



Advocates for Children of New York

Protecting every child's right to learn

Testimony for the Joint Legislative Public Hearing on the 2019-2020 Executive Budget Proposal: Elementary and Secondary Education

February 2019

Advocates for Children of New York (AFC) appreciates the opportunity to submit testimony on the 2019-2020 Executive Budget Proposal: Elementary and Secondary Education. For more than 45 years, Advocates for Children has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York parents and students navigate the education system. We focus on the students who are most likely to experience failure in school because of poverty, race, disability, homelessness, immigration status, involvement in the child welfare or juvenile or criminal justice systems, or language barriers.

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Based on this experience, we urge the Legislature to:

1. Invest \$50 million to promote safe and supportive schools;
2. Increase the reimbursement rate for preschool special education programs by at least five percent and add substantial funding to address teacher shortages in these programs;
3. Invest an additional \$150 million in prekindergarten programs;
4. Reject the Executive Budget special education waiver proposal;
5. Invest \$100 million to support English Language Learners (ELLs)/Multilingual Learners (MLLs), \$4.43 million for accurate assessments for ELLs/MLLs, and \$2 million for assessments for ELLs/MLLs with severe cognitive disabilities;
6. Increase Foundation Aid by \$1.66 billion;
7. Support the extension of mayoral control of New York City schools; and
8. Reject the proposed consolidation and capping of certain expense-based aid.

1. Invest \$50 million to promote safe and supportive schools.

Every child deserves to attend a safe, high-quality school where students, teachers, and staff are treated with dignity and respect. Without the training and tools teachers need to support students, schools resort too often to exclusionary discipline like suspensions. Suspensions, disproportionately given to black students and students with disabilities, force students to miss valuable instructional time, while failing to address the issues underlying the students' behaviors. Suspensions and expulsions increase the likelihood that students will have lower academic achievement, be held back a grade, not graduate, drop out of school, receive a subsequent suspension or



expulsion, and become involved in the juvenile or criminal justice system. These suspensions also have financial consequences for New York; experts estimate that suspensions cost states hundreds of millions of dollars in lost wages, tax revenue, and other social costs.

There are effective alternatives to suspending and arresting students that hold students accountable and help create healthy and inclusive school communities where both students and educators can thrive. For example, in contrast to suspensions, which focus on excluding students from school as punishment for breaking rules, restorative practices allow school officials to consider how students will best learn why they must change their behavior, require students to take responsibility for their behavior, help students learn to avoid such behavior in the future, and keep students in the classroom. Schools and school districts that have successfully integrated restorative practices have seen higher graduation rates, improvement in math and reading scores, and reductions in chronic absenteeism.

We recommend that the budget include at least \$50 million to provide schools with the assistance and training needed to adopt positive, age-appropriate approaches to discipline that keep students in school and on a positive track, such as training for school staff and administrators on restorative practices, in-school restorative practices facilitators, peer mediation training and facilitation, and additional social workers and school psychologists.

We are encouraged that Governor Cuomo included in his proposed budget \$3 million for training teachers and school staff on alternatives to suspensions, including restorative practices and positive behavioral supports. The proposed amount in the budget, however, is woefully inadequate to meet the need across the State and far less than the \$50 million recommended.

We recommend that the Legislature negotiate a budget that includes \$50 million for grants for schools to implement positive approaches to discipline.



2. Increase the reimbursement rate for preschool special education programs by at least five percent and add substantial funding to address teacher shortages in these programs.

We are very concerned about the growing number of preschoolers with disabilities in New York City who are waiting for the preschool special class seats to which they are entitled. A “regional need” memo posted by the State Education Department in August 2018 shows that New York City needs 30 12:1:2 classes (including 7 bilingual classes), 30 8:1:2 classes (including 4 bilingual classes), and 24 6:1:2 classes (including 3 bilingual classes). According to this memo, New York City needs preschool special class seats for 740 children. We have received calls from parents of children with disabilities who have been sitting at home for months because of the shortage of preschool special classes, in violation of their legal rights, while their peers participate in a Universal Pre-K class. These children are missing a critical opportunity to get the intervention, instruction, and services they need during the window of time when these services can have the greatest impact.

Contributing to the shortage is the closure of “4410” preschool special education programs run by community-based organizations. Over the past few years, approximately 30 preschool special education programs have closed in New York City and another 30 have closed around the rest of the State. We have heard from additional programs that are worried that they may be forced to close due to inadequate funding. Among other challenges, programs report that they are having difficulty hiring and retaining certified special education teachers because teachers are leaving for Universal Pre-K jobs where they can earn far higher salaries for working only 10 months per year than the salaries that 4410 providers can pay under their current reimbursement rates. We have also heard from parents concerned that their children are attending preschool special classes that do not have teachers.

While we fully support the State’s efforts to expand Universal Pre-K, the State must also ensure that there is a preschool special class seat for every child whose Individualized Education Program (IEP) mandates one. To stem the tide of program closures, the State must provide at least a five percent increase in reimbursement rates for preschool special education programs. While the State Education Department recommended a four percent increase last year, the Division of Budget approved only a two percent increase. In addition, the Board of Regents has recommended adding \$4 million to the existing \$8 million in funding for Excessive Teacher Turnover Prevention, for a total investment of \$12 million in 2019-2020, to help address teacher shortages in community-based preschool special education programs and school-aged special education non-public schools. However, this proposed funding is not sufficient to address the teacher shortages. In fact, the Regents’ proposal



translates to only around \$1,300 per teacher, when these teachers could earn tens of thousands of dollars more if they were to leave for public school jobs. Furthermore, the Executive Budget does not include this increased funding.

We urge the Legislature to negotiate a budget that provides at least a 5 percent increase in reimbursement rates for preschool special education programs and invests substantial funding to address teacher shortages in these programs.

3. Invest an additional \$150 million in prekindergarten programs.

By the time children enter kindergarten, children from lower socioeconomic backgrounds lag significantly behind children from higher socioeconomic backgrounds in academic skills. High-quality early childhood education programs are proven to help fill this gap. Rigorous research has shown that, compared to children left out of high-quality early childhood education programs, low-income children who participated were less likely to be retained a grade in school, be placed in a special education class, drop out of school, rely on public assistance, or be arrested for a violent crime. As a result, these programs result in substantial cost savings to schools, government, and taxpayers.

We are grateful to Governor Cuomo and the Legislature for increasing funding for prekindergarten over the past few years, making New York City's universal pre-K program possible. However, despite promises to make full-day prekindergarten available statewide, tens of thousands of four-year-old children around the State still have no full-day pre-K. In addition, New York City needs additional funding to implement its plan to expand pre-K to three-year-old children. Although research shows the benefits of giving children access to early childhood education programs at an even younger age, far fewer three-year-old children have access to pre-K.

We appreciate that the Executive Budget sustains the recent increases in prekindergarten funding and includes an additional increase of \$15 million. However, this funding falls far short of the amount needed to reach universal access. We urge the Legislature to keep the promise of universal pre-K by investing at least an additional \$125 million in prekindergarten for three-year-old and four-year-old children and an additional \$25 million for quality improvements to ensure that the State funds high-quality programs.

We ask the Legislature to keep the promise of making full-day prekindergarten universal by negotiating a budget that invests at least an additional \$125 million for prekindergarten and \$25 million for prekindergarten quality enhancement.



4. Reject the Executive Budget special education waiver proposal.

AFC opposes the Executive Budget proposal to allow school districts, approved private schools, or boards of cooperative educational services (BOCES) to seek waivers from important protections contained in N.Y. Education Law §§ 4402 and 4403 and their implementing regulations for students with disabilities. Sections 4402 and 4403 contain important requirements, including (1) provisions regarding IEP teams and annual and triennial reviews (which already include waiver provisions for individual students); (2) policies regarding functional behavior assessments, behavior intervention plans, transition to adulthood, and class sizes; and (3) notifications required to parents before changes in placement, including placement in residential programs and interim alternate educational settings. All of these provisions provide important rights to students with disabilities and their families. A waiver provision this broad would erode students' rights and have an adverse effect on students with disabilities, particularly those who are from low-income backgrounds. Importantly, there has been no showing that this provision will result in significant cost savings for districts or remove actual barriers to serving students with disabilities more effectively.

In addition, the notice provision and process for approval for the waiver are inadequate. The notice provision does not provide for public notice of waiver requests, but leaves it up to the local school district, approved private school, or BOCES to determine which parents will be impacted and to give them notice in a form to be determined by the Commissioner. This process leaves too much room for error and for districts to limit notice too severely, with parents who are in fact affected by the proposed waiver having no chance to voice their opposition. We are also concerned that the current proposal allows the Commissioner to approve a waiver proposal without approval from the Board of Regents, giving the Commissioner power to singlehandedly authorize school districts to remove important protections for students with disabilities.

With the current political climate in Washington, we need the State to stand firm on rights for students with disabilities, not enact legislation that would take these rights away.

We are pleased that the Legislature has rejected this proposal for at least the past five years. **We urge the Legislature to protect the rights of students with disabilities by rejecting the special education waiver proposal once again this year.**



5. Invest \$100 million to support English Language Learners/Multilingual Learners (ELLs/MLLs), \$4.43 million for accurate assessments for ELLs/MLLs, and \$2 million for assessments for ELLs/MLLs with severe cognitive disabilities.

Statewide, there are more than 250,000 students identified as English Language Learners/Multilingual Learners (ELLs/MLLs)—approximately 9 percent of New York State’s students. Over half of New York City’s school-age children come from immigrant families and around 15 percent of NYC students are ELLs/MLLs. We work with many families of ELLs/MLLs whose schools are not equipped to provide their children with the support and instruction required by law and are not providing them with access to the interpretation and translation services they need in order to play a meaningful role in their children’s education.

a) Invest \$100 million in support for English Language Learners

Given the growing number of ELLs/MLLs, a significant investment is needed to serve them through a variety of approaches, including creating materials and instructional resources for ELLs/MLLs that are age and grade appropriate, academically and linguistically relevant, and aligned with the New York Learning Standards; providing professional development to teachers and school staff on addressing the academic and socio-emotional needs of ELLs/MLLs and immigrant students; providing appropriate support and programs for newcomers, older ELLs/MLLs, Students with Interrupted Formal Education (SIFE), ELLs/MLLs with disabilities, and other subpopulations of ELLs/MLLs; matching content area teachers with teachers who have training and certification in bilingual education; creating and translating materials for families; and hiring bilingual personnel such as teachers and guidance counselors. For the past few years, the Board of Regents has recommended an influx of additional resources to serve ELLs/MLLs. Unfortunately, however, the Executive Budget does not include any new funding to support ELLs/MLLs. New York State cannot continue to leave these students behind.

We urge the Legislature to negotiate a budget that includes an additional \$100 million to provide increased support to English Language Learners/Multilingual Learners.



b) **Invest \$4.43 million for accurate assessments for English Language Learners/Multilingual Learners**

With the growing number of ELLs/MLLs in New York State, teachers and school districts do not have all the necessary tools to accurately understand how these students are performing. Assessments are particularly needed to test students on their content knowledge of a particular subject (e.g., math or science) rather than on their command of the English language, which is already assessed through a separate test.

In order to determine the progress and achievement of ELLs/MLLs in a meaningful way, New York must translate all required assessments into the most common home languages of ELLs/MLLs. While translations of Grades 3-8 math tests and the Regents tests are already available in five languages, these languages no longer completely align with the languages most commonly spoken and read by students today, and additional translations are needed. The Board of Regents' 2018-2019 State Budget Priorities recommends \$1 million to fund translations of all required assessments in the eight most common home languages of ELLs/MLLs. However, the Executive Budget does not include any funding to translate assessments.

While the State's ELLs/MLLs speak more than 200 languages, Spanish is the home language of 62.7 percent of ELLs/MLLs across the State. Developing a Spanish Language Arts test would allow school districts the option of administering this assessment when it would best measure the progress of Spanish-speaking ELLs/MLLs in bilingual classes. The assessment would be aligned with the curriculum taught in bilingual classes and would help assess the progress that native Spanish speakers are making in Language Arts. The Board of Regents' 2019-2020 State Budget Priorities recommends \$3.43 million for this purpose. However, the Executive Budget does not include any funding for a Spanish Language Arts test.

We urge the Legislature to negotiate a budget that includes the Board of Regents' recommendation for \$4.43 million for the translation of assessments and the development of a Spanish Language Arts test in order to help schools meaningfully determine the progress and achievement of English Language Learners/Multilingual Learners.



- c) **Invest \$2 million to develop a new English Language Proficiency (ELP) assessment program for English Language Learners/Multilingual Learners with severe cognitive disabilities.**

New York State administers an assessment called the New York State English as a Second Language Achievement Test (NYSESLAT) to determine the level of language services an ELL/MLL student needs and to determine when such services are no longer needed. However, students who have severe cognitive disabilities often have difficulty demonstrating proficiency in English using this assessment. Therefore, a new assessment is needed for this population of students. In addition, last year, the U.S. Department of Education released guidance requiring an alternate English Language Proficiency assessment for ELLs/MLLs who cannot test out of ELL/MLL status with the current assessment due to their severe cognitive disabilities. The Board of Regents' 2019-2020 State Budget Priorities recommend \$2 million to develop a new English Language Proficiency assessment program for the State's approximately 7,000 ELL/MLLs who have severe cognitive disabilities. However, the Executive Budget does not include any funding for such an assessment.

We urge the Legislature to negotiate a budget that includes the Board of Regents' recommendation for \$2 million to develop an assessment program for ELLs/MLLs who have severe cognitive disabilities.

6. Increase Foundation Aid by \$1.66 billion.

The Executive Budget proposal includes an increase of only \$338 million in Foundation Aid for schools, less than 10% of the \$4.1 billion gap between the amount appropriated for the current year and the amount called for in the Foundation Aid formula that the State adopted in 2007 in response to the decisions in the Campaign for Fiscal Equity (CFE) lawsuit. We are disappointed that the proposed Foundation Aid funding falls far short of the amount owed pursuant to CFE and the amount that the Board of Regents has recommended. The Board of Regents recommended a three-year phase-in of Foundation Aid, starting with an increase of \$1.66 billion this year.

We urge the Legislature to fulfill its commitment to our schools by negotiating a budget that includes an increase of at least \$1.66 billion in Foundation Aid.



7. Support the extension of mayoral control of New York City schools.

As advocates who help parents navigate the New York City school system, we know how important it is to have stability in the leadership and governance structure of the education system. Having a political battle each year about whether or not to extend mayoral control of schools does not help New York City students and takes attention away from important policy debates about how to strengthen public education. The Executive Budget proposes extending mayoral control of New York City schools for three years.

We urge the Legislature to approve an extension of mayoral control of this length at a minimum.

8. Reject the proposed consolidation and capping of certain expense-based aid.

We are concerned about the Executive Budget proposal to consolidate eleven major expense-based aid categories into a new aid category with a cap on growth. We worry that the cap on growth based on inflation and district enrollment does not adequately account for the various factors that could change a district's expenses in several of these categories. For example, during the 2017-2018 school year, 152,839 students were identified as homeless by New York State school districts and charter schools, an increase of 4,624 students from the 2016-2017 school year. Under federal and state law, students in temporary housing have the right to transportation so they can continue attending their original school when they become homeless. A cap on transportation aid would be burdensome to districts with growing numbers of students in temporary housing and could make it even more difficult for students to get the transportation they need to maintain school stability. The State should not reduce its contribution in these important areas.

We urge the Legislature to reject the Executive Budget proposal to consolidate and cap certain expense-based aid.



We look forward to working with you throughout the budget process. Please feel free to contact me at 212-822-9532 or rlevine@advocatesforchildren.org if we can be of assistance.

Respectfully,

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