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Testimony for the Joint Legislative Hearing on the 2023-2024 Executive Budget Proposal: Elementary and Secondary Education

February 8, 2023

Thank you for the opportunity to speak with you about the 2023-2024 Executive Budget: Elementary and Secondary Education. My name is Randi Levine, and I am the Policy Director at Advocates for Children of New York. For 50 years, AFC 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 Yorkers navigate the education system. We focus on students whose needs are often overlooked, such as students with disabilities, English Language Learners, students who are homeless or in foster care, students with mental health needs, and students with involvement in the juvenile or criminal legal systems.

We are very pleased that the Executive Budget includes the full implementation of Foundation Aid for the first time. This funding increase for our schools is sorely needed, and we appreciate the work of Governor Hochul and the Legislature to achieve this milestone.

As you negotiate the 2023-2024 budget, we urge the Legislature to work with the Governor to:

1. Modify the Executive Budget proposal on high-impact tutoring to expand the grade levels covered so that K-12 students can benefit (p. 2);
2. Modify the Executive Budget proposal for a tuition rate-setting methodology study for preschool special education programs to eliminate the language requiring recommendations to be cost neutral and also ensure these programs receive a rate increase in this year's budget (p.3);
3. Increase funding to support English Language Learners by investing \$1 million for a bilingual educator pipeline program, \$5 million for an alternate assessment for ELLs with severe cognitive disabilities, and \$500,000 for translated exams (p. 4);
4. Increase funding by at least \$100 million for school-based behavioral and mental health supports and services for students and pass the Judith Kaye Solutions Not Suspensions Act (S.1040 in the current session, S.7198/A.5197 in 2021-22) (p. 6);
5. Reject the Executive Budget proposals to lift the regional charter school cap and to reissue charters from schools that closed until civil rights issues are addressed and financial implications for NYC district schools are assessed (p. 9); and
6. Plan now to sustain long-term education initiatives funded with federal COVID-19 relief funding that expires in the fall of 2024 (p. 11).

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1. Modify the Executive Budget proposal on high-impact tutoring to expand the grade levels covered so that kindergarten through twelfth grade students can benefit

One of the most fundamental responsibilities of schools is to teach children how to read. Yet far too many students in New York struggle to become skilled readers: less than half of all students in grades 3–8, and only 36% of Black and Hispanic students and 15% of students with disabilities, are reading proficiently, according to the 2022 state exams. Each year, Advocates for Children hears from numerous families whose children are struggling with reading and cannot get help within their public schools. Even when families reach AFC, we often need to take legal action to help them get intensive private tutoring or specialized school placements so their children can learn to read.

We are pleased that the Executive Budget includes a \$250 million set-aside for high-impact tutoring in reading and math. However, we urge you to modify this proposal to expand the grade levels of students eligible for tutoring from grades 3-8 to grades K-12. Limiting eligibility for high-impact tutoring to students in third through eighth grade would leave behind many students who could benefit from these services.

We hear from families of high school students – and sometimes from high schoolers themselves – who are still struggling with foundational reading skills and are unable to find support within the public school system. Such students are not an anomaly; in fact, only half of all 8th graders around the State scored proficient on the state reading exam in 2022. These older students, who are now in high school, should not be left out of district-administered high-impact reading tutoring programs.

On the other end of the grade span, we know the early years are especially critical for development of reading skills. By intervening at the first sign of trouble, before children fall behind, we can prevent the need for more intensive—and expensive—remediation later on. We would like to see New York City expand promising programs such as the CUNY Reading Corps, an initiative in which pre-service teachers and other CUNY students deliver a research-based early literacy intervention to first graders at DOE schools.

We urge you to modify the high-impact tutoring proposal to expand the eligible grade levels so that districts can provide high-impact tutoring to all students who need it from kindergarten through 12th grade.



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2. Modify the Executive Budget proposal for a tuition rate-setting methodology study for preschool special education programs and state-approved non-public schools for students with disabilities to eliminate the language requiring recommendations to be cost neutral and also ensure these programs receive a rate increase in this year's budget

In recent years, we have heard from family after family who learned their young child had severe autism or another significant disability and needed a small, specialized preschool class, but was sitting at home, in violation of their legal rights, because there was no seat available. Some children were waiting for months or longer. In fact, in New York City alone, as of June 2022, 800 children with disabilities were still waiting for seats in their legally mandated preschool special education classes because of the shortage. As a result, children who had a legal right to such a class missed the chance to receive services at a time in their lives when those services can have the greatest impact.

Contributing to the shortage of classes 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 education classes. In recent years, dozens of CBOs around the State have closed their preschool special education classes. Among other challenges, programs report that they are struggling to recruit and retain special education teachers who are leaving for jobs in schools or universal prekindergarten programs 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. State-approved non-public schools for school-aged students with disabilities have faced similar challenges. School districts place students in state-approved non-public schools when they cannot meet the students’ needs, but, too often, these schools struggle to recruit and retain teachers and service providers due to inadequate state rates.

We are pleased that the Executive Budget includes \$2.5 million for the State Education Department to conduct a comprehensive study of alternative tuition rate-setting methodologies for preschool special education programs and state-approved non-public schools serving students with disabilities.

However, we are concerned that the legislative language requires the recommendations of the study to be cost neutral. The State has a legal obligation to provide children with disabilities with appropriate preschool and school placements. Currently, the State is failing to meet that obligation and must have the flexibility to consider methodologies that will enable these schools to have the special education teachers, related service providers, and specialized programs they need, even if doing so costs more than current spending.

While we are grateful that these programs received an 11% rate increase this year, they have historically been underfunded and had gone many years without a significant increase prior to this year. For example, prior to the 2015-2016 school year, the State did not provide any rate increase for preschool special education programs for six years, keeping the rate stagnant with no cost-of-living



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adjustments. Between 2015-2016 and 2019-2020, the State approved only a two percent increase each year—far less than the increase provided for public education overall in the State budget.

We urge you to support the \$2.5 million for a tuition rate methodology study but modify this proposal to remove the language requiring recommendations to be cost neutral.

In addition, at a time when inflation has risen and school districts are receiving a significant funding increase, **we urge you to ensure there is a rate increase for preschool special education programs and state-approved non-public schools for students with disabilities, on par with the increase to school districts, this year to help them stay afloat while the work moves forward to revamp the rate methodology.** These schools are an important part of the State's system for fulfilling its obligation to students with disabilities and cannot be left to fend for themselves. Additionally, at a time when we are hearing from families about a backlog in getting evaluations for preschoolers, there should be an increase for preschool evaluation agencies, which were left out of the 11% rate increase provided to other preschool special education programs this year.

3. Increase funding to support English Language Learners by investing \$1 million for a bilingual educator pipeline program, \$5 million to develop an alternate assessment for ELLs with severe cognitive disabilities, and \$500,000 to continue translating assessments

Approximately 145,000 New York City students—about one in eight—are English Language Learners (ELLs). When provided with needed support, ELLs have the potential to outperform their native-English speaking peers. However, ELLs have long been left behind in New York City and across the State. In New York State, only 65% of ELLs graduated high school in four years in 2022 – and 16% dropped out. On the third through eighth grade state exams, only 13% of ELLs statewide scored proficient in reading and 15% scored proficient in math.

Unfortunately, the Executive Budget does not include any new investments focused on ELLs. We recommend the State include the following investments in the 2023-24 budget:

a) Invest \$1 million for a bilingual educator pipeline pilot program to increase access to certified bilingual educators and bilingual special education teachers

Though bilingual programs—in which students receive instruction in both their home language and in English—have proven effectiveness, currently only 17% of New York City's ELLs are enrolled in such programs, while four out of five are in English-only classes. According to the most recent data publicly available, 3,800 NYC students who needed a bilingual special education class (around 69%) did not have one. Statewide, there is a shortage of bilingual teachers and bilingual special education teachers.



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We are joining with New York Advocates for Fair and Inclusive Resources for Multilingual Learners (NY-AFFIRMs) to recommend that the State invest funding for a bilingual educator pipeline pilot program to help test comprehensive models to recruit, train, and retain a culturally and linguistically responsive bilingual educator workforce and ensure the State's ELLs, including those with disabilities, are provided the support and services they deserve and to which they are entitled.

In the first year, the funding would be used to replicate and expand a successful educator pipeline program in Western New York to offer free undergraduate and graduate degrees for high school graduates and paraprofessionals, aides, or assistants working in districts across Western New York and tuition assistance for the advanced, online certificate program for already certified teachers who wish to obtain their bilingual extension. Years two and three would require additional funds to launch and expand bilingual educator pipelines in Long Island and New York City.

b) Invest \$5 million to develop an alternate assessment for ELLs who have 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 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 fact, U.S. Department of Education guidance requires states to have an alternate English Language Proficiency assessment for ELLs who cannot test out of ELL status with the current assessment due to their severe cognitive disabilities. The Board of Regents' 2023-2024 State Budget Priorities recommends \$5 million to make needed updates to the NYSESLAT, including the development or procurement of a new English Language Proficiency assessment program for the State's ELLs who have severe cognitive disabilities. However, the Executive Budget does not include any funding for such an assessment.

c) Invest \$500,000 to continue translating assessments for English Language Learners

Teachers and school districts do not have all the necessary tools to accurately understand how English Language Learners are performing. Assessments given 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, need to be translated if they are to provide useful data.

The Board of Regents' 2023-2024 State Budget Priorities recommends \$500,000 to continue translating five of the Regents Exams, the 3rd-8th grade math exams, and the elementary and intermediate-level science tests. Unfortunately, the Executive Budget does not include this funding.

We urge the Legislature to negotiate a budget that includes \$1 million for a bilingual educator pipeline pilot program, \$5 million to develop an alternate assessment program for ELLs who have severe cognitive disabilities, and \$500,000 to continue translating assessments for ELLs.



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4. Increase funding by at least \$100 million for FY 24 for school-based behavioral and mental health supports and services for students and pass the Judith Kaye Solutions Not Suspensions Act (S.1040 in the current session, S.7198/A.5197 in the 2021-22 session)

It is more urgent than ever that our young people are connected to behavioral and mental health supports and services to keep them in school learning. As highlighted in recent advisories by the U.S. Surgeon General, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the Children's Hospital Association, the COVID-19 pandemic has impacted the mental health and well-being of all children, exacerbated unmet youth mental health needs that existed before the pandemic, and spurred a national youth mental health crisis. According to a recent national poll by Effective School Solutions, 90% of school administrators say the youth mental health crisis is growing.

Research shows that students are 21 times more likely to seek support for mental health issues at school than at a community-based clinic, if at all. According to the School-Based Health Alliance, of students who successfully engage in mental health treatment, over 70% initiated services through school. Data also indicate that school-based mental health services reduce racial disparities in access to mental health care. Yet, in response to a survey conducted by Citizens' Committee for Children of NY during the pandemic, only 42% of young people reporting a need for mental health services said they received them.

Sadly, this is unsurprising. Too often when students are struggling, nationally and in New York, they are met with exclusionary school discipline and policing practices that only further traumatize them and perpetuate the school-to-prison pipeline, disproportionately harming Black and Brown students, students with disabilities, and students in foster care. As outlined in AFC's June 2021 report, *Police Response to Students in Emotional Crisis: A Call for Comprehensive Mental Health and Social-Emotional Support for Students in Police-Free Schools*, in the 2018-2019 school year alone, the NYPD reported 3,544 "child in crisis interventions" in which a NYC student displayed signs of emotional distress, was removed from school by a police or school safety officer, and was sent to a hospital for a psychological evaluation. Of these students, 47% were Black despite Black students accounting for only 25% of the total NYC public school population. Moreover, during these transports, some students as young as 5 were handcuffed. AFC's new report released in January 2023, *Building on Potential: Next Steps to Improve Educational Outcomes for Students in Foster Care*, found that pre-pandemic, NYC public school students in foster care were suspended at almost four times the rate of the overall student population while comprising less than one percent of the overall population.



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Through our work assisting thousands of students and families over the years, we know the indelible harm on the school community from sending students to local hospital emergency rooms, subjecting students to police intervention, and suspending students from school for student behavior that can and should be effectively supported and addressed at the school level. As one of many examples, last year, the mother of a 7-year-old student with Autism contacted us because her child's school called the police when she was crying, throwing pencils, and then biting the principal who did not know how to de-escalate the child's behavior. The student was transported to the hospital by Emergency Medical Services without her parent and without even notifying her parent until the child arrived at the hospital.

We know that punishing and excluding students from school does not make schools safer and can only exacerbate behavioral and mental health needs, alienating young people from the place that should be a haven for learning and support. Indeed, these responses do nothing to address the root causes of student behavior, reduce time spent in class learning, and correlate with poor academic outcomes, decreased likelihood of graduating, and increased likelihood of entering the juvenile/criminal legal system.

Along those lines, the New York State Education Department presented the report, *Recommendations for Reducing Disparities in and Reforming School Discipline in New York State*, to the Board of Regents in January 2023. The report recommends amending NYS Education Law with provisions that are strikingly similar to those in the Judith Kaye Solutions Not Suspensions (SNS) Act (S.1040 in the current session, S.7198/A.5197 in the 2021-22 session), which is pending in the Legislature. Among other things, NYSED's report and the SNS Act both: prohibit the use of exclusionary discipline for students in pre-K through third grade (except when required by federal law); limit the length of suspension to 20 days (in the vast majority of situations); require academic instruction and exams during suspension; and require proactive, supportive alternatives to punishment and exclusion that build a positive, inclusive climate.

While many of the provisions in the SNS Act do not require funding, we know from our work with thousands of families over the years how crucial investments in school-based behavioral and mental health services are for students. While we appreciate Governor Hochul's inclusion of \$10 million in the Executive Budget for student mental health support grants, as well as funding for school-based mental health programs and violence prevention programs, this is not nearly enough to support students and schools statewide. **The Legislature must add substantial investments in the budget to sustain, launch, and expand innovative, effective initiatives and practices that foster healing-centered schools, such as school-based mental health services and trauma-informed, restorative, and culturally-responsive practices.**



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We know there are promising solutions that tap into the richness of communities and engage parents, students, government agencies, and experts as partners. Here are two examples that merit attention and additional investment:

- **Mental Health Continuum:** This innovative model, recently highlighted in the [NYC Speaks Action Plan](#), is the first-ever cross-agency partnership (NYC Department of Education, Health + Hospitals, Department of Health and Mental Hygiene) to help NYC students struggling with mental health challenges access timely mental healthcare. It will support students at 50 high-needs schools through partnerships with mental health clinics, expedited access to evaluation and treatment, a hotline to advise school staff with mental health inquiries, support for crisis response, culturally responsive family engagement, and training in Collaborative Problem Solving, which builds school staff capacity to better manage student behavior. Unfortunately, the City only allocated funding for the Mental Health Continuum until June 2023—just when it is starting to get off the ground.
- **School-wide Restorative Justice Practices:** Some individual school districts and schools around the nation and state have recognized the harm from exclusionary discipline and policing and begun adopting more restorative approaches that address students' underlying needs, teach positive behaviors, and keep students in the classroom where they belong. Restorative practices hold students accountable for their actions, help address the root causes of behavior, and build and heal relationships; their adoption is correlated with improved academic outcomes, school climate, and staff-student relationships. School-wide models can be particularly effective and may include hiring a restorative justice coordinator for each school; training all staff and interested members of school communities; and providing young people with training, course credit, and stipends to lead restorative practices.

Increased state funding is essential to launch, sustain, expand, and replicate promising and effective social-emotional and mental health models and practices like these around the State. NYSED's report on school discipline noted above also recommends long-term state investments to ensure appropriate supports are available to students so they can succeed.

We urge the Legislature to:

- a) **Negotiate a budget that increases investments in school-based behavioral and mental health supports and services for students by at least \$100 million for FY 24.**
- b) **Pass the Judith Kaye Solutions Not Suspensions Act (S.1040 in the current session, S.7198/A.5197 in the 2021-22 session) to keep students in school supported and learning.**



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5. Reject the Executive Budget proposals to lift the regional charter school cap and to reissue charters from schools that closed until civil rights issues are addressed and financial implications for NYC district schools are assessed

AFC believes that every child should have access to a high-quality education. There is no question that some students are receiving an excellent education at the charter schools they attend. Unfortunately, however, we get frequent calls from families of students who enrolled their children in charter schools believing the charter schools would provide their children with an excellent education, only to have the charter schools suspend or expel their children or encourage them to return to district schools due to the students' needs.

The Executive Budget includes proposals to remove the regional cap on charter school growth in New York City and to reissue charters from charter schools that have closed. We are concerned about diverting funding from New York City district schools, particularly at a time when federal COVID-19 relief funding is set to expire in the fall of 2024. This year, through federal COVID-19 relief funding, NYC is investing \$160 million to help district schools that have declining enrollment and more than \$700 million for programs to address needs that will continue long after the federal stimulus funding expires, like social workers to support students and shelter-based staff to address chronic absenteeism for students experiencing homelessness. Even with federal relief, the majority of NYC district schools saw budget cuts this year due to declining enrollment. Previously, the State eliminated state reimbursement to NYC for the cost of charter school rental assistance, shifting the entire burden of paying for charter school space to NYC. The financial implications of the Executive Budget charter school proposals for NYC district schools should be examined before moving forward with additional charter schools.

In addition, we are concerned about protecting the civil rights of students at charter schools as an expansion of these schools is considered. Before moving forward with changes to authorize additional charter schools in New York City, the Legislature should make clarifications to the law as to charter schools', school districts', and authorizers' specific obligations to students with disabilities and English Language Learners and the due process procedures required in order to suspend or expel a student from a charter school.

We have seen a lot of confusion and multiple interpretations of the complicated state law regarding charter schools' and school districts' obligations to English Language Learners and students with disabilities. For example, the New York Charter Schools Act states that special education programs and services "shall be provided to students with a disability attending a charter school in accordance with the individualized education program" and that charter schools may arrange to have such services provided by the school district of residence or by the charter school directly or by contract with another provider. N.Y. Education Law § 2853(4). We often see charter schools and the NYC Department of Education point to each other as being responsible for implementing charter school



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students' IEPs and, in violation of federal law, charter schools and school districts tell parents they need to enroll their children in district schools in order to get their mandated special education programs. The result is students with disabilities not receiving the supports and services they need – or being pushed out of their charter schools. State law should be amended to clarify the specific obligations that charter schools and school districts of residence have to students with disabilities and ELLs to help ensure these students get the support they need at charter schools.

Unfortunately, we often see charter schools resort to disciplinary exclusions of students with disabilities. Section 3214 of the New York Education Law outlines the due process procedures that schools must follow when seeking to suspend or expel a student, in order to help ensure that students receive a fair process before being excluded from school. The current version of the Charter Schools Act explicitly states that charter schools are *not* exempt from the compulsory education requirements of part one of article 65—where Section 3214 is contained. In addition, the Charter Schools Act currently requires charter school discipline policies to meet “requirements of due process,” and such requirements for suspensions are found in Section 3214. Despite the current language of the law, the State Education Department’s current position has been not to require charter schools to comply with Section 3214. State law must be amended to eliminate any perceived ambiguity in the law concerning due process requirements for students facing suspension or expulsion. Based on our experience representing students recommended for expulsion from charter schools, state law should also include standards for expelling students to ensure that students who engage in minor behavioral infractions are not sent back to district schools and permanently excluded from their charter school.

In addition, when charter schools violate the law, we have found the grievance process to be lengthy and unresponsive to the needs of students. Under the Charter Schools Act, parents may file a complaint with the charter school’s Board of Trustees—whose members often do not have expertise in education law and do not respond in a timely manner—and then to the school’s authorizer and then to the State Education Department. This lengthy “accountability” structure is not sufficient to address egregious legal violations by schools, and, for example, may result in a student having completed a suspension months (and in some cases years) before the appeal is resolved.

Instead of lifting the regional cap or reissuing charters from schools that closed, the Legislature should amend state law to ensure the obligations of charter schools, school districts of residence, and authorizers are clear and students’ rights are protected.

The Legislature should reject the Executive Budget proposals to lift the regional charter school cap and reissue charters from schools that closed until civil rights violations are addressed and financial implications for NYC district schools are assessed.



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6. Plan now to sustain long-term education initiatives funded with federal COVID-19 relief funding that expires in the fall of 2024

Over the last two years, school districts received an unprecedented infusion of federal stimulus funding, allowing them to invest in a number of critical education priorities.

While the New York City Department of Education has used some of this funding for short-term expenses directly stemming from the pandemic—such as costs associated with reopening school buildings and accounting for the impact of lost instructional time—NYC is also using these stimulus dollars to address student needs that existed long before the pandemic, many of which have historically been underfunded.

Although the federal COVID-19 relief funds will run dry in October 2024, these ongoing needs will remain. Among other things, stimulus funding is currently being used in NYC to:

- Double 3-K enrollment and open new preschool special education classes to help address a longstanding shortage of seats for preschoolers with disabilities;
- Increase the number of community schools and expand access to summer enrichment programming;
- Hire 500 new school social workers, expand restorative justice practices, and enable every school building to have a nurse;
- Bolster supports for students with dyslexia, students with intensive sensory needs, and students living in homeless shelters; and
- Open new bilingual programs for English Language Learners and improve access to translation and interpretation services for immigrant families.

It will take more than \$700 million per year to sustain these new and expanded education initiatives that are making a difference for some of New York City's most marginalized students. While our analysis has focused on New York City, we know school districts across the State are also grappling with the looming fiscal cliff. For example, a [recent article](#) discussed similar challenges in Yonkers.

Elected officials at the local, state, and federal levels need to start planning right away to identify funding to avoid taking a massive step backwards and losing the progress the stimulus funding has enabled. More information about the education programs at risk in New York City is available at https://www.advocatesforchildren.org/sustaining_progress_call_to_action.

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.