



**Testimony of Education Law Center**  
**Joint Legislative Budget Hearing – Elementary and Secondary Education**  
**January 26, 2022**

Dear Finance Chairs Krueger & Weinstein, Education Chairs Mayer & Benedetto, NYC Education Chair Liu, and other members of the committees:

Thank you for the opportunity to submit testimony on the FY2023 Executive Budget. Education Law Center (“ELC”) advocates for education justice and equity across the nation and, since 2011, has worked to advance the right of all New York children to a sound basic education as guaranteed by the State York Constitution as effectuated by the landmark *Campaign for Fiscal Equity* (“CFE”) ruling. In addition, ELC has served as co-counsel for parents and students in New York’s two more recent major school funding cases: *Maisto v. State* and *NYSER v. State*.

We note with great appreciation the inclusion in the Executive Budget proposal of a \$1.6 billion increase in Foundation Aid for this fiscal year--- representing the second year installment of the three year phase-in toward full funding of Foundation Aid, consistent with the State’s commitment last year. This investment will help ensure New York State complies with its constitutional obligation to ensure students have the opportunity to obtain a “sound basic education” and to comply with the recent settlement agreement in the *NYSER* litigation.

We outline below our recommendations regarding several other components of the Executive Budget Proposal which are critical to effectuating students’ constitutional right to a sound basic education.

**Contracts for Excellence**

The Contract for Excellence (C4E) law was enacted in 2007, in response to the landmark school *CFE* ruling. The law’s goal was to ensure the additional funding struggling school districts received as part of the promised phase in of the 2007 Foundation Aid Formula would be spent on proven methods to improve student learning. Now, after over a decade, New York has finally recommitted to fully funding the Foundation Aid Formula. It is imperative, therefore, that C4E not only be continued but that it be strengthened to guarantee that the funding districts will now receive is expended on essential resources designed to improve academic outcomes. Several recommended amendments to the law, detailed below, will ensure that C4E is implemented according to its original legislative intent.

The C4E law provides that a district submitting a Contract for Excellence in the previous year must have a Contract for the current year that is “not less” than the amount approved by the Commissioner for the previous year. However, since 2012, the Commissioner has interpreted this provision to mean that the current Contract for Excellence plan shall be no more than the

amount approved for the previous year. Under the proposed Executive Budget, districts will be receiving significant increases in Foundation Aid this year. It contravenes the purpose of C4E to not require districts to spend any this increase on effective methods to improve student outcomes. C4E must be clarified to require districts to spend their increased Foundation Aid on these crucial educational resources.

In *CFE*, New York's highest court found that tens of thousands of New York City school children suffered in classes of 30 or more, contributing to a systemic deprivation of their right to a constitutional education. C4E contained an explicit provision mandating that New York City develop and execute a five-year plan to reduce class size averages. Though New York City failed to fulfill that plan, depriving hundreds of thousands of New York City students of this essential resource, an Appellate Court ruled in 2020 that the City's class size plan expired in 2012 and was no longer enforceable. While class sizes in some areas of New York City have decreased this fall because of enrollment decline, class sizes remain higher on average in grades k-3 than before the C4E law was passed, and large disparities persist throughout the city.

Smaller class size is among the most effective tools for improving education outcomes, especially for students from low-income families, students with special needs and students of color. It is thus imperative that C4E be amended to require New York City to recommit to a new five-year class size reduction plan, with enforceable class size caps, in order to ensure meaningful progress toward the critical goal of reasonable and equitable class size throughout the city.

C4E's public process provisions require school districts to develop their Contracts for Excellence spending plans together with the public. As such, districts must conduct hearings to solicit public comment, both oral and written, and they must indicate how they incorporated public comments into their spending plans. However, the public process schedule established by the Commissioner of Education permits districts to conduct hearings well after the district budget process is completed, and often after the school year is underway. New York City has for years conducted its hearings in the fall and winter, after the school year has already started and much of the C4E funding is already allocated. Consequently, public input becomes meaningless, undermining the goal of C4E's public process provision. In order to effectuate C4E's public process provisions, the law must be amended to require that public hearings begin no later than thirty days after a state budget is enacted and be completed no later than 30 days later, with submission of the plan for state approval occurring within two weeks after the close of public hearings. Moreover the law should explicitly provide for timely public posting of the approved C4E spending plans.

## **Pre-K Funding**

As you may be aware, in May 2021 an Appellate Court in *Maisto* ruled that the State's inadequate funding violated the constitutional right to a sound basic education of students in the eight small city school districts. In its detailed ruling, the Court reviewed the essential elements of a sound basic education required by the New York State Constitution. Among those essential elements recognized by the Court as essential is Pre-K.<sup>1</sup> The evidence is undisputed that high

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<sup>1</sup> See, e.g., *Maisto v. State*, 196 A.D.3d 104, 128 (3d Dep't 2021)

quality preschool provides a myriad of academic and life benefits, such as decreased placement in special education, decreased suspension rates, higher educational attainment, higher income, and decreased contact with the criminal justice system. Moreover, the benefits of a high quality early education inure not only to the child attending preschool but those benefits also extend across generations.<sup>2</sup>

Across the state, approximately 2/3 of four-year olds have access to preschool. This leaves tens of thousands of children unserved. Yet, the current Executive Budget proposal makes no additional investments in pre-k to improve both program quality and access. The Alliance for Quality Education has calculated that to provide at least \$10,000 per child for high quality preschool, New York must invest an additional \$500 million. This investment will help ensure that all four year olds across New York will have access to high quality preschool.

### **Rising Charter School Costs**

The Executive Budget proposes to increase state charter school funding by 4.7%. In New York City, that represents a \$721 increase per pupil, approximately double the \$340 per pupil increase New York City public school students will receive in 2023. New York City charter schools are slated to receive an increase of \$300 million this year while the City public schools will be allocated an increase of approximately \$345 million in Foundation Aid. New York City also receives no transitional aid for charter schools. **Thus, the tuition payments to charter schools, which enroll 14% of New York City students, will consume the entire increase in Foundation Aid intended for all New York City public school students.** In addition to tuition, New York City is mandated to either provide space or pay rent for charter schools.

In 2016, a New York State Appellate Court warned that “to divert education funds away from the traditional public schools and towards charter schools would benefit a select few at the expense of the “common schools, wherein all the children of this State may be educated,” and thus may violate the New York State Constitution.<sup>3</sup> The disproportionate impact of charter school funding on New York City public school students, exemplifies the threat to students’ constitutional rights posed by the failure to control charter school costs.

### **Conclusion**

The goal of the Foundation Aid Formula is to ensure that all students in New York State can be provided with the essential educational resources to obtain a constitutionally “sound basic education.” We applaud the Governor for honoring her commitment to continue the phase-in of full funding of the Foundation Aid formula, which the Legislature set in motion last year. However, these historic efforts will be undermined if a vital educational resource, pre-k, remains unavailable to tens of thousands of children in New York. And the increase will be further eroded in New York City if funding intended for all students in New York City is diverted to a distinct subset of charter school students. Thus, pre-k and charter funding must be addressed in order to ensure all students receive the full intended benefit of this major step forward in New

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<sup>2</sup> Heckman, J. and Karapakula, G. Intergenerational and Intragenerational Externalities of the Perry Preschool Project, *NBER Working Paper 25889*, 2019 <https://www.nber.org/papers/w25889>

<sup>3</sup> *Brown ex rel Stevens v. State*, 144 A.D.3d 88, 95 (4<sup>th</sup> Dep’t 2016).

York state school funding. Finally, to ensure that the funds districts do receive are used in an effective manner to improve student learning and outcomes, the accountability measures already in statute, C4E must be maintained and significantly strengthened, as outlined above.

Thank you.