



TO: Members of the Commission to Study School Funding

FROM: Jeff McLynch, Project Director, NHSFFP
John Tobin, Chair, Board of Directors, NHSFFP

RE: Draft Commission findings and recommendations

DATE: November 23, 2020

The draft report of the Commission to Study School Funding released on November 22, 2020 reflects considerable progress toward the fulfillment of the Commission's statutory responsibilities and, more importantly, toward devising a more equitable and sustainable system for funding New Hampshire's public schools. Nevertheless, further refinements to the draft report could strengthen it significantly prior to the Commission's final vote on November 30. More specifically:

- 1. The Commission's final report should seek to achieve equity for both students and taxpayers.** In its current form, the draft report finds that "student equity is the most important principle for good fiscal policy in school funding" (FP-F12) and subsequently recommends that fiscal policy "for education funding should place a priority on student equity" (FP-R1). While NHSFFP agrees that one of the chief aims of any reform of school funding in New Hampshire should be a greater equalization of educational opportunity for all students, regardless of the schools they attend, such reform should also strive to put an end to the tremendous disparities in property tax rates homeowners and businesses now pay to support their local schools. Indeed, the draft report elsewhere notes the concerns of the public, expressed during the Commission's engagement activities, about "the reliance on property tax and the unequal application of taxes across the state when funding public schools" as well as the public's view that "the reliance on local property tax to fund public school is undesirable..." (E-F2). In the "Forward" and elsewhere, the Commission should make explicit that the twin pillars of the report are student equity and taxpayer equity. This would be consistent with the two core mandates of the New Hampshire Constitution, from Part 2, Article 83, and Part 2, Article 5, that undergird our state's school funding system.
- 2. The Commission's final report should specify the revenue source (or sources) the State of New Hampshire should use to meet its obligation to provide an adequate education to every child.** As the draft report notes, among its statutory charges, the Commission is required to "...make recommendations to ensure a uniform and equitable design for financing the cost of an adequate education...". In addition to the concerns about taxes expressed through the Commission's engagement events detailed above, the Commission received public testimony on several occasions urging it to fulfill this charge and to detail the changes in tax policy necessary to finance the cost of an adequate education in an equitable manner. For instance, the Petition of Support

presented by NHSFFP to the Commission on September 21 on behalf of more than 400 Granite Staters urged the Commission to “produce legislative recommendations that ... use a source of revenue – or a combination of sources – for meeting [the cost of an adequate education] that is fair and uniform among all New Hampshire taxpayers.”

Nevertheless, such recommendations are absent from the Commission’s draft report. The draft report does outline three models of how the costs of an adequate education might be met, but only one – a single statewide property tax at a rate sufficient to provide full state funding – would likely ameliorate existing inequities while complying with constitutional mandates. The Commission should endorse that model in combination with a robust, state-funded property tax relief program for low- and moderate-income taxpayers.

3. The Commission’s final report should recommend a funding formula that includes specific dollar values and should clarify the goals that formula seeks to achieve.

The current draft of the Commission’s report finds that “Weights for differentiated aid should be aligned with the resources needed by students with greater needs to ensure every student has the opportunity to achieve statewide average outcomes,” details the weights for different factors calculated by the American Institutes for Research (AIR), and notes that AIR’s research yields a base per student cost (for 2018-19 and including transportation expenses) of \$5,868 (ADF-3). Yet, the current draft fails to recommend that either this base per student cost or the dollar figures resulting from AIR’s factor weights be incorporated into a new funding model; the final version of the report should rectify this shortcoming.

On a related note, recommendation AD-R2 in the Commission’s draft report currently states:

Court proceedings over the past 30 years have asked the legislature to define constitutional adequacy. The Commission recommends that the legislature adopt a funding model that recognizes that the cost of constitutional adequacy varies by community and state funding should direct resources in a manner that addresses communities with the greatest need as determined by student outcome factors identified in this report.

As the first sentence of that recommendation is more in the nature of a finding and to ensure that the Commission’s recommendations remain consistent with constitutional mandates articulated by the New Hampshire Supreme Court, NHSFFP suggests replacing the above language with the following:

The Commission recommends that the legislature adopt a funding model that ensures that every child receives a constitutionally adequate education, that recognizes that the cost of constitutional adequacy varies across communities and children, and that targets those areas and students with the greatest needs, as determined by the factors identified in this report.



- 4. The Commission’s final report should properly reflect the substance of school funding litigation in New Hampshire.** In particular, the Commission’s draft report portrays one of the central elements of the Supreme Court’s ruling in the 2006 *Londonderry* case – namely, that the State of New Hampshire must pay for the full cost of providing a constitutionally adequate education – as “advisory language” (p. 44). Later (p. 48), the draft report asserts that “The role of state funding in New Hampshire is not to implement a specific set of state-defined programs. State funding should be applied to assist locally raised funds to ensure student equity.”

Neither statement is accurate. The Court’s decision in *Londonderry* was not an advisory opinion and its holding about the full measure of the State’s responsibility – “whatever the State defines as comprising constitutional adequacy it must pay for” – is a clear constitutional command, not non-binding advice that can be minimized or disregarded. All of the lawyers who made presentations to the Commission regarding the constitutional principles underlying school funding, whether they were from the Attorney General’s office or represented local school districts, agreed that this principle was clear and binding. Several Commission members have indicated that they don’t like this holding, but it is settled law which can’t be disregarded or explained away by mislabeling it as “advisory”. Such a statement is simply incorrect and would be misleading if it remained in the report. Likewise, *Londonderry*, and the cases that preceded it, made clear that a constitutionally adequate education is to come directly from state funding, with locally raised funds to supplement the State’s core support, should a city or town elect to provide educational services or programs over and above the standard of adequacy. The Commission’s final report should correct these inaccuracies.

- 5. The Commission’s final report should avoid a protracted implementation timeline and should consider more frequent re-evaluation of the education cost model.** In its present form, the Commission’s report suggests a five-year phase-in for the reform of New Hampshire’s school funding system. In other words, if the Commission’s timeline were followed, any New Hampshire student in grade 8 or higher today would complete his or her elementary and secondary education in New Hampshire without ever knowing a full measure of justice. No one should ask them to continue to wait.

If the Commission still chooses to endorse a five year phase-in, it should clarify language in the draft report detailing how that phase-in could be accomplished, as one description of it (p. 55) could be open to multiple interpretations.

Finally, just as the Commission should strive to hasten the implementation of any reforms it recommends, so too should it shorten the period that it suggests for regular re-evaluation of the education cost model (ECM). In its current form, the draft report calls for the ECM to be “recalibrated using student outcome data and actual statewide spending” “at least every ten years.” Increasing the frequency of such re-evaluations to every five years would ensure that the ECM is more responsive to existing conditions and would help to minimize not only the possibility of dramatic changes in funding for specific districts arising from such re-evaluations but also the likelihood that policymakers would resort to funding changes that attempt to mitigate such “shocks” and that, by extension, deviate from the ECM.