press schools toward emphasizing the full range of desired educational experiences and results” (p. 185).⁵⁰

Many useful precedents exist on which New York could build. Following state-court adequacy decisions, a number of states require the regular collection and analysis of relevant school-level data in order to assess and monitor the availability of adequate essential resources in every school.⁵¹ Other states collect and publish school-level data on certain indicators of resource adequacy.⁵² Further, ESSA requires annual public reporting of certain resource data from states, districts, and schools, in addition to disaggregated student-outcome data. For information purposes (rather than accountability), ESSA requires disaggregated data on the resources that must already be reported to the Civil Rights Data Collection. These include but are not limited to data on access to preschool; access to advanced coursework, such as AP, International Baccalaureate (IB), and dual enrollment; the professional qualifications of educators, including

⁵⁰ Oakes, J. (1989). What educational indicators? The case for assessing the school context. *Educational Evaluation and Policy Analysis*, 11 (2), 181-199.

⁵¹ New Hampshire requires all schools to demonstrate that they are providing “an opportunity for an adequate education” by submitting evidence that they have met each of the state’s specified adequacy standards using an online survey or being fully accredited by the regional accreditation association. New Hampshire schools that do not meet adequacy through the input-based system may demonstrate that they are providing an opportunity for an adequate education by exceeding a performance cut score. Elementary and middle schools are assessed in six categories: reading growth, mathematics growth, science, writing, assessment participation, and excessive absence. High schools are assessed in nine categories: reading, math, writing, science, assessment participation, excessive absence, four-year graduation rate, five-year graduation rate, dropout rate (New Hampshire Statutes. *Chapter 193-E: Adequate public education*. Retrieved from <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XV-193-E.htm>) In Arkansas, all schools must provide documentation each year to the state education department to indicate compliance with state accreditation standards, which are its adequacy standards (Arkansas Department of Education. (August 2015). *Rules governing standards for accreditation of Arkansas public schools and school districts*. p. 27 Retrieved from http://www.arkansased.gov/public/userfiles/rules/Current/FINAL_Standards_for_Accreditation.pdf).

⁵² California has long collected information in every school about the availability of sufficient textbooks, instructional materials, and qualified teachers, and it has recently added a requirement to collect data on course offerings and class size (<http://decentsschools.org/settlement/WilliamsReportWeb2005.pdf>) The Massachusetts Department of Education’s collects data from each school on the availability of technology and internet access, class size, access to Advanced Placement (AP) courses, and a number of other resources. Its school and district profiles provide easy-to-access information and analysis to the public (see, for example, http://profiles.doe.mass.edu/state_report).

the number and percentage of inexperienced teachers, principals, and other school leaders; teachers teaching with emergency credentials, and teachers who are out-of-field; data on school quality, climate, and safety (including rates of in-school suspensions, out-of school suspensions, expulsions, school-related arrests, referrals to law enforcement, chronic absenteeism, and incidences of violence, including bullying and harassment); and data about per-pupil expenditures for each school.⁵³

The Board of Regents and the New York State Education Department are required by state law to submit an annual report on the “educational status of the state's schools” to the governor and the legislature.⁵⁴ The data currently reported consist of "enrollment trends; indicators of student achievement in reading, writing, mathematics science, and vocational courses; graduation, college attendance and employment rates; ... (and) information concerning teacher and administrator preparation, turnover, in-service education and performance."⁵⁵ Although the “Chapter 655” report was once a two-volume annual publication accessible to the general public and policymakers alike, it currently consists of a series of discrete webpages and large data files that require substantial expertise to analyze.

We recommend that the Chapter 655 report be expanded to include data on resource adequacy that correspond with the resource-adequacy requirements described above. These should include indicators of sufficient qualified personnel; appropriate class sizes; suitable curricula and course offering; appropriate supports for English language learners, students with disabilities, and students struggling academically; up-to-date instructional materials and technology; a safe and supportive climate; and suitable facilities. To serve its purpose to inform

⁵³ 20 U.S.C.A. §6311 (h).

⁵⁴ Chapter 655 of the Laws of 1987 (which amended Section 215-1 of State Education Law).

⁵⁵ See <http://www.p12.nysed.gov/irs/chapter655>.

policymakers and the public on the “educational status of the state's schools,” the Chapter 655 report should make data—and relevant analyses (for example, of resource adequacy, year-to-year comparisons, interdistrict and interschool comparisons—available and accessible to the general public. Furthermore, it should encompass the resource-adequacy, school-process, student-outcome and student-engagement data necessary for creating well-rounded, user-friendly, next-generation accountability for New York’s public schools.

5. Improved Enforcement Mechanisms

New York State lacks adequate enforcement of its existing funding and resource requirements. To ensure that all students, and particularly those who have been historically disadvantaged, receive the resources to which they are entitled, improved enforcement mechanisms are needed. The state must make enforcement of appropriate school-level budgeting and spending for resource adequacy the explicit responsibility of school-district officials. It must also specify by statute that enforcement of district-level resource adequacy is among the explicit responsibilities of the state commissioner of education.

Where schools lack adequate funding for resource adequacy, the commissioner must determine whether localities are paying their expected local share of foundation funding and have the authority to enforce appropriate local funding requirements. In school districts where localities are paying their share of foundation funding and the school district is unable to meet resource adequacy requirements in every school, the commissioner must petition the legislature for necessary additional funding. If the legislature does not allocate sufficient resources, then citizens will have evidence and cause to ask the courts to step in to enforce constitutional compliance.

In part 3 of this series, *Utilizing a Constitutional Cost Methodology*, we recommend the state create a permanent independent bipartisan commission with a professional staff to do regular cost analyses and other studies relevant for constitutional compliance. The resource adequacy information developed by school-level, district-level and SED reviews would provide additional experiential data to supplement the commission’s biennial funding recommendations. Alignment between the commission recommendations and the resource accountability process will provide strong evidence for the governor and the legislature of school funding needs.

Other mechanisms could aid New York in providing better ongoing monitoring and enforcement of school-level resource adequacy. The state currently has a process, called a “section 310 proceeding,” by which individuals or groups can bring violations of state education statute and regulations to the state commissioner of education.⁵⁶ This procedure should be reviewed and revised as necessary to minimize legal-process requirements and allow parents whose children are most affected by inequities to file such cases easily and expeditiously. With such revisions and clearer resource requirements, this could be an effective avenue for enforcement.

New York lacks and could also benefit from some basic government structures for enforcing school resource adequacy that other states currently have in place. Other states employ a bipartisan legislative research services bureau to provide independent data and analysis to the state legislature.⁵⁷ (In Arkansas and Washington State, for example, this is where ongoing constitutional compliance analysis is done.) New York also lacks an accreditation or approval

⁵⁶ [Education Law §310](#) and the Regulations of the Commissioner of Education at 8 NYCRR [Part 275 et seq.](#) See also, www.counsel.nysed.gov/appeals/faqs. The commissioner is required to examine and make a decision about evidence of such a violation. The commissioner may also institute such a proceeding.

⁵⁷ See https://ballotopedia.org/state_legislative_research_service_bureaus.

process to monitor and ensure basic quality standards in its public schools, a mechanism on which other states rely in enforcing school quality and resource-adequacy standards. In these states, schools that do not meet quality standards, as assessed by the state or an independent accrediting agency, are at risk of losing their accreditation and diploma-granting status, though some believe that current accreditation systems need to be strengthened to play their intended role in enforcing school quality.⁵⁸

ONGOING ROLE FOR THE PUBLIC IN RESOURCE ACCOUNTABILITY

Even with school, district, and state monitoring, education stakeholders and the public at large will need to play ongoing roles in assuring resource adequacy. Public awareness about students' educational rights and collective public monitoring of progress toward upholding those rights will be critical components for achieving and sustaining a sound basic education for all New York students. It is particularly important that students, families, and communities that are most affected by educational inequities and inadequacies take leadership roles in this effort.⁵⁹

Currently, independent research groups, education stakeholder groups, and advocates provide the public with critical information about school resource availability.⁶⁰ The Campaign

⁵⁸ Rothstein, R., Jacobsen, R., & Wilder, T. (2009). From accreditation to accountability. *Phi Delta Kappan*, 90, 624-629.

⁵⁹ CEE's Know Your Educational Rights (KYER) public engagement project is one effort to partner with youth, parents, educators, and other concerned community members bring awareness to students' rights issues. For more information, go to <http://equitycampaign.org/areas-of-focus/know-your-educational-rights-youth-parent-educator-and-community-engagement>.

⁶⁰ For example, the New York State Council of School Supervisors produces an annual survey of district superintendents (www.nyscoss.org/img/uploads/file/News-Release-School-Finance-Survey-Report-October-2016_1.pdf); the New York City Independent Budget Office monitors and reports annually on a range of education indicators (www.ibo.nyc.ny.us/iboreports/2013hsresources.pdf); Class Size Matters monitors class sizes and other data (www.classsizematters.org/report-number-of-k-3-students-in-classes-of-30-or-more-risen-sharply-since-2011); Alliance for Quality Education (www.aqeny.org/wp-content/uploads/2016/06/CFE-Derailed-June-17-final-1.pdf) has published statewide findings; and the

for Educational Equity has proposed convening an annual summit focused the state of New York students' right to a sound basic education. As a major collaborative event for stakeholders, advocates, and researchers, the summit would serve as a showcase for the year's efforts of the many groups working toward shared goals, and as a forum to report data and research findings (both from technical experts and community members). It would also establish an important new public-accountability mechanism to monitor progress toward school-funding adequacy and equity, engage city and state officials, and bring media attention and public scrutiny to this issue. The summit would be scheduled to have maximum impact on both the governor's executive budget and the budget deliberations of the legislature, as well as on local budget processes.

CONCLUSION

The Every Student Succeeds Act requires all states to rethink their education accountability systems in consultation with researchers and education stakeholders. New York's current ESSA policy development provides the opportunity for the state to adopt a broader set of mechanisms and measures through which to understand, evaluate, and improve our schools, and can help the state move toward compliance with the *CFE* decision and its promise of a meaningful educational opportunity for all New York children. The analysis and recommendations provided by this report are designed to aid state education leaders in aligning ESSA planning with requirements of *CFE* and the education article of the state constitution. As we have argued, New York needs a stronger and more comprehensive set of policies to move the

New York City Comptroller has produced reports on arts education and physical education resources (<https://comptroller.nyc.gov/reports/state-of-the-arts-a-plan-to-boost-arts-education-in-new-york-city-schools/> and <https://comptroller.nyc.gov/reports/dropping-the-ball-disparities-in-physical-education-in-new-york-city>).

state swiftly toward constitutional compliance and to safeguard, against future economic and political shifts, students' right to the opportunity for a sound basic education. Resource accountability is a critical piece of the education-accountability system that New York State must adopt in order to provide educators, policymakers, and the public the information needed to enforce students' educational rights and support continuous improvement.