



# Advocates for Children of New York

Protecting every child's right to learn

## Testimony for the Joint Legislative Public Hearing on the 2017-2018 Executive Budget Proposal: Elementary and Secondary Education

February 14, 2017

Thank you for the opportunity to speak with you today. My name is Randi Levine, and I am Policy Director at Advocates for Children of New York (AFC). For 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.

Based on this experience, we urge the Legislature to:

1. Support multiple pathways to a high school diploma by:
  - a. Renewing the State's \$1 million investment to improve access to Career and Technical Education (CTE) programs for English Language Learners (ELLs) and students with disabilities; and
  - b. Investing \$8 million in the development of performance-based assessments as alternatives to Regents exams;
2. Support the Executive Budget proposal to amend state law to align with recent changes to the federal McKinney-Vento Homeless Assistance Act and add an amendment requiring alternatives to public transportation in certain cases of hardship;
3. Invest \$50 million to promote safe and supportive schools;
4. Invest an additional \$150 million in prekindergarten programs;
5. Invest \$100 million to support English Language Learners;
6. Reject the Executive Budget special education waiver proposal;
7. Increase Foundation Aid by \$2 billion;
8. Reject the Executive Budget proposal to freeze Foundation Aid in future years;
9. Ensure that the Executive Budget proposals to lift the regional charter school cap and require New York City to pay more for charter school space only move

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- forward in conjunction with clarifications to the charter school law regarding discipline, students with disabilities, and English Language Learners;
10. Support the Executive Budget proposal to develop a new reimbursement methodology for preschool integrated special class programs;
  11. Support the extension of mayoral control of New York City schools; and
  12. Support the DREAM Act.

### **1. Support Multiple Pathways to a High School Diploma**

In 2016, about 20 percent of New York students failed to graduate from high school in four years. The four-year graduation rate for English Language Learners (ELLs) and students with disabilities was significantly lower. In fact, only 27 percent of ELLs and 52 percent of students with disabilities graduated in four years. According to the most recent year for which national data is available, the gap in graduation rates between students with disabilities and their non-disabled peers in New York is the sixth widest in the country. New York State also has the third lowest ELL graduation rate in the country and the widest graduation gap between ELLs and non-ELLs.

#### **a. Renew the State’s \$1 million investment to improve access to Career and Technical Education (CTE) programs for English Language Learners (ELLs) and students with disabilities.**

Career and Technical Education (CTE) programs can help close the high school graduation gap. CTE programs provide high school students with technical and job skills training alongside academic study. With hands-on, project-based curricula, CTE can engage and motivate students, including ELLs and students with disabilities, who might struggle in a traditional high school classroom setting. CTE programs in New York consistently show promise in keeping students engaged in school and on-track for graduation. For example, in 2015, over 75 percent of students with disabilities who enrolled in CTE courses graduated from high school as compared to only about 50 percent of students with disabilities overall—a difference of over 25 percent.<sup>1</sup> Similarly, ELLs who have completed CTE programs graduate at significantly higher rates than ELLs not in CTE. Despite these and other benefits,

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<sup>1</sup> Sam Streed and Abja Midha, “Obstacles and Opportunities: Creating Career and Technical Education Pathways for Students with Disabilities” (New York, NY: Advocates for Children of New York, December 2016), [http://www.advocatesforchildren.org/sites/default/files/library/cte\\_obstacles\\_opportunities.pdf](http://www.advocatesforchildren.org/sites/default/files/library/cte_obstacles_opportunities.pdf).



ELLs and students with disabilities often encounter barriers to accessing and benefiting from CTE programs.<sup>2</sup>

We are very pleased that the Executive Budget renews the State’s \$1 million investment to provide CTE programs with support and resources to help eliminate such barriers for ELLs and students with disabilities, as well as to promote gender diversity. We appreciate Governor Cuomo’s recognition of the importance of improving access to CTE programs for these student populations.

**We urge the Legislature to ensure that the 2017-2018 budget includes at least \$1 million to improve access to CTE programs for students with disabilities and ELLs.**

**b. Invest \$8 million in the development of performance-based assessments as alternatives to Regents exams.**

Currently, students who have mastered state standards, but who struggle on high-stakes, standardized Regents exams, are unable to graduate from high school in New York State. Performance-based assessments would provide these students the opportunity to demonstrate their knowledge and skills so that they may receive the high school diploma that they deserve and move on to college or career.

Performance-based assessments include projects of the same rigor as the corresponding Regents exam, but measure student proficiency through intentional projects, tasks, or presentations. In its State Budget Priorities, the Board of Regents requested \$8 million in new funding to develop infrastructure at the state and local level for a performance-based assessment program. Unfortunately, the Executive Budget does not include this funding.

**We urge the Legislature to add \$8 million to the budget to finance the piloting of performance-based assessments as alternatives to high school Regents exams.**

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<sup>2</sup> “Creating CTE Programs That Benefit Students with Disabilities and English Language Learners” (Advocates for Children of New York, February 2016), [http://www.advocatesforchildren.org/sites/default/files/on\\_page/diploma\\_coalition\\_cte\\_recs\\_21216.pdf](http://www.advocatesforchildren.org/sites/default/files/on_page/diploma_coalition_cte_recs_21216.pdf).



**2. Support the Executive Budget proposal to amend state law to align with recent changes to the federal McKinney-Vento Homeless Assistance Act and add an amendment requiring alternatives to public transportation in certain cases of hardship.**

During the 2015-2016 school year, 140,150 New York State students were identified as students in temporary housing—around 5 percent of the total number of New York students. Students in temporary housing often face frequent school transfers, which are linked to increased absenteeism and suspensions, higher grade retention, higher drop-out rates, and disruption of services and social and emotional supports.

In 2015, Congress reauthorized the McKinney-Vento Homeless Assistance Act, the federal law designed to ensure that students experiencing homelessness have access to school and to supports needed to be successful in school. The reauthorization includes new federal requirements that are critical to helping improve school stability for students in temporary housing and removing barriers to participation in school programs and activities.

We are very pleased that the Executive Budget includes changes to state law to align with the recent changes to the federal McKinney-Vento Homeless Assistance Act. The important changes in the Executive Budget proposal include, for example, clarifying that the protections for students in temporary housing apply to preschool students; addressing barriers to participation in summer school and after-school activities for students in temporary housing; ensuring that students in temporary housing receive transportation for the remainder of the school year in which they become permanently housed; and requiring that information about the living situation of students in temporary housing be kept private. We fully support the proposed McKinney-Vento Act amendments in the Executive Budget.

We have one recommendation for an additional amendment that would help certain students in temporary housing stay in their original schools, especially in New York City. Under the law, students in temporary housing have the right to transportation to help ensure that they do not have to switch schools every time they move. Historically, under this provision, New York City has provided MetroCards to students in temporary housing, requiring them to take public transportation to remain in their original schools. We are very pleased that, starting last year, New York City began providing yellow bus service to kindergarten through sixth grade students living in shelters. This service has had a significant impact in helping young students living in shelter get to school. However, it can often take time to arrange a school bus when a student enters the shelter system, and there continue to be other students in temporary housing, including prekindergarten students and students living in



temporary housing arrangements other than shelters, who are not eligible for yellow bus service under the City's policy.

While many of these students can get to their original schools using MetroCards even when their temporary housing is located far away from school, there are some students who are unable to get to their original schools due to certain factors that make the trip a hardship. For example, a parent with a physical disability may be unable to transport her young child to the original school via public transportation, or a student may be unable to get to school via public transportation where the trip would require a complex transportation arrangement involving a long walk through a high-crime neighborhood, two buses, and a subway. In such cases, a MetroCard is insufficient to enable a student in temporary housing to exercise the right to remain in the student's original school.

Section 3209(4)(e) of the New York Education Law should be amended to require school districts to provide an alternative form of transportation in cases where public transportation poses a barrier to the student's continued enrollment in the student's original school. This amendment would improve school stability for students in temporary housing in New York City.

**The Legislature should ensure that the budget includes the Executive Budget proposal regarding students who are homeless and an additional provision requiring school districts to provide an alternative form of transportation where public transportation poses a barrier to the student's continued enrollment in the student's school of origin.**

### **3. Invest \$50 million to promote safe and supportive schools.**

Schools need to create safe school environments, but suspensions can create more problems than they solve because they force students to miss valuable instructional time while failing to address the issues underlying the student's behavior. School suspension and expulsion 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.

Schools need assistance and training to adopt positive, age-appropriate approaches to discipline that help students stay in school, reduce the disproportionately high rates of suspension experienced by black students and students with disabilities, and provide a safe and supportive school climate. For example, in contrast to suspension, which



focuses 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. These practices have been implemented successfully across the country and in schools within New York State.

We recommend that the budget include \$50 million for a new competitive grant program that allows schools to implement or expand positive approaches to discipline such as restorative practices training for school staff and administrators, school-based restorative practices facilitators, peer mediation training and facilitation, and additional guidance counselors, social workers, and school psychologists. Unfortunately, the Executive Budget does not include this funding.

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

#### **4. 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 it possible for New York City to offer a pre-K seat for every four-year-old child. However, despite promises to make full-day prekindergarten available statewide, nearly 24,000 four-year-old children in low-income communities around the State still have no full-day pre-K.

We appreciate that the Executive Budget sustains the recent increases in prekindergarten funding and includes an additional increase of \$5 million. However, this funding falls short of the \$100 million increase recommended by the Board of Regents for prekindergarten for 2017-2018 and 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 are also pleased that the Executive Budget would begin the process of consolidating the State's prekindergarten funding streams. The State has a complex web of multiple prekindergarten funding streams, and we support the effort to begin to merge these programs. However, we want to ensure that, as the State consolidates prekindergarten programs, it does so in a way that protects and sustains each school district's current prekindergarten funding levels for the coming year and future years.

**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.**

##### **5. Invest \$100 million to support English Language Learners**

Statewide, there are more than 240,000 students classified as English Language Learners (ELLs)—nearly 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. In 2016, the four-year high school graduation rate among ELLs was only 27 percent statewide and only 30.8 percent in New York City, representing an alarming 9.7 percent drop in NYC from 2015.

The Board of Regents' State Aid Proposal recommends an additional investment of \$100 million in 2017-2018 to serve ELLs through a variety of approaches including matching teachers with training and certification in bilingual education with content area teachers to ensure appropriate instruction for ELLs; creating materials and instructional resources that are age and grade appropriate, academically and linguistically relevant, and aligned with the New York Learning Standards; providing professional development; providing appropriate support and programs for newcomers, Students with Interrupted Formal Education (SIFE), and other subpopulations of ELLs; and creating and translating materials for families. Unfortunately, the Executive Budget does not include any new funding for this initiative. New York State cannot continue to leave these students behind.

**We urge the Legislature to negotiate a budget that includes the Board of Regents' proposal to invest an additional \$100 million to provide increased support to English Language Learners.**



## **6. 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 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 protections regarding the duties of school districts, 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 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 board of cooperative educational services 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. If any waiver proposal moves forward, notice should be made public as well as mailed to individual parents, so that all parents, parent advocates, and educators have an opportunity to comment on any proposed waiver. 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.

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





## **7. Increase Foundation Aid by \$2 billion.**

The Executive Budget proposal includes an increase of only \$428 million in Foundation Aid for schools, less than 10% of the \$4.3 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. As we mark the 10<sup>th</sup> anniversary of the CFE lawsuit, we recommend a two-year commitment to meeting the promise of CFE, starting with an investment of a \$2 billion increase in Foundation Aid for 2017-2018.

**We urge the Legislature to fulfill its commitment to our schools by negotiating a budget that invests an increase of at least \$2 billion in Foundation Aid.**

## **8. Reject the Executive Budget proposal to freeze Foundation Aid in future years.**

The Executive Budget proposes to eliminate the use of the Foundation Aid formula as a means for distributing new funding starting in the 2018-2019 school year, freezing Foundation Aid to school districts at the 2017-2018 school year levels. The Executive Budget does not state how any new funding would be allocated. While the Foundation Aid formula is not perfect, it was designed to be a transparent means of allocating funding to school districts based on the needs of their student populations. We are very concerned about eliminating this formula with no equitable, transparent replacement formula for distributing new funding.

**We recommend that the Legislature ensure that the budget retains the Foundation Aid formula for future years.**



**9. Ensure that the Executive Budget proposals to lift the regional charter school cap and to require New York City to pay more for charter school space only move forward in conjunction with clarifications to the charter school law regarding discipline, students with disabilities, and English Language Learners.**

AFC believes that every child should have access to a high-quality education. There is no question that many charter schools are providing an excellent education to the students we serve. Unfortunately, however, we get frequent calls from families of students who enrolled their children in charter schools believing these 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 their needs.

The Executive Budget includes proposals to remove the regional cap on charter school growth in New York City and to increase the funding that New York City would be required to pay for privately-leased space for charter schools. We are concerned about the added financial burden that these provisions will place on New York City. In addition, we are concerned about protecting the civil rights of students at charter schools as these schools expand. The Legislature should only move forward with these changes if it also makes clarifications to the law as to charter schools' and school districts' 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 students' IEPs and, in violation of federal law, hear charter schools and school districts tell parents that they need to enroll their children in district schools in order to get their mandated special education programs. 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 to get the support they need at charter schools.



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, some charter school advocates assert that Section 3214 does not apply to charter schools. 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.

Prior to lifting the regional cap or increasing the funding that New York City must pay for privately-leased space for charter schools, the Legislature must make these clarifications to state law so that, as charter schools expand in New York City, the obligations of charter schools and school districts of residence are clear and students’ rights are protected. Without these changes, we fear that the children who need the most support will not benefit from a charter school expansion.

**The Legislature should ensure that the Executive Budget proposals to lift the regional charter school cap and to require New York City to pay more for charter school space only move forward in conjunction with clarifications to the charter school law regarding discipline, students with disabilities, and English Language Learners.**

**10. Support the Executive Budget proposal to develop a new reimbursement methodology for preschool integrated special class programs.**

Preschool special classes in an integrated setting give preschoolers with disabilities an opportunity to learn alongside typically developing peers with the support of a special education teacher. Unfortunately, the current reimbursement methodology for these programs does not reflect the actual cost of operating these classes, leaving programs with a deficit. In New York City, we have seen a shortage of such classes and have had cases in which preschoolers have had to wait months for a seat to open up in such a class.



The Executive Budget includes a proposal to require the State Education Department to develop a new methodology for reimbursement for preschool special classes in an integrated setting by October 1, 2017 that would go into effect for the 2018-2019 school year. AFC supports this proposal. However, the State must ensure that the rates are adequate to provide high-quality programs. In determining rates, the State Education Department should consider stakeholder input including from school districts, Early Childhood Direction Centers, Parent Training and Information Centers, preschool special education providers, and parents of students with disabilities or groups representing them.

**We ask the Legislature to support the Executive Budget proposal to develop an alternative reimbursement methodology for preschool integrated special class programs.**

#### **11. 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 through June 30, 2020.

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

#### **12. Support the DREAM Act.**

We are pleased that the Executive Budget includes the New York State DREAM Act, which would make New York State residents eligible to receive state financial assistance for college regardless of their immigration status. The DREAM Act would help break down a barrier to college access for students from immigrant families.

**We urge the Legislature to ensure that the budget includes the DREAM Act.**

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.