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## JOINT LEGISLATIVE PUBLIC HEARING ON 2023-24 EXECUTIVE BUDGET PROPOSAL ELEMENTARY AND SECONDARY EDUCATION

FEBRUARY 8, 2023

Good afternoon. I am Marian Bott, Education Finance Specialist for the New York State League of Women Voters.

I will address two topics:

- 1) Charter school expansion
- 2) The challenge of losing federal funding and Title I issues

### **CONDITIONS FOR CHARTER SCHOOL EXPANSION**

The League does not oppose the concept of charter schools. However, from the time they were first allowed to apply for a charter over twenty-five years ago, the League has argued that charter operators need to be held to a very high standard. They should be required to prove that they achieve positive educational outcomes for all children, disaggregated by special needs, exceeding those in traditional schools. They should do this not at the expense of traditional public schools by enrolling and retaining only those students whose special needs are the least expensive to address—otherwise known as cherry picking their students.

### **The Legislature Should Insist that Charters Equitably Serve Students with Special Needs**

The key words in the League’s position are “disaggregated by special needs.” In the classification method used by the U.S. federal government,<sup>1</sup> there are distinct categories of special needs. They are autism spectrum disorder, visual impairment including blindness, hearing impairment, emotional disturbance, intellectual disability, specific learning disability, orthopedic impairment, speech and language impairment, traumatic brain injury, and multiple disabilities.

One does not have to be an expert in special education to recognize that these categories should not be lumped together, either from the standpoint of required teacher training or from the standpoint of the cost of addressing the need. Yet the tendency of the charter school sector, in some instances, is to publish information<sup>2</sup> that generalizes, using the term “students with

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<sup>1</sup> <http://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter33&edition=prelim>

<sup>2</sup> <https://suny-charters-uploads.s3.amazonaws.com/wp-content/uploads/2023/01/06115325/January-2023-fast-facts-1.pdf>

disabilities.” The 16% “students with disabilities” statistic currently published by SUNY’s charter school institute is an example of such an attempt to generalize the situation. What is needed, before any charter school is either authorized or re-authorized, is a demonstration of its capacity and performance with respect to students with disabilities, broken down by category. All schools need to hire staff who are trained to address the needs of students in other categories. The one exception, which applies to traditional schools as well, is staffing and training where the student’s deafness, blindness, some orthopedic impairments, and some other severe disabling conditions limit their ability to be mainstreamed. For such students, specialized schools are the most appropriate setting.

Detailed data on the incidence in our state of students in these categories (in charter vs. traditional schools) would help policy makers to determine whether the charter sector is, in fact, cherry picking students, as advocates have often asserted. The League supports the funding of the necessary incremental staff at NYSED to provide and analyze such data.

In a preliminary study that I did using 2016-17 NYSED data in 2018, there was some evidence that our state’s charter schools, particularly some large charter management organizations, as compared with traditional public schools, were willing and able to serve students in the categories of speech and language impairment and specific learning disability, but far less often did they serve students with Individualized Education Plans in the other categories such as emotional disturbance or intellectual disability. The study could not be published with details at the school level because of privacy concerns.

The Education Committees of the Legislature should promptly request from NYSED adequate detail to ascertain what the facts were in the latest fiscal year available, presumably 2021-22. The League supports additional funding for NYSED staff to produce an analysis of charter school vs. traditional school enrollment and performance with respect to students with disabilities. This should be a precondition to any charter school expansion, particularly if existing charter management organizations are requesting more schools.

Expanding the number of charter schools, if it either continues or exacerbates the tendency of some charter schools to cherry pick students, will not make the task of educators in the traditional schools easier, and it might make it more difficult.

### **The Legislature Should Insist that Charter Schools Not Drain Funds from Traditional Public Schools**

Charter schools should not drain funding from traditional public schools. When legislation was first enacted, it was expected that individual charter operators would provide their own capital funds, which many did with ample help from wealthy donors. With the increased prevalence of charter management organizations which operate multiple charters, pressure built to provide them with free space, causing friction in districts such as New York City as co-location was forced on traditional public schools. When it became clear that charter schools were

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impacting school districts' finances statewide in the early 2000s, the League successfully lobbied for charter school transitional aid to school districts, but that aid category was not offered to New York City and should have been. The original rationale was that it was just a small percentage of schools and could not possibly impact the finances of such a large system. At this point, with the financial backing of private investors, coupled with free space, the New York City charter sector has grown to 15% of total student enrollment, and it is clearer that all along transitional funding should have been equally provided to New York City.

Statistics that are offered by charter school supporters showing only taxpayer support for the sector, by definition, exclude private donations, making it difficult to fairly compare total resources available to charters vs. traditional public schools. Looking at the individual charter schools' federal Form 990's will reveal financial (but not all in-kind donations) but this takes time to analyze as there are now hundreds of charter schools and not only do the schools file Form 990s, their management organizations do as well. The Education Committees and Finance Committees of the Legislature should be armed with these types of data before deciding on financing for the charter sector going forward.

## **FEDERAL FUNDING ISSUES**

### **The Legislature Should Anticipate the Loss of Federal Funding and Request Details from NYSED Staff on its Timing**

#### **Potential Loss of Funding**

Federal aid to Education in New York State has grown from \$4.1 billion in Federal Fiscal Year 2020 to \$9.9 billion in FFY 2023, and \$9.1 billion in FFY 2024.<sup>3</sup> Federal Coronavirus Aid, listed as a separate category and not directed toward education per se, was \$2.8 billion in FFY 2021 and \$2.3 billion in FFY 2022, then was discontinued. A very important question for the Legislature should be what amounts are likely to be forthcoming in FFYs 2025 and beyond. While the trend for PreK-12 expenditures has been upward in the recent past State Fiscal Years, this year supporting \$34.5 billion in School Aid, and providing the much-needed Foundation Aid increases, it is important to query the appropriate officials as to what "plan B" might be if federal aid were to continue to trend downward. The Briefing Book (see note 3) indicates that total federal aid was \$60.7 billion in FFY 2020, \$71.7 billion in FFY 2021, \$79.5 billion in FFY 2022, \$86 billion in FY 2023, and \$83.9 billion in FFY 2024. The downward trend in both total federal support and in Education should signal some concern for State Fiscal Years 2025 and forward.

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<sup>3</sup> 2024 Executive Briefing Book, page 45 chart entitled "Federal Disbursements by Program Area FY 2020-FY 2024."

## **Title I Issues**

In the past, I have testified at these hearings that New York State is disadvantaged in the distribution of Title I funding because of a policy change to the original 1966 Elementary and Secondary Education Act (enacted under Lyndon B. Johnson) that was enacted in 1974 (under Gerald D. Ford). In brief, our state, now along with thirteen others, is capped in its receipt of Title I funding because appropriations are limited to no more than 20% above the national average. For example, if the national average expenditure per pupil is \$15,000 per pupil, New York and the other states who spend, per pupil, more than \$18,000, receive Title I monies as though they spent only \$18,000 per pupil. Clearly, in New York State, we spend more than this. Title I monies are not adjusted for regional cost.

We believe it is incumbent on the appropriate officials of our State to ensure that New York State receives as much Title I funding as possible. In that regard, we would request that the appropriate legislative representatives, presumably members of these committees, meet with the experts at NYSED to discuss future federal aid to our schools.

### **A FINAL WORD:**

We regret that limitations on multi-faceted organizations' ability to offer oral testimony in more than one hearing do not permit us to fully participate in the process of interacting with our legislature. Having appreciated, since my first testimony for Educational Priorities Panel in 1999, the value of being in the Capitol together with our elected officials, I was looking forward to the return, post-Covid, of normal testimony days. I offer these comments with the hope that we can revise this policy in the future, as it disadvantages organizations such as ours which have expertise in multiple areas. I believe that Commissioner testimonies should be held on a separate day, since legislators deserve the opportunity to question them. However, this lengthy process, with multiple legislator Q and A, is what makes the public testifiers' testimony days, to say nothing of yours, so difficult.