



Advocates for Children of New York

Protecting every child's right to learn

Testimony for the Joint Legislative Hearing on the 2020-2021 Executive Budget Proposal: Elementary and Secondary Education

February 11, 2020

Thank you for the opportunity to speak with you today about the 2020-2021 Executive Budget Proposal: Elementary and Secondary Education. My name is Randi Levine, and I am the Policy Director at Advocates for Children of New York (AFC). For almost 50 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.

Based on this experience, we urge the Legislature to:

1. Fully fund Foundation Aid;
2. Address the shortage of preschool special education classes by increasing reimbursement rates by ten percent;
3. Reject the Executive Budget special education waiver proposal;
4. Increase funding to support Multilingual Learners (MLLs)/English Language Learners (ELLs);
5. Increase funding to promote safe and supportive schools;
6. Increase funding for prekindergarten programs; and
7. Reject the proposed consolidation and capping of certain expense-based aid.

1. Fully fund Foundation Aid.

Every day, Advocates for Children hears from parents struggling to get their children the educational services and supports they need, including parents of students with disabilities, English Language Learners, and students who are homeless. Across the populations we serve, we see a need for more academic support, including evidence-based literacy instruction, as well as social-emotional support. Given the unmet needs of students in New York City and throughout the State, we continue to be

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disappointed that Foundation Aid funding falls far short of the amount owed pursuant to the Campaign for Fiscal Equity lawsuit. New York City alone is owed more than \$1 billion.

The Executive Budget proposal includes an increase of \$504 million in Foundation Aid allocated on the School Aid run and \$200 million in unallocated funding for high-need school districts, far less than the \$3.8 billion owed under the Foundation Aid formula that the State adopted in 2007 in response to the decisions in the Campaign for Fiscal Equity (CFE) lawsuit. The Board of Regents recommended an increase of \$1.9 billion in Foundation Aid this year as part of a three-year phase in of full funding. Increased funding is needed to support students and help address the inequities we see and the barriers students face in achieving school success.

We urge the Legislature to fulfill its commitment to our schools by negotiating a budget that includes an increase of at least \$1.9 billion in Foundation Aid this year.

2. Address the shortage of preschool special education classes by increasing reimbursement rates by ten percent.

Over the past year, AFC has received dozens of calls from parents whose preschoolers had a legal right to a preschool special education class but were sitting at home due to a shortage of available seats. Some of these children lost the skills they had gained through the Early Intervention program due to the gap in services. Other children were being identified as having a disability for the first time but could not get the help they needed. All of these children were missing a critical opportunity to get the intervention, instruction, and services they needed during the window of time when these services can have the greatest impact.

Now, New York City is projecting a significant shortfall in the seats needed for this spring. We released a new report this month showing that New York City will need **between 1,028 and 1,932 new preschool special education class seats** (for classes conducted entirely in English), as well as hundreds of additional seats in bilingual preschool special education classes, this spring in order to serve the City's preschoolers with disabilities and uphold their legal rights. While all five boroughs have a shortage, the need is particularly acute in the Bronx, with a projected need of at least 450 and up to as many as 798 seats in monolingual English classes, as well as additional seats in bilingual Spanish classes. This problem is not limited to New York City. For example, Rochester's preschool special class seats are entirely full



with no seats available for children identified as needing them over the rest of the school year.

Contributing to the shortage of preschool special education class seats has been the closure of classes by “4410” preschool special education programs run by community-based organizations (CBOs), which operate the majority of preschool special classes. In recent years, more than 30 of these CBOs in New York City and more than 30 in the rest of New York State have closed their preschool special education classes. We have heard from additional programs that are worried that they may be forced to close their preschool special education classes due to inadequate funding. Among other challenges, programs report that they are struggling to recruit and retain special education teachers who are leaving for universal prekindergarten jobs where they can earn higher salaries for working only 10 months per year than 4410 providers can pay for a 12-month school year under the payment rate for preschool special education classes set by the State.

Prior to the 2015-2016 school year, the State did not provide any increase in reimbursement rates for preschool special classes for six years, keeping the rate stagnant with no cost of living adjustments. Since that time, the State has approved only a two percent increase each year—far less than the increase provided for public education overall in the State budget. As recently as last year, as the New York City Department of Education (NYC DOE) opened new classes, CBOs closed their preschool special education classes, setting back the progress that the NYC DOE made.

While we fully support the State’s efforts to expand universal prekindergarten, the State must also ensure that there is a preschool special class seat for every child whose Individualized Education Program (IEP) mandates one.

In addition to the lack of seats in appropriate classes, more than one in ten preschoolers with disabilities (12%) do not receive timely evaluations, often due to a shortage of providers. The most recent data available show that in a number of districts around the State, such as New York City and Poughkeepsie, *more than 30%* of preschoolers were not evaluated within the legally mandated timeframe during the 2017-18 school year—delays that meant children went without the critical services they needed. Children are waiting for evaluations because inadequate State funding has made it difficult for evaluation agencies to continue operating.

We appreciate that, last year, the Assembly one-house budget recommended an increase in reimbursement rates for preschool special education programs of at least



five percent, and the Senate one-house budget recommended an increase of at least a four percent. However, the Division of Budget approved only a two percent increase.

Without a significant increase in reimbursement rates for preschool special classes and evaluations, we are deeply concerned that the shortage of preschool special education programs will only grow and that the State will continue violating the civil rights of preschoolers with disabilities.

To make up for under-investment in prior years, stop additional programs from closing, and address the delays in timely evaluations and the shortage of seats in preschool special classes, we join with our partners in the Kids Can't Wait Campaign and the Winning Beginning New York coalition to urge you to increase the reimbursement rates for preschool special education programs and evaluation sites by ten percent.

We urge the Legislature to negotiate a budget that provides a ten percent increase in reimbursement rates for preschool special education classes and evaluations.

3. 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 six years. **We urge the Legislature to protect the rights of students with disabilities by rejecting the special education waiver proposal once again this year.**

4. Increase funding to support Multilingual Learners (MLLs)/English Language Learners (ELLs)

Statewide, there are more than 250,000 students identified as Multilingual Learners (MLLs)/ English Language Learners (ELLs)—approximately 9 percent of New York State’s students. When MLLs/ELLs receive the support they need to succeed, they have the potential to outperform their native-English speaking peers. Yet in New York State, MLLs/ELLs fall incredibly far behind. Statewide, only 38.9% of MLLs/ELLs graduate within four years compared to 85.5% of non-MLLs/ELLs. Appallingly, they have the highest dropout rate of any subgroup at 27%. We work with many families of MLLs/ELLs 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.

To address long-standing achievement and opportunity gaps and help MLLs/ELLs reach their full potential, we join with New York Advocates for Fair and Inclusive Resources for Multilingual Learners (NY-AFFIRMs) in urging the Legislature to negotiate a budget that adds the following investments recommended in the Board of Regents’ 2020-2021 State Budget Priorities:



Improve Graduation Pathways: Invest **\$200,000** annually for two years for a Blue Ribbon Commission on Diploma Requirements including a broad cross-section of stakeholders to ensure all students have access to multiple pathways to graduation.

Increase Districts' Capacity to Serve Multilingual Learners (MLLs/ELLs): Allocate **\$15M** to school districts to enhance curriculum and increase instructional supports for the education of MLLs/ELLs.

Expand Access to Regional Support Services: Invest **\$1.6M** to expand staff at the State Education Department's eight Regional Bilingual Education Resource Networks to provide school districts professional development, key supports, and translations and fulfill other goals regarding MLL/ELL achievement.

Provide Appropriate Assessments: Invest **\$1M** to create a new English Language Proficiency Assessment for MLLs/ELLs with Severe Cognitive Disabilities.

Increase Access to Diverse and Bilingual Teachers: Invest **\$3M** to establish a Teacher Opportunity Corps II program that increases MLLs/ELLs' access to diverse and bilingual educators across all regions of the state.

Improve Language Access for Immigrant Families: Invest **\$1.5M** to support the State Education Department in translating documents into languages other than English and making available culturally responsive-sustaining and linguistically accessible resources for the field and public.

5. Increase funding 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. New York should be a state where students have access to positive, pedagogical discipline and are held accountable for their behaviors through age-appropriate, graduated, and proportionate restorative and trauma-informed interventions. Without the training and tools teachers need to support students, schools resort too often to exclusionary discipline like suspensions. Suspensions force students to miss valuable instructional time, while failing to address the issues underlying the students' behaviors. In New York, schools suspend Black students and students with disabilities at disproportionate rates. In fact, in 2017-18, schools suspended Black students at more than five times the rate of White students in New York City and more than four times the rate of White students outside of New York City. 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 and cause them to miss out on days, weeks, or months of classroom instruction, 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 are encouraged that, for the second year, Governor Cuomo has included in the Executive Budget \$3 million for alternative approaches to suspensions, including restorative practices, therapeutic crisis intervention, staff training on alternative discipline, and trauma-informed education. However, we know that far more funding is needed to meet the needs around the State. In fact, we and our colleagues have recommended a \$50 million investment 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. This year, as a step toward this needed investment, we join our partners in the Solutions Not Suspensions campaign in calling on the State to double the amount of funding in the Executive Budget and invest \$6 million in alternatives to suspensions.

We urge the Legislature to negotiate a budget that includes at least \$6 million – double the amount proposed in the Executive Budget – for grants for schools to implement positive approaches to discipline.

6. Increase funding for 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 join with our colleagues in the Winning Beginning New York coalition in urging 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

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

We are concerned about the Executive Budget proposal to consolidate ten expense-based aid categories into Foundation Aid, as well as to cap transportation growth. We worry that these proposed changes do not adequately account for the various factors that could change a district's expenses in several of these categories. For example, over the past decade, the number of New York students who are homeless has grown significantly, and, during the 2019-2020 school year, 148,554 students were identified as homeless by New York State school districts and charter schools. Under federal and state law, students who are homeless 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



experiencing homelessness 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. Thank you for the opportunity to testify. I would be happy to answer any questions you may have.