

# CRITICAL QUESTIONS BEFORE THE COMMISSION TO STUDY SCHOOL FUNDING

The independent Commission to Study School Funding, created as part of last fall's state budget agreement, is set to issue its final report, along with its recommendations for reforming New Hampshire's school funding system, by December 1. As the Commission works toward that conclusion, it continues to grapple with a number of critical questions; those questions were detailed in a document distributed on October 19 to Commission members by staff from the Carsey School of Public Policy, which is providing logistical and research support to the Commission.

To help inform the Commission's deliberations, the NH School Funding Fairness Project (NHSFFP) offers its perspective on each of those critical questions below.

## 1. Does every child deserve (have a right to) an equal opportunity to an adequate education, as measured by comparable outcomes (our kids vs. my/their kids)?

**NHSFFP's POSITION:** Not only does every New Hampshire child have a clear legal right to an adequate education, but it is in our best social and economic interest as a state to ensure that they receive it. In its first *Claremont* ruling, in 1993, the New Hampshire Supreme Court determined that the State has a duty to provide "a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding" to achieve that end. Policymakers have substantial latitude in defining what constitutes an "adequate" education and the approaches used to deliver it. They could elect to focus on inputs, as New Hampshire's current state adequacy formula does, or choose to use a method that is oriented more toward outcomes, as the model developed by the American Institutes for Research (AIR) on behalf of the Commission would do. In the latter instance, however, failure to set a uniform outcome standard – such as a statewide average – and, instead, to employ a range of outcomes falls short of providing an equal opportunity.

## 2. Is total statewide spending enough for an opportunity for adequate/comparable outcomes?

**NHSFFP's POSITION:** It is sufficient if allocated among districts based on need. In its draft final report to the Commission, AIR notes that "our assumption for the cost model is that New Hampshire's state average level of outcomes is adequate, given that the state is among the top-performing states nationally on achievement tests. Therefore, we expect the level of funding distributed through our simulated formula to be comparable to existing levels of education funding for current operations." Accordingly, any reduction in funding below that existing statewide expenditure total (aside from the efficiency adjustments AIR made in devising its model) is likely to result in outcomes that are not equitable among students and that therefore fail to meet the Commission's standard for an adequate education. Local control allows districts to decide if they would like their students to exceed state averages and, if so, to appropriate additional funds from local sources to achieve those goals.

### 3. Should the state increase its share of education costs? How much?

**NHSFFP'S POSITION:** Yes, the State of New Hampshire should, as a matter of policy, and must, to comply with constitutional mandates, increase its share of education costs. At present, excluding the Statewide Education Property Tax (SWEPT), which is functionally a local tax, New Hampshire provides only about 20 percent of the revenue flowing into local school districts. This represents the lowest share in the nation and results in disproportionate property tax burdens for homeowners – and lesser educational opportunities for students – in property-poor communities. A series of Supreme Court rulings have established that the State of New Hampshire is responsible for 100 percent of the costs of an adequate education. That is the target share for which the Commission must aim. The state's share of total K-12 education costs will ultimately be somewhat less than 100 percent, as local districts elect to supplement an adequate education with a greater diversity of courses, additional enrichment activities, or other programs.

### 4. Should all students have the opportunity for statewide average outcomes?

**NHSFFP's POSITION:** The State of New Hampshire has a duty to provide an adequate education to each and every one of its K-12 students, regardless of where they live. Consequently, should the Commission recommend the use of outcome-oriented education cost model to meet that duty, then the target outcome (or target set of outcomes) should be same for each school district; in the case of AIR's model, that target set of outcomes was fixed at the statewide average outcome for three specific measures. Substituting a range of possible outcomes for a single uniform outcome standard runs counter to the notion of defining an adequate education as the opportunity to achieve a particular outcome.

### 5. Should there be less variation in property tax rates used for education?

**NHSFFP's POSITION:** There should be no variation in the rate of any tax, including the property tax, that the State of New Hampshire uses to fulfill its responsibility to provide an adequate education. At present, because of significant differences in property values among New Hampshire's cities and towns, the tax rates that local districts use to generate the resources necessary to educate the children in their care vary widely as well. For instance, during the 2018-19 school year, Moultonborough was able to use a tax rate of \$3.79 per \$1,000 of property value, yet generate \$26,604 in revenue per pupil. In stark contrast, Newport had to rely upon a tax rate of \$14.98 per \$1,000, which yielded only \$8,314 per pupil. These disparities cannot be allowed to persist if we want every child in New Hampshire to have the same opportunity to learn and to succeed in life. What's more, these disparities cause hardship for individual homeowners and economic distress for local communities. Tax rate inequities must be faced and resolved.

### 6. Should property tax rates used for education be the same statewide?

**NHSFFP's POSITION:** If the State of New Hampshire employs a property tax to help meet its obligation to provide an adequate education, the rate of that tax must be the same for every class of taxpayer. As the New Hampshire Supreme Court established in its second *Claremont* ruling in 1997, "[to] the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate

throughout the State.” Again, as noted earlier, local control allows districts to decide if they would like their students to exceed state average outcomes and, if so, to appropriate additional funds from local sources to achieve those goals.

### 7. Must the legislature fund the first and last dollar of school expenditure with state dollars?

**NHSFFP’s POSITION:** The New Hampshire Supreme Court has made it abundantly clear that the State of New Hampshire is responsible for meeting, in full, the costs associated with providing an adequate education. As the Court ruled in the *Londonderry* case in 2006, “Whatever the State identifies as comprising constitutional adequacy it must pay for. None of that financial obligation can be shifted to local school districts, regardless of their relative wealth or need.” Local school districts can nevertheless choose to provide, and to pay for, programs or enrichment opportunities that go beyond an adequate education.

### 8. What circuit breakers/protections for low- and middle-income owners need to be expanded or created for the SPT [state property tax]?

**NHSFFP’s POSITION:** New Hampshire’s existing Low- and Moderate-Income Homeowner Property Tax Relief Program represents a good starting point for efforts to mitigate the impact of property taxes on families struggling to make ends meet, but it is in need of significant reform. At present, only married couples with incomes of less than \$40,000 and single people with incomes less than \$20,000 can take part, while the maximum rebate is limited to only about \$230. The program should be strengthened to increase the income eligibility limits and to cover local school property taxes in order to increase the amount of relief available. A homestead exemption could also reduce property taxes for many New Hampshire residents without reducing taxes on other properties.

### 9. What is the base adequacy formula amount? Should that include transportation or not?

**NHSFFP’s POSITION:** Any adequacy formula devised by the Commission should account for transportation costs. Under the outcomes-oriented education cost model AIR has developed for the Commission, including transportation costs in the adequacy formula yields a base per student amount of \$6,015. If any weights for differential aid are reduced or eliminated, however, the base amount must rise.

### 10. What are the desired weights for differential aid? What are the components of differential aid? Should we add new weights for district size and grade level?

**NHSFFP’s POSITION:** In devising a new adequacy formula, the Commission must strike a balance between identifying all of the factors that have a meaningful impact on students’ opportunity to achieve a given set of outcomes and ensuring that the formula is understandable and manageable. At the same time, the Commission should consider the incentives or disincentives the formula may create (for instance, encouraging the continuance or creation of smaller schools than may be desirable). As AIR has advised, the Commission should avoid any ad hoc adjustments to the components of differential aid or to the weights assigned to the components now in the model and its final recommendations should caution policymakers against doing so. The weights that AIR has

calculated to date are each elements of an integral whole, so that efforts to add or remove one component of differential aid or to change a particular weight would necessitate a re-evaluation of the entire model. That said, in future years, as new data become available, policymakers may wish to refine or change various components of differential aid.

### 11. What issues need to be addressed relative to categorical programs (CTE, early childhood, catastrophic aid, transportation, building aid, charter schools)?

**NHSFFP's POSITION:** If the Commission believes that the services provided by categorical programs constitute part of an adequate education, then they must be included within the calculation of the cost of an adequate education. With limited resources to support education, any resources distributed outside of the adequacy formula necessarily reduce the resources to be distributed within the formula. This will tend to have the effect of rewarding districts with student populations of lower need, while penalizing districts with greater student needs.

### 12. Will we recommend a phase-in of a new funding formula and revenue mix? Over what period of time?

**NHSFFP's POSITION:** The legal requirement is clear. The decisions of the New Hampshire Supreme Court were meant to address the needs of students and taxpayers 20 years ago. There has already been an unconscionable delay affecting an entire generation. Further delay, called a phase-in, would simply continue current inequities.

Indeed, the Petition of Support that NHSFFP presented to the Commission last month urged the Commission "to be bold and visionary, undeterred by political considerations or by immediate fiscal and economic conditions." Hundreds of Granite Staters signed that petition because they know that their children cannot wait any longer for better schools, nor can they themselves continue to suffer the grossly disproportionate tax burdens and economic harm to their communities that are inherent in the current school funding system. A student who is in 4<sup>th</sup> grade today should not have to wait until she reaches high school to finally receive an adequate education. Nor should her parents continue to pay property taxes at an unfairly high rate for inferior educational opportunities for their daughter.

### 13. Do we need to identify additional outcome performance measures as benchmarks for future adjustments to the funding formula?

**NHSFFP's POSITION:** Rather than attempt to identify specific additional measures now, the Commission should instead prioritize the creation of a robust and regular process for both re-evaluating the funding formula as new data and research become available and making any needed changes in law arising from such periodic re-evaluations. The Commission could also recommend that the Department of Education determine how other performance measures could be used in subsequent years.

#### 14. How can we build a crosswalk showing the adequacy perspective based on an outcomes model and an adequacy model based on the traditional model (current)?

**NHSFFP's POSITION:** Any explanation of an outcome-oriented funding model, as compared to the state's current adequacy formula, must begin with an acknowledgement that the current approach is insufficient and fails to fulfill the state's responsibility to provide an adequate education to every child in New Hampshire. With that as a baseline, the crosswalk could then describe the elements that the outcome-oriented model and the current input-based model have in common, such as differential aid for low-income students, English language learners, or students with special education needs. From there, the crosswalk could discuss the elements that have been added to the model and the reasons for their inclusion.

#### 15. What do these models mean for the elements people think most about? (sports, materials, faculty, PD, retention of staff, etc.)

**NHSFFP's POSITION:** With sufficient resources, each district will be able to make its own decisions. Importantly, in directing additional resources to those school districts serving students with the greatest needs, the cost model that AIR has developed strengthens the capacity of those districts to make the kinds of decisions and investments, such as improving compensation to attract and retain skilled and experienced educators, that are likely to lead to better outcomes for the students in their communities. The Commission's report should emphasize that the AIR model would finally give many school districts an opportunity to actually exercise "local control," because these districts would have sufficient resources to make sound decisions about how to best meet the needs of their students. In too many school districts, "local control" has long been a cruel illusion. The only control these districts have is in deciding which essential services or support must be cut to avoid even more draconian property tax increases.

#### 16. Should SPT [state property tax] be sent 100% to the state treasury?

**NHSFFP's POSITION:** In general, any revenue generated by a state property tax should be remitted to the State so that it can distribute such funds to local districts in fulfillment of its obligation to provide an adequate education to every child in New Hampshire. For the sake of administrative ease, the Commission may wish to permit cities and towns to retain the state property tax they collect to meet the cost of an adequate education in their associated school districts, but, if the amount of state property tax they collect exceed such costs, they must be required to transmit the excess to the State to meet education needs in other, less affluent communities.

#### 17. What is the target ratio for revenues relative to local vs. statewide property tax?

**NHSFFP's POSITION:** In considering the mix of state and local revenues used to educate New Hampshire's schoolchildren, there is only one target on which the Commission should focus. As noted previously, a series of Supreme Court rulings have established that the State of New Hampshire is responsible for 100 percent of the costs of an adequate education. As stated above, that is the target for which the Commission must aim. The final ratio of state to local revenue will depend upon the decisions local districts make about whether to supplement an adequate education with greater additional enrichment activities or other programs.

## 18. What is the target statewide property tax rate?

**NHSFFP's POSITION:** Under the outcomes-based simulator tool AIR has developed for the Commission, a statewide property tax rate of \$12.04 per \$1,000, when taken in combination with existing sources of revenue flowing into the Education Trust Fund, appears sufficient to fulfill the State's obligation to provide an adequate education. Importantly, that tax rate would not be levied on top of existing school property tax rates. Rather, it would replace both the existing Statewide Education Property Tax (SWEPT) and, most, if not all, of the local school property tax rate in every city and town in New Hampshire. Consequently, many communities would likely see their total school property tax rates fall under such an approach.

It is worth noting that the statewide property tax rate could be less than \$12.04, if the amount of revenue flowing into the Education Trust Fund were to increase through the adoption of revenue reforms, such as the creation of a capital gains tax or a tax on marijuana sales, the restoration of an estate or inheritance tax, or the elimination of business tax rate reductions. The AIR model will automatically recalculate the needed statewide property tax rate based on the amount of funding from other sources in the Education Trust Fund (currently assumed to be \$601.9 million).

## 19. Should there be a mandated and constant minimal local property tax contribution?

**NHSFFP's POSITION:** If a "minimum local property tax contribution" is implemented, the rate must be the same across the state. Moreover, any cities or towns that generate an amount of revenue from their mandatory local minimum that exceeds the local cost of providing an adequate education must be required to remit that excess to the state. Otherwise, the effective tax rate of a mandatory local minimum contribution would vary from place to place, perpetuating the inequities of New Hampshire's current approach to school funding and violating a key constitutional principle.

## 20. What is the desired ratio of total SPT revenues relative to non-SPT revenues?

**NHSFFP's POSITION:** Again, under the outcomes-based simulator tool AIR has developed for the Commission, a statewide property tax rate of \$12.04 per \$1,000, when taken in combination with existing sources of revenue flowing into the Education Trust Fund, appears sufficient to fulfill the State's obligation to provide an adequate education. Under this scenario, the statewide property tax would generate roughly \$2.3 billion annually, while Education Trust Fund revenues are assumed to total approximately \$602 million. The resulting ratio is just under 4:1. As noted above, that ratio could be reduced if revenue reforms, such as the creation of a capital gains tax or a tax on marijuana sales, the restoration of an estate or inheritance tax, or the elimination of business tax rate reductions, were adopted and allocated to the Education Trust Fund.

## 21. What are the various non-SPT revenue sources and what is the relative mix of those revenues? Are we proposing any new non-SPT sources that don't currently exist?

**NHSFFP's POSITION:** Leaving aside the Statewide Education Property Tax (SWEPT), under current law, revenue from 8 sources is allocated to the Education Trust Fund, specifically:

- Business Profits Tax (BPT)
- Business Enterprise Tax (BET)
- Meals and Rooms Tax
- Tobacco Tax
- Real Estate Transfer Tax
- NH Lottery
- Utility Property Tax
- The state's settlement with tobacco manufacturers

Of these sources, the state's twin business taxes, in combination, provide a little more than half of the non-SWEPT revenue accumulating in the Education Trust Fund. Any of these sources could be increased, as an alternative to continued heavy reliance on property taxes.

The legislative authorization that created the Commission did not limit its consideration of possible revenue sources to the property tax and the Commission should evaluate whether any existing revenue sources should be expanded or new revenue sources should be added. When the Commission established its three work groups in May, it tasked the Fiscal Policy Workgroup with proposing "alternative sources and mix of revenues to achieve for every child an equal opportunity for an adequate education, with pros and cons of each." Accordingly, the Commission should consider additional revenue sources, either in combination with, or as a substitute for, a statewide property tax. Thus far, the Commission has touched on these possibilities only briefly.

The Office of the Legislative Budget Assistant can review many of the changes in tax policy that have been proposed in recent years and update the estimates of the amount of revenue that each would raise.

## 22. Will we address school administrative structure in the final report (e.g., consolidation, regionalization)?

**NHSFFP's POSITION:** Local control is important. Care must be taken that the proposed distribution formula does not result in either disincentives for districts that may be considering consolidation or regionalization or incentives for districts that already have co-operative arrangements in place to abandon them. The Commission has made some progress on this front in refining the weights it may assign based on school enrollment levels, but further improvements might still be possible.

## 23. How will we address instructional technology costs and other COVID-related expenses, either one-time or recurring?

**NHSFFP's POSITION:** As the outcomes-oriented cost model developed by AIR relies upon the 2019, pre-COVID-19 level of statewide education expenditures, it is not designed to account explicitly for any new or increased recurring technology costs arising from the pandemic; thus, periodic re-evaluations of the model are essential, so that it reflects the actual experiences of students and

school districts. The Commission should focus on the long term and provide a map that will be used for many years.

However, that should not dismiss the need for possible state aid to respond to the specific needs of the COVID era. For instance, as the Commission weighs changes in funding for categorical programs, it may wish to include support for capital costs incurred in response to the pandemic, such as improvements in HVAC systems, in the state's school building assistance program.

#### **24. Should there be permanent accountability structures, mechanisms, processes included in the recommendations?**

**NHSFFP's POSITION:** The Supreme Court has ordered that ensuring accountability is a State responsibility. The charge that the legislature gave the Commission did not include reviewing or proposing accountability standards. In view of the number and scope of tasks still before the Commission and the limited time remaining before it must issue its final report, the Commission should simply leave in place the few existing accountability structures, mechanisms, and processes. The Commission might simply recommend that such a review and redesign take place to ensure accountability for outcomes.

#### **25. Will we make any comments or recommendations on the funding of public charter schools?**

**NHSFFP's POSITION:** To the extent that students are attending public charter schools, the State of New Hampshire has the same responsibility to those students that it has to students attending traditional public schools. That responsibility is to ensure that they have an opportunity for an adequate education. There is no reason for the Commission to get involved in the debate over school types, or curriculum, or any other education debate.

#### **26. What kinds of recommendations need to be made to local legislators post-December 2020? For example, when local school leaders and state leaders/advocates start thinking about accountability, if the funding may be distributed differently**

**NHSFFP's POSITION:** To the extent possible, the Commission should continue its outreach and engagement efforts with school and municipal leaders, both to help them understand the value of a student-centered, outcome-oriented approach to school funding and to solicit their input on future refinements to that approach.

#### **27. What are the ancillary expectations for the Department of Education?**

**NHSFFP's POSITION:** The Commission should seek to partner with the Department of Education to address the myriad data collection and dissemination issues it has identified over the past several months and to prepare the Department to conduct the periodic reassessments of the education cost model vital both to its continued accuracy and to the proper distribution of resources to school districts in the years to come. The Commission should also require AIR to provide all underlying data, regression analyses, formulas, and other materials to the Department and to other public

entities. Only with all such material will the Department be able to refine and to update the important work that has been done to date.

## 28. How do we address the confusion about how the current taxes are labeled? State? Local?

**NHSFFP's POSITION:** Any confusion about the existing Statewide Education Property Tax (SWEPT) and whether it constitutes a local or a state tax can easily be addressed by replacing it with a property tax that is imposed by the State of New Hampshire at a single uniform rate across all cities and towns and by requiring that any revenue generated by such a tax be remitted to the state for use in meeting its obligation to provide an adequate education.