



Gov. Andrew Cuomo. | AP Photo/Seth Wenig

## Cuomo school aid proposal likely to face opposition in Legislature

By KESHIA CLUKEY | 01/23/17 05:44 AM EST

ALBANY — Gov. Andrew Cuomo's proposal to eliminate the phase-in of the decade-old school aid formula will likely face opposition in the Democratic-led Assembly, and could

also affect lawsuits over funding issues.

“He basically threw gasoline on the fire and created a storm over something that could have easily been avoided,” said Michael Borges, executive director of the New York State Association of School Business Officials.

Cuomo is proposing a \$1 billion increase in school aid for the 2017-18 school year — \$428 million of which is in Foundation Aid. That’s along with changes to the state’s Foundation Aid funding formula which would provide more money to the state’s neediest districts. State education groups have lauded both proposals.

If Cuomo would have stopped there and begun the phase-in of Foundation Aid, it would have been “business as usual,” Borges said. Instead, it has caused contention in an otherwise uncontroversial education budget, he said.

Cuomo’s budget proposal, released last week, eliminated the phase-in of the formula, which if fully run, would drive an additional \$4.3 billion to districts statewide, according to state Education Department numbers.

Morris Peters, a budget division spokesman, previously told POLITICO New York that the formula itself has not been eliminated, and the proposed changes “will lower the levels of poverty and update census data, both progressive measures that will direct more funding to high-needs districts.”

The administration has disputed the total aid owed to districts, pointing to how much aid Cuomo continues to budget for education. The 2016-17 state budget allocated approximately \$24.6 billion for education.

The proposal could not only be a sticking point in budget negotiations with the Legislature, but could help the plaintiffs in two lengthy legal battles.

“From my point of view, it’s good timing,” said Michael Rebell, the lead attorney for the plaintiffs in the New Yorkers for Students’ Education Rights (NYSER) v. New York. The NYSER case is before the state Supreme Court’s Appellate Division, with the first of several briefs due Feb. 13, Rebell said. It could be ready for argument starting in late April.

The suit follows the landmark Campaign for Fiscal Equity case, a 2006 decision in which the state’s highest court ruled the state was under-funding its schools and not meeting its constitutional burden to provide children with a “sound, basic education.” Following the

decision, the state created the Foundation Aid formula to fund its schools. But it was never fully put in place due to the recession that hit in 2008.

The NYSER suit was filed in 2014 by a coalition of statewide organizations, parents and education advocates. It alleges the state is still under-funding schools and not complying with the earlier court order.

The state, represented by Attorney General Eric Schneiderman, contends that it has already complied with a previous court order and has since significantly increased funding for all school districts statewide.

An administration official previously told POLITICO New York that the original phase-in agreed to under former governor Eliot Spitzer was an aspirational number, adding that budgets are done in one-year increments.

Rebell said Cuomo's proposal strengthens the plaintiffs' argument. "His proposing it makes it brazenly clear that he thinks that he can do whatever he wants, that the constitution is aspirational," Rebell said.

The proposal could also help in a similar case, *Maisto v. New York*, in which the parents and students in eight small city school districts — Jamestown, Kingston, Mount Vernon, Newburgh, Niagara Falls, Port Jervis, Poughkeepsie and Utica — accused the state of under-funding the districts.

In September a state Supreme Court justice dismissed the case, ruling in the favor of the state and saying the Foundation Aid formula had "barely gotten off of the ground," and that it "cannot be said that the state has failed to meet its constitutional obligation."

The plaintiffs this week are filing a brief to perfect the appeal in the hopes that the case will also go before the state's highest court, Bob Biggerstaff, executive director and attorney for the New York State Association for Small City School Districts, told POLITICO New York.

Cuomo's budget proposal removes the phase-in, and in its stead, districts would receive the Foundation Aid they received in 2017-18, as well as an increased amount allocated every year. Under the proposal schools would not get less than they did the year prior.

But the state's poorer districts, like the small cities, will still be at a disadvantage without the phase-in, Biggerstaff said.

The students "don't have the resources to enable them to achieve success," he said. "The [state] constitution says the Legislature must provide them an education that constitutes a

meaningful ... education, and so if the governor says that they don't owe the money to provide that, then that's wrong."

The Attorney General's office, which is representing the state in both cases, declined to comment on the possible impact.

And it's not clear if the proposal will make it through the Legislative process.

Borges, executive director of the school business officials group, believes school districts will put pressure on legislators, who will then in turn pressure the governor over his proposal.

The Democratic-led Assembly very likely will oppose the change and will push for the full phase-in of Foundation Aid.

In his opening remarks at the beginning of the new legislative session earlier this month, Assembly Speaker Carl Heastie, a Bronx Democrat, made it clear that education and education funding would be a priority for his conference.

This week he told reporters Cuomo's proposed education budget was "not enough."

"We still believe there's some back money that still should be put towards education," he said. "We believe that the Foundation Aid and the numbers pertaining to Foundation Aid are important and we'd like to see that happen. There are still too many communities around the state where there's just not enough funding to these school districts."

It's unclear if the Republican-led Senate will oppose or embrace Cuomo's proposal.

Senate Majority Leader John Flanagan, a Long Island Republican, said last week the details of Cuomo's education proposals are going to be "extremely important."

"In the last six years we put over 31 percent more money into education, so I'm very proud of that," Flanagan said, although he did not specifically say whether or not the Senate Republicans plan to push for the phase-in of the formula. "The distribution of the money is just as important as the amount," he said.

This is just step one, state education commissioner MaryEllen Elia said on Friday.

"This is the beginning of the conversation, we all know that," she said. "We're going to work with everyone to try to come out with what we think is the best budget that will support students in the state."

She did not comment on the governor's proposal to eliminate the phase-in, but said it is a conversation the lawmakers will have as they move forward.

The Senate and Assembly will release their budget proposals in the coming weeks, and then discussion will begin as lawmakers aim to pass it before the start of the new fiscal year on April 1.

—*Additional reporting by Jimmy Vielkind.*