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**Written Testimony of Commissioner Dr. Betty A. Rosa  
New York State Education Department  
Joint Legislative Elementary and Secondary Education Budget Hearing  
February 1, 2024**

Good morning Chairs Krueger, Weinstein, Mayer, Liu, and Benedetto. And good morning to the members of the Senate and Assembly who are here today. My name is Dr. Betty A. Rosa, and I am New York's Commissioner of Education. I am joined today by Executive Deputy Commissioner Sharon Cates-Williams; Senior Deputy Commissioner Dr. Jeffrey Matteson; Chief Financial Officer Dr. Christina Coughlin; and P-12 Deputy Commissioners Angelique Johnson-Dingle and Jason Harmon. I also want to acknowledge and thank Chancellor Lester Young, and the members of the Board of Regents, who I know are watching today.

The New York State Education Department (NYSED) comprises an exceptionally complex and interconnected system of educational programs and services. Our stated mission is to raise the knowledge, skill, and opportunity of *all* New Yorkers.

To achieve this mission, the Regents and NYSED have developed three principles that guide our work; through these principles, we seek to:

- Foster lifelong learning, academic success, and improved outcomes for all students.
- Advance equity, excellence, diversity, inclusion, and access for all.
- Strengthen NYSED's capacity to serve the public.

Our streamlined budget requests this year align closely with these guiding principles and would provide the resources needed to achieve them.

We want to thank the Governor for including many important Regents and NYSED budget and policy priorities in the Executive Budget proposal which include:

- **Critical NYSED Staffing-** Positions related to our Department IT needs; Statewide Longitudinal Data System efforts; needed literacy and health content expertise for our Office of Standards & Instruction; as well as support for districts as they implement the Governor's zero-emission bus initiative.
- **Expense-Based Aids-** Fully funding all expense-based aids and proposing no changes to current law expense-based aid formulas.

- **Updating the Broken Special Education Tuition Methodology-** Providing an additional \$1.4 million to support the longstanding Regents priority proposal for consultant services to develop models to inform the development of options for a new tuition reimbursement methodology for approved providers of special education programs and services design for stakeholder consideration as well as additional time to complete this work.
- **Important Changes to Prekindergarten Funding-** State funded prekindergarten is made up of three types of funding streams: preschool for students with disabilities (4410), Universal Prekindergarten (UPK), and Statewide Universal Full-day Prekindergarten (SUFDPK). Merging any two of the three types is not possible without additional funds and/or a new funding mechanism. The state has four SUFDPK grants, three of which are handled separately and are being proposed to be merged in the 2024-25 school year for ease of administration. Additionally, all but one of the prekindergarten grants include limitations on supplanting other state grants. With the slow expansion of prekindergarten funding through the proliferation of grants, districts have struggled to manage these programs. Limitations created by this sequence of expenditures have dampened interest in new grants. Removal of the “supplement not supplant” language from all state funded prekindergarten programs was addressed, at no cost to the state, in order to support the need to streamline these important programs for districts.
- **NOVELny-** \$3 million in funding for the New York Online Virtual Electronic Library (NOVELny) which is a full-text research database free to all residents of the State of New York used extensively across the State, in academic research libraries, public school libraries, public libraries and remotely by the public.
- **Talking Book & Braille Library (TBBL) and the Conservation/Preservation Program-** An increase of \$235,000 for a total of \$1 million to better serve visually impaired individuals who utilize the services of TBB and to preserve objects and materials that represent New York's rich history.

While there are certainly positive areas of this Executive Budget proposal, there are areas that need additional thought or where key needs of school districts and libraries, as well as the Department were not addressed. We request that the Legislature consider these and address them thoughtfully.

### **Foundation Aid**

The Executive Budget proposes three changes to foundation aid:

- Replace the single year inflation value (4.1% for 2023) with a multi-year average of 2.6%. This approach reduces the year-to-year growth in the foundation aid amount by \$331.4 million. Multi-year averages are used in several places in foundation aid, and

they yield more stable results, but the average used here reduces growth significantly in a year when inflation remained high.

- Save harmless funding would be cut by \$167.9 million across 337 districts. Reductions are prorated based on district wealth but occur primarily within rural districts and represent sizeable reductions in many districts, especially those that have had the greatest enrollment declines. The proposal does not include a minimum increase for all districts.
- Increase the maximum state sharing ratio from 90% to 91% to support the highest needs districts. This partially offsets the lower inflation factor.

While population declines and other demographic changes need to be considered in the model for state support of schools and the distribution of school aid, this Executive Budget proposal is an abrupt and unexpected change to the school aid calculation. If enacted, this could leave hundreds of districts without the ability to plan for and implement appropriate transition measures to address their declining student enrollment and maintain educational opportunities and related supports for students. The Department recognizes the need to consider how state aid to school districts is calculated and that current structures and configurations need to be examined considering drastically changed conditions in our demographics and in our expectations of schools. However, this work must be undertaken in a thoughtful and deliberate manner that provides for orderly transitions at the school and district levels.

The Regents and NYSED have long advocated for expanded support for rural districts to regionalize their programs and offer greater opportunities for students living in rural communities. For years, the Board has recommended updating the BOCES and Special Services Aid (aid for non-BOCES component school districts) formulas. While NYSED has used its discretionary authority to expand use of BOCES programs and services, changes in the BOCES Aid formula requires executive and legislative action that must be part of transitioning delivery of opportunities and services in sparsely populated rural areas.

In addition, the Regents and NYSED support greater flexibility for school districts to configure themselves in ways that will allow and encourage local decision-making to regionalize where appropriate, while maintaining local school communities especially at the elementary level. For example, districts and BOCES should be allowed to contract with each other to create new regional delivery systems responsive to local needs. This would ease the path for districts who may wish to continue to operate elementary schools but contract with other districts or BOCES to deliver middle school or high school programming, transportation, and other support and ancillary services and capital planning.

The sudden change to the school aid calculation, with no accompanying support for regionalization efforts or long-range vision that would facilitate future planning, limits opportunities for students in these disadvantaged rural communities. In a fiscal year where federal stimulus funding is being drawn down, the effects will devastate some school

communities. Providing funding to NYSED to study potential future changes to the Foundation Aid formula along with consideration of how other aids can be adjusted to respond to dramatically changed conditions would be a timely and prudent use of resources that will enable policy makers to make informed decisions about the future of our educational delivery systems.

**2024-25 Funding Request: \$1 million for the Department to contract with researchers and engage with stakeholders to review the Foundation Aid formula and identify potential changes.** To ensure that New York State provides state funding for education most efficiently and where it is most needed, NYSED requests \$1 million to support a contract with educational researchers and organizations to review Foundation Aid and engage with stakeholders. To ensure that updates are research-based and reflect present thinking about funding student needs, researchers would review big picture items such as the “successful schools study,” measures of student need and regional cost, as well as considering updated measures of poverty and other need indicators.

***This funding was not included in the Executive Budget proposal.***

### **Career and Technical Education**

Demand for career and technical education programs is growing. Limitations on the availability of these opportunities include restricted and outdated levels of state support for the costs of CTE (Career and Technical Education) and current programs being mostly limited to high school juniors and seniors. The BOCES instructional salary level aid reimbursement has been capped at \$30,000 for decades. This flat reimbursement amount has not kept pace with inflation. The Regents and NYSED recommend increasing the salary limit for BOCES aid to \$60,000 over the next three years to encourage program expansion. Taking a similar approach to increasing the Special Services aids would expand support for students in career, technical, occupational, and business education programs in districts that are not components of a BOCES, such as the Big Five City school districts.

***This funding was not included in the Executive Budget proposal.***

### **Funding for NYSED’s Charter School Office**

Our Charter School Office maintains ambitious standards for Regents chartered schools in a cost-effective manner, and it serves the state’s broader charter sector (entities chartered by SUNY, New York City, and Buffalo) in important ways consistent with state requirements. The Office has been funded primarily by a federal grant that is ending. Since no more federal funds will be available, we request state funding to replace the federal funding. We also request an additional staff member to address increasing legal issues around charters. New state funds to support this office are critical to enabling the Department to fulfill its statutory responsibilities related to charter schools, which would be severely diminished. These responsibilities include:

- Assisting parents and community members who file complaints regarding charter schools, including those for SUNY-authorized charter schools, significantly limiting the monitoring and oversight occurring for all charter schools here in New York.
- Conducting monitoring and oversight over the 95 Board of Regents authorized charter schools.
- Providing technical assistance to the NYC DOE or Buffalo charter school offices or the schools they oversee.
- Assisting SUNY in the authorization of the 225 charter schools they oversee or issue charters for these schools, particularly for any new charters issued based on the charter school cap increase enacted last year.

It is important to understand that every year SUNY receives over \$5.1 million in the enacted budget for its oversight of charter schools. There is \$4.3 million in funding that is suballocated from the Department’s appropriations to SUNY- a majority of which is used to fund the Charter School Institute- in addition to \$848,600 that SUNY receives directly.

**2024-25 Funding Request: \$1.7 million in state funding to make up for the loss of federal funding.**

***This funding was not included in the Executive Budget proposal.***

**NYSED Federal Stimulus Funds Continued Work**

The state’s responsibilities for oversight of the American Rescue Plan Act do not disappear with the loss of administration funds but persist through the extended liquidation period for school districts and nonpublic schools to utilize their federal stimulus funding, as well as ‘close out’ reporting requirements. NYSED must be allowed to sustain needed staffing that has supported the federal stimulus funded work during this extended period.

**2024-25 Funding Request:** \$865,000 would support the cost of staff through the end of the 2024-2025 state fiscal year.

***This funding was not included in the Executive Budget proposal.***

**Provision of a Free Appropriate Public Education (FAPE) Through Age 22**

The United States Court of Appeals for the Second Circuit held in *A.R. v. Connecticut Board of Education* (5 F.4th 155 (July 8, 2021) that a state’s obligation under the Individuals with Disabilities Education Act (IDEA) to provide a “free appropriate public education” (FAPE) to "all children with disabilities ... between the ages of 3 and 21, inclusive" extends through at least the 22<sup>nd</sup> birthday of a student who has not achieved a high school diploma if a state offers publicly-funded adult education programs to non-disabled students in this age group. The Court declared that Connecticut’s law terminating special education for students with disabilities between 21 and 22 who had not completed a high school degree violated the IDEA.

The *A.R.* opinion marks at least the third Circuit Court of Appeals, joining the Ninth Circuit and the First Circuits, to hold that when a state offers “public education” to non-disabled adults between the ages of 18 and 22, a state must offer FAPE to qualifying individuals with disabilities until their 22<sup>nd</sup> birthday or stand in violation of the IDEA.

New York State Education Law §4402(5) currently provides that those turning age 21 on or after September 1 through June 30, are eligible to remain in school until June 30. Those turning age 21 on or after July 1 through August 31, if otherwise eligible, may remain in school through August 31. Because the jurisdiction of the Second Circuit includes New York State, and because New York offers publicly funded adult education programs to non-disabled students in this age group, the Department believes that school districts now *should* provide special education and related services for students with disabilities in their districts at least through students’ 22<sup>nd</sup> birthdays.

On July 6, 2023, NYSED released the [Formal Opinion of Counsel](#) specific to the Second Circuit Court of Appeals’ decision in *A.R. v. Connecticut Board of Education* on the responsibility of public schools to provide special education to students over the age of 21. It recommended that districts consult with their school district attorney regarding the information contained in the Second Circuit Court of Appeals’ decision. As described in the Formal Opinion of Counsel, that decision requires that public schools in New York provide special education and related services to resident students with disabilities who have not received a high school diploma through the day before their 22<sup>nd</sup> birthday. While not required by the decision, NYSED’s Office of Special Education recommends that school districts consider providing special education and related services through the end of the school year in which the student turns 22 or upon receipt of a high school diploma, whichever occurs first.

NYSED established a cross-Department workgroup to identify the potential fiscal, programmatic, legislative, regulatory and logistical implications, decision points and specific action items that may be necessary to comply with case-law. A key policy decision was to determine when during the students’ 22<sup>nd</sup> year eligibility will end. The Regents and Department included the need to support lifelong learning and the emerging needs of students with disabilities, including the provision of a free appropriate public education (FAPE) through the day before a child’s 22<sup>nd</sup> birthday in our legislative and funding priorities.

**2024-25 Funding Request: \$55.3 million to support the costs of providing educational services through the end of the school year in which the student turns 22.**

***This proposal and funding were not included in the Executive Budget proposal.***

### **Interim Relief Until Tuition Methodology is Fixed for Special Education Providers**

**Support Educational Providers with Residential Programs:** Residential facilities for students receiving special education services have retained students beyond age 21 (and now 22) where it is difficult to find adult placements that meet their needs. Since these young adults take the place of students who would participate in the school program, the school

loses tuition revenue for that student. Some school programs have multiple cases of this happening at the same time. Since providers are funded on a per-pupil basis, this, unfortunately, affects the provider's ability to appropriately fund its operations and limits the availability of residential placements for school-aged students that need them. The Regents and NYSED recommend amending the statute to make the provider whole when tuition cannot be billed due to an adult occupying a student placement. Also, it is recommended that the Governor direct the state agencies overseeing such placements to come together to ensure sufficient residential capacity for all placements in residential settings (adult and school age).

**2024-25 Funding Request: \$19 million**

***This proposal and funding were not included in the Executive Budget proposal.***

**Tuition Growth Methodology:** Last year's enacted budget provided funding to review the rate setting methodology for private special education providers and special act school districts and this year's proposed Executive budget includes additional needed funding to successfully carry out this important work. However, as noted, this work will take some time to complete. Until then, these schools must have a tuition rate growth factor that reflects the year to year increases in costs (staff salaries and benefits, etc.) to be able to maintain current levels of services.

**2024-25 Funding Request: The net impact of this inflation-adjusted cost factor is unknown at this time.**

***This proposal and funding were not included in the Executive Budget proposal.***

**Interim Plus:** To minimize the delay in approved special education providers receiving access to a tuition rate that includes growth, NYSED must continue to apply a growth factor in the calculation of interim rates. As any approved growth factor will be applied to prospective rates too, this proposal is cost neutral and eliminates the need for programs to incur additional interest charges to fund expenses while waiting for the prospective rate.

**2024-25 Funding Request: Cost neutral, will allow providers to plan for the year with a known rate growth percentage.**

***This proposal was not included in the Executive Budget proposal.***

### **Influx of Newly Arrived Immigrant Students in New York State**

School districts across the state, but particularly in New York City, have seen enrollment influxes driven, in part, by newly arrived immigrant students. These newcomers often arrive unexpectedly or midyear, after district budgets are established. Districts are expected to educate all the school age children within their boundaries without delay, but current funding formulas do not support the cost of implementing this expectation, especially in districts that

do not have the staff, resources, and community partnerships already in place to serve the particular needs of these students. In these circumstances, waiting for reimbursement until the following school year for unexpected growth in student populations, which is how current state and federal funding works, is an issue that needs to be addressed.

Foundation Aid, the major form of operating support for many districts, is calculated on a per pupil basis, using the pupil count from the prior year. For districts undergoing rapid enrollment growth, or rapid growth in the number of students with a particular set of needs such as English Language Learners, aid based on enrollment from the prior year is insufficient to meet the needs of the students who have arrived. This is why the Regents and NYSED's proposal to support school districts is to provide current year aid for these students with a standalone "Growth Aid" formula at the Foundation Aid per pupil level. Aid in the 2024-2025 school year will be based on enrollment growth in the 2024-2025 school year and would be paid in the next state fiscal year.

To support unanticipated costs, NYSED is allocating \$2.25 million in surplus 2022-23 School Year Title III funds to districts throughout New York State that have enrolled high numbers of newly arrived immigrants who are reported to be in crisis in fall 2023. Grants have been awarded to 33 upstate districts and all 32 geographical districts within the NYC public school system, with funding divided evenly among three population size tiers and then split among each tier's constituent districts.

NYSED has also adjusted policy in response to the ongoing influx of newly arrived families. The Board of Regents has approved emergency rules to:

- Allow local educational agencies experiencing an unanticipated increase in enrollment to petition for an extension of the standard 10-day timeline for identifying and placing English Language Learners (ELLs). Qualifying districts will follow a 30-day timeline as required by ESSA.
- Provide greater flexibility for certified content area educators to obtain a Supplementary English to Speakers of Other Languages (ESOL) certificate or a Supplementary Bilingual Education Extension and for certified ESOL teachers to apply for a supplementary certificate in another area. (ELLs). Qualifying districts will follow a 30-day timeline as required by ESSA. This change will support schools' and districts' ability to comply with Commissioner's Regulations and address the state's shortage of certified teachers of ELLs.

Additionally, NYSED issued a joint statement with the Office of the Attorney General reasserting the entitlement of all school-age child and youth to free public education as well as a memo reminding LEAs of the 30-day window afforded to all students arriving in New York from other states or countries to attend school pending the availability of immunization records.



## **NYS English as a Second Language Achievement Test (NYSESLAT)**

In New York State, all English language learners (ELLs) are assessed annually for English language proficiency (ELP) as required by the Every Student Succeeds Act (ESSA) and New York State Education Law §3204. New York State has developed and administered the New York State English as a Second Language Achievement Test (NYSESLAT) to meet this requirement. The results of the NYSESLAT are used to determine the level of language services needed for each student and when such services are no longer needed.

Although the NYSESLAT allows accommodations for ELL students with disabilities, the NYSESLAT was not designed for measuring the incremental annual gains of ELLs with severe cognitive disabilities. In addition to improving these students' educational experience, a new assessment that measures the ELP of students with severe cognitive disabilities is necessary to fulfill federal requirements. Guidance from the U.S. Department of Education released in 2017 requires an alternate ELP assessment for ELLs who cannot take part in the current assessment even with appropriate accommodations. **By not providing this assessment to this population of students with disabilities, New York State will be out of compliance with these federal requirements and could potentially be penalized by the loss of federal educational funds.**

**2024-25 Funding Request: \$4 million**

***This funding was not included in the Executive Budget proposal.***

## **Continuing Exam Translations**

In the 2019 budget, NYSED received a \$1 million appropriation to offer translations of all required assessments (five of the Regents Exams, the Grades 3-8 Math Tests, and the Elementary- and Intermediate-level Science Tests) in the eight most common home languages of ELL students: Arabic, Bengali, Chinese (Simplified), Chinese (Traditional), Haitian-Creole, Korean, Russian, and Spanish. This was requested to be an ongoing appropriation but was not included in subsequent budgets. The Regents and the Department are committed to ensuring that the entire assessment program is productive and contributes to improved teaching and learning opportunities of ELL students.

The Regents support offering assessment translations to give ELL students the opportunity to test in their native language. Schools may provide ELLs with oral, direct translations of the English editions when there is no translated edition provided by the Department. It is a significant challenge and cost for schools to arrange for oral translations and there is less confidence in the accuracy of such translations than written translated editions.

**2024-25 Funding Request: \$500,000** in annual funding is needed to continue to provide these translated assessments. More funding would be needed to increase NYSED translated parent and public materials.

***This funding was not included in the Executive Budget proposal.***

### **Improving Education for Juvenile Justice Students**

While passage of Raise the Age in New York State was a critical step for youthful offenders, ensuring improved education opportunities for students in juvenile justice facilities is also needed to successfully address the school-to-prison pipeline. This is why the Regents and NYSED continue to propose the creation of statewide hybrid high school, in collaboration with the Office of Children and Family Services, for students in juvenile justice settings. Since these students are not able to attend traditional school programs, this program would employ certified teachers to provide instructional programs for these students. Funding would combine support for onsite staff and the costs of providing other coursework online. Operating costs would be covered in a manner that parallels current funding mechanisms for school districts. The program would be provided with start-up funding for design and implementation. For the first year, a high need district's pupil distribution would be used to establish a start-up weighting, then in subsequent years, funding would revert to the actual weightings for the students served. For students with disabilities who need in-person services, the district of residence would provide services and generate state aid for the services.

**2024-25 Funding Request: \$20 million**

***This funding was not included in the Executive Budget proposal.***

### **Creation of a Zero-Emission Bus Agency Leadership Level Working Group**

The Executive's zero-emission bus initiative and the requirement that school buildings move towards increased electrification will require the State to overcome significant obstacles to reach full implementation. Many of these issues are outside the purview of NYSED. These include power generation capacity limitations, shortages of appropriately trained mechanics, and local tax/cost concerns, among others. To ensure successful implementation, we request that Legislature propose an agency leadership level working group that can identify implementation issues and develop and recommend solutions to support school districts across New York.

### **NYSED's Office of Cultural Education Revenue Stabilization**

While the Office of Cultural Education also receives federal funding, which is intended to provide for the support of public libraries around the state, operational funding for the State Museum, State Library and the State Archives comes primarily through the Cultural Education (CE) Revenue Account and Local Government Records Management Improvement Fund (LGRMIF). These program funds receive their revenues from a fee charged for the recording of deeds. These accounts supply most of the operational funding for the State Museum, a substantial portion of funding for the State Archives and the State

Library, all funding for the Office of Public Broadcasting and Educational Television, and, until recently, all funding for the New York State Summer School for the Arts.

The dollar amount of the fee has not changed in over twenty years. The fee's purchasing power has declined to only 60 percent of what it was in 2003-04, because of inflation during that time. The total revenues also depend on the number of eligible real estate transactions. That makes funding for these programs intended to protect the state's heritage for future generations vary widely from year to year, since the number of real estate transactions is highly dependent on macroeconomic conditions. Since inflation continues to eat away at the value of the fee, this situation is not sustainable. Either a reliable base State general fund appropriation of \$17 million or a \$10 fee increase is essential to ensure the Museum, Library and Archives' ability to safeguard our state's heritage.

**2024-25 Funding Request: Increase current fee by \$10 per transaction or provide equivalent GF appropriation of \$17 million).**

***This funding was not included in the Executive Budget proposal.***

### **Public Library Construction Assistance**

The State Aid for Library Construction program stretches local investment, ensuring that even libraries serving economically disadvantaged communities can access capital funding for critical library improvements. Although \$45 million just scratches the surface of our libraries' significant construction needs, this request would be a step forward and consistent with last year's request.

**2024-25 Funding Request: \$45 million (\$11 million increase)**

***The Executive Budget proposal provides only \$34 million- level funding from 2023-24.***

### **New York State Summer School for the Arts**

The New York State Summer School for the Arts (NYSSSA) provides residential programming and scholarships during the summers of 2024 and 2025, to New York State students interested in the arts.

**2024-25 Funding Request: \$2 million (\$1 million increase)**

***The Executive Budget proposal eliminates funding for the New York State Summer School for the Arts, a decrease of \$1 million.***

### **Conclusion**

While the Executive Budget proposal contains laudable and needed resources for schools and the Department, more conversations and thoughtful long-term policy and budget

planning, to ensure successful preparation for college and careers and that all students have access to a world-class education, is required. The critical issues that we have outlined today also need to be addressed. In the days ahead, as we complete our more technical review of the Executive Budget proposal, we will reach out to all parties to address any additional technical issues or concerns that we identify.

For the Department to provide quality customer service and successfully complete all of the work that we are required to do by current law requirements, by the enacted legislation you pass, and by the many proposals that will be in the budget, a reminder that appropriate staffing is needed. It is important to understand that 80% of NYSED staffing funding comes from non-New York State funding sources (federal or special revenue/fees). Only 1 in 5 staff are funded directly by the State/General Fund. I want to acknowledge and thank our NYSED staff- their resilience and all the hard work that they do on a daily basis is extraordinary.

In summary, our proposals are true to the voices of the countless students, educators, parents, and stakeholder groups we serve and interact with daily. I look forward to your questions and to working with all of you on our shared goal to increase equity in education for all New York State students. Thank you.