



# Advocates for Children of New York

Protecting every child's right to learn

## Testimony for the Joint Legislative Hearing on the 2021-2022 Executive Budget Proposal: Elementary and Secondary Education

January 28, 2021

Thank you for the opportunity to speak with you today about the 2021-2022 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 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 or discrimination in school because of poverty, race, disability, homelessness, immigration status, involvement in the child welfare or juvenile or criminal justice systems, or language barriers.

Given the immense challenges with education over the past year, we urge the Legislature to:

1. Ensure schools get their full COVID-19 federal relief funding and that federal funding supplements, and does not supplant, state funding;
2. Reject the proposed consolidation, capping, and reduction of certain expense-based aid;
3. Reject the proposed special education waiver;
4. Address the shortage of preschool special education classes;
5. Reject the proposal to eliminate state reimbursement to New York City for the cost of charter school rental assistance;
6. Increase investments in our schools.

### **1. Ensure schools get their full COVID-19 federal relief funding and that federal funding supplements, and does not supplant, state funding.**

When we testified about the need for more resources in our schools one year ago, we could never have imagined the unprecedented learning loss and trauma that was about to unfold. Over the past year, the students we serve have faced immense barriers to learning and for many students with disabilities, English Language Learners, and students experiencing homelessness, remote learning has been disastrous.

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Educating children is one of the most essential services the State provides, and the State should do everything possible to fully reopen schools as soon as possible while keeping school communities safe. The State must also invest the resources needed for school districts to launch ambitious and comprehensive COVID-19 educational recovery efforts to get students back on track. Such efforts must include targeted, evidence-based instructional and social-emotional approaches to address the learning loss and trauma that students have experienced, as well as compensatory services for students with disabilities who have gone without their legally mandated special education instruction and services and language instruction for English Language Learners who have gone without their legally mandated bilingual or English as a New Language instruction. Recovery efforts must address the needs of the youngest and oldest learners and ensure students who have not been able to earn course credit get the support and time they need to make up the work, including students who would normally be forced to age out of school because they have turned 21.

Therefore, it is critical for school districts to receive the full amount of COVID-19 relief aid allocated for schools by Congress. While the federal government allocated funding to schools through the CARES Act in the spring of 2020, New York’s school districts did not see any additional funding because the state budget reduced state aid for schools by an equal amount, through a mechanism known as the “pandemic adjustment.” In fact, the pandemic adjustment resulted in a net decrease to school districts, which were required to use a portion of the CARES Act funding for equitable services for private schools.

Now, the Executive Budget again proposes to reduce the State’s investment in schools, forcing school districts to use part of the aid allocated for schools in the December 2020 federal Coronavirus Response and Relief Supplemental Appropriation Act (CRRSA) to plug the gap.

The impact on high-needs districts would be significant. While New York City would see a net gain in school aid due to the federal relief funding, state funding for NYC schools would be cut by more than \$700 million through the reduction and consolidation of expense-based aid and the “local district funding adjustment,” requiring the City to use federal relief funds for regular expenses instead of the essential purposes of reopening schools and helping students get back on track. While our primary concern is the immense need for assistance this year, we are also concerned about the long-term impact of decreasing state aid to schools and what will happen when one-time federal funding is no longer available.



While we recognize the State’s fiscal constraints, the State must prioritize maintaining – and increasing – its investment in schools at this critical moment and must ensure that each school district receives the full amount of aid allocated for schools through the federal COVID-19 relief bills passed so far, as well as any additional aid ultimately passed by Congress.

**The Legislature must stand firm and ensure that the final budget provides full federal COVID-19 education relief funding to school districts and does not use federal relief funds to replace state support to schools. We stand ready to work with government partners at all levels to ensure that our schools get the federal and state resources needed to ensure the learning loss students have experienced does not have ripple effects for generations to come.**

**2. Reject the proposed consolidation, capping, and reduction of certain expense-based aid.**

We are deeply concerned about the Executive Budget proposal to consolidate funding for eleven expense-based aid categories into a new “Services Aid” block grant and to cap and cut the funding. This proposed change would disproportionately harm New York City schools, cutting funding for these services by \$603.02 per New York City pupil for a total cut of more than \$590 million in a year when students are going to need more support than ever before.

Beyond the amount of this steep cut, we worry that the proposed structural change does 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, 143,500 students were identified as homeless by New York State school districts and charter schools. The number of students who are homeless may skyrocket even further after the eviction moratorium is lifted. 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, cap, and cut certain expense-based aid.**



### **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.

Particularly at a time when students with disabilities have missed out on critical special education instruction and services due to the pandemic, 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 seven 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. Address the shortage of preschool special education classes.

One year ago, hundreds of students were already sitting at home – not because of the pandemic but because the State did not have enough seats in preschool special education classes. As a result, children with disabilities who had a legal right to a preschool special education class missed 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.

Even before the pandemic, New York City projected a significant shortfall in preschool special education class seats needed, showing a need for **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, in order to serve the City’s preschoolers with disabilities and uphold their legal rights. While all five boroughs had a shortage, the need was 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.

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. The challenges faced by these programs have been exacerbated by the pandemic – as programs have incurred new and unanticipated expenses and some programs have been temporarily under-enrolled due to a drop in referrals during the pandemic.

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. 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 appreciate that, in FY 20, 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, these increases were not included in the final budget.

Without an 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. We are particularly concerned that as the **thousands of New York children who missed out on Early Intervention** during the pandemic are identified, the State will see an increase in referrals of children who now need more intensive preschool special education services.

To make up for under-investment in prior years, stop additional programs from closing, and address 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 continue urging you to increase the reimbursement rates for preschool special education programs and evaluation sites by ten percent. In addition, we support the Board of Regents' proposals to:

- Create a statutory index to provide annual funding increases to preschool special education programs on par with the growth in General Support for Public Schools.
- Dedicate \$1.5 million over two years to design a new tuition rate-setting methodology with stakeholder input.

**We urge the Legislature to negotiate a budget that provides an increase in reimbursement rates for preschool special education classes and includes a statutory index for annual funding increases.**

**5. Reject the proposal to eliminate state reimbursement to New York City for the cost of charter school rental assistance.**

We are also concerned about the Executive Budget proposal to eliminate state reimbursement to New York City for the cost of charter school rental assistance, an estimated cost of \$47 million to the City. Whether or not a given public school building has sufficient room for a co-location of another school is a complex analysis that must consider whether the school has sufficient room for a variety of supports and services including mandated special education services. The State should not shift the entire burden of paying for charter school space to New York City.



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**We urge the Legislature to reject the proposal to eliminate state reimbursement to NYC for the cost of charter school rental assistance.**

**6. Increase investments in our schools.**

While we have focused this testimony on some of the significant threats posed by the budget proposal, we must note the importance of having the Legislature work to increase investments in our schools to address the preexisting inequities that have been exacerbated by the pandemic and ensure all students in New York get an excellent education. Such investments include full Foundation Aid funding pursuant to the Campaign for Fiscal Equity lawsuit; high-quality, full-day prekindergarten programs for three- and four-year-old children throughout the State; funding for academic support, including evidence-based literacy instruction, and social-emotional and mental health support; and targeted support for groups of students including students with disabilities, English Language Learners, and students who are homeless.

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.