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# TESTIMONY

## 2015-16 Executive Budget and Schools

Senate Finance Committee  
Assembly Ways and Means Committee  
February 3, 2015

*Chairman DeFrancisco, Chairman Farrell, and other members of the Senate and Assembly:*

I am Robert Lowry, Deputy Director of the New York State Council of School Superintendents.

First, thank you for your support for our public schools through your budget actions a year ago and nearly every year. I know that you say “no” to many other people who also have good causes, in order to say “yes” to schools as much as you have and we explain that fact to local school leaders.

### **Withholding School Aid runs**

This year, the Governor’s budget would appropriate funds for a \$1.1 billion increase in School Aid. However, no formula changes have been proposed to allocate that increase and no runs have been published to tell district leaders and community members how much state aid their schools might receive.

The proposed budget includes a contingency: no district may receive an increase in aid over its prior year level unless you, the Assembly and Senate, approve legislation the Governor recommends to enact an “education opportunity agenda,” comprised of reforms affecting teaching, charter schools, New York City mayoral control, and chronically low-performing public schools.

It has been reported that there is a minimum increase in School Aid in this budget of \$377 million based upon the personal income growth cap. That is not what the proposed budget legislation reflects, however. In fact, the bill language expressly provides for no increase in aid beyond the 2014-15 year if the accompanying reforms are not adopted.

Current law aid formulas remain in place, subject to this contingency. Districts can lose aid under current law, due to changes in wealth, enrollment, student needs, or expenditures; and 146 districts are due to lose aid under current law formulas according to November estimates.

So if the Governor’s reforms are not enacted, some districts could lose aid but none could gain. If the reforms are enacted, we do not know what districts might receive. It may be reasonable to assume that districts would receive current law amounts for expense-based aids such as Building, Transportation and BOCES Aid and some categorical programs. That would add up to a \$309 million increase. But the Governor has signaled an intention to change current law formulas, by proposing to appropriate for a \$1.1 billion increase.

This tactic has provoked intense frustration among school district leaders. The property tax cap law requires them to submit certain data to three state agencies by March 1 and guidance from the State Education Department advises them to rely upon School Aid estimates in the Executive Budget.

## **NEW YORK STATE COUNCIL OF SCHOOL SUPERINTENDENTS**

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But a more fundamental concern is that the school district budget process is exemplary in its openness and transparency. Building toward voter approval referenda in May in districts outside the “Big 5” cities, the process strives to inform and engage stakeholders and voters. Having School Aid figures as proposed by the Governor enforces realism in the development and consideration of options. Not having these numbers undermines a model of good government practice.

The furor over the withholding of School Aid figures has diverted attention from even greater concerns: the true needs of schools and the merits of the Governor’s reform recommendations.

**The needs of schools**

Despite all your efforts, many schools are still struggling with financial challenges. Fears are common that children in the future will never again have all the opportunities those of our past have enjoyed.

Last week, Comptroller DiNapoli released his second annual summary of fiscal stress in school districts. The Comptroller found little change in extent of fiscal stress among school districts from a year ago. The Comptroller’s findings are consistent with those from our surveys of superintendents from across the state over the past four years.

Asked how they would rate their district financial condition on a scale from very poor to very strong, there has been very little shift in the ratings given by superintendents, even after three years of state aid increases. Over the past year, there was a 5 point jump in the percentage of superintendents from 13 percent to 18 percent.

<b>Council Survey: Measures of overall fiscal condition (Statewide)</b>				
<b>Overall fiscal condition</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Strong/very strong	32%	30%	39%	36%
Poor/very poor	17%	17%	13%	18%
<b>Change in fiscal condition over prior year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Somewhat/much better	3%	7%	16%	18%
Somewhat/much worse	75%	52%	32%	26%
<b>Reliance on reserves</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Somewhat/very concerned	89%	83%	83%	72%
Not concerned -- limited use of reserves	6%	11%	12%	22%
Not using reserves for recurring costs	5%	6%	5%	6%

There has been a decline in the share of superintendents saying their district’s financial condition had worsened over the prior year. But more superintendents still say their district’s financial condition deteriorated rather than improved this past year.

The percentage of superintendents expressing concern over their districts’ reliance on reserves to pay recurring costs has fallen, but remains high.

Generally, the higher the level of student poverty of the district, the bleaker the overall fiscal outlook.



**Council Survey: Measures of overall fiscal condition  
Districts grouped by student poverty**

Estimated % of students in poverty (qualifying for free/reduced price lunches)

	0 to 10%	11 to 20%	21 to 40%	41 to 60%	Over 60%	Total
Overall fiscal condition poor/very poor	4%	13%	16%	18%	34%	18%
Change in fiscal condition over prior year -- somewhat/much worse	25%	20%	24%	24%	43%	26%
Somewhat/very concerned by reliance on reserves	65%	71%	73%	74%	75%	72%

These modest gains in overall outlook have yet to translate into improved opportunities for students.

When asked how this year's school budget affected 19 categories of services and operations, for only two categories did more superintendents report positive impacts than negative – core instruction in elementary grades (27 percent positive, 26 percent negative) and school safety (19 percent positive, 14 percent negative). "Extra help for students who need it" drew the largest share of superintendents anticipating negative effects, 42 percent. Capacity to assure extra academic help emerged as a concern throughout the survey, as it did in the prior three years.

We also asked for a longer term view: how have financial decisions over the past four years affected the adequacy of various student services? Mostly by wide margins, more superintendents reported that adequacy had worsened rather than improved, with extra academic help again most widely seen as deteriorating. Only prekindergarten and school safety were more often cited as improved over the last four years.

Notably, over 40 percent of superintendents reported a significant or somewhat worsening impact on core instructional services for elementary and middle grades (those making up the bulk of the statewide standardized testing program) over the last four years. This is significant given proposals to give increased reliance on the results of the corresponding assessments for those grades and subjects by the state for multiple purposes.

Another significant but not wholly surprising result: 50 percent of superintendents reported a worsening impact on advanced placement and enrichment class offerings since 2010-11. This is a measure that New York State has historically excelled at when compared to other states. Losing ground in this area is a concern to a substantial point of New York educational pride, and to college admission competitiveness.

Each year we have conducted our surveys we have asked superintendents for their top priorities if new funding became available, beyond that needed to support basic, ongoing operations. Each year, strengthening the capacity to provide extra academic help for struggling students has been the highest ranked concerns. This year, restoring or expanding advanced classes and providing mental health/counseling services climbed as priorities.

How has the adequacy of these student services changed due to financial decisions since the 2010-11 school year?			
	Much/ Somewhat Better	Much/ Somewhat Worse	Better - Worse
Extra help for students who need it -- any level	11%	57%	-45%
Advanced or enrichment classes	11%	50%	-38%
Other extracurricular activities	5%	43%	-38%
Instruction in art -- any level	4%	39%	-35%
Student counseling, social work, mental health or similar support services	9%	43%	-34%
Instruction in music -- any level	6%	39%	-33%
Athletics	7%	39%	-31%
Second language instruction at the middle or high school levels	4%	34%	-30%
Other student services	3%	30%	-26%
Instruction in English, math, science, and social studies in high school	16%	41%	-25%
Instruction in English, math, science, and social studies in middle grades	17%	42%	-25%
Student transportation	4%	29%	-25%
Career and technical education	8%	31%	-23%
Core instruction in elementary grades	21%	41%	-20%
Special education	17%	26%	-9%
Services for English language learners	12%	19%	-7%
Prekindergarten	17%	16%	1%
School safety/security	26%	19%	7%

We also invite superintendents to share statements on the financial prospects for their schools. Here is how one Capital Region superintendent summed up his district's position:

This was the first budget in five years that we have not had to reduce staff. While a relief, we still have not been able to restore any of the programs that have been eliminated since 2009. Our program is in far worse shape than it was at that time.

A Southern Tier city superintendent wrote:

...we have tried to limit the impact of decreasing financial resources; we have been able to do so by maintaining these programs at the expense of intervention, administration, and staff development. It is an illusion. We are keeping programs alive while decimating the ability to run them effectively or to grow program in response to economic development/workforce demands.

A North Country superintendent told us,

Students are afforded far fewer opportunities in electives, fine arts, AP classes, remedial help and extracurricular activities. Classroom sizes have ballooned to near 30 students. Our students struggle to compete to get into the college of their choice due to the content of their transcripts. The GEA, inequitable Foundation Aid formula, and the tax cap have severely negatively affected the quality of education our students receive.

A Mohawk Valley superintendent said,



We have right sized and turned over every possible stone in order to limit impact on programs. We are providing a sound, basic education. Unfortunately, our kids cannot compete with the curriculum offerings at districts who are more wealthy than we are. Without systemic change to how schools are financed, we will offer a very good educational experience, but not worthy of what the children in our "zip code" deserve.

One Long Island superintendent wrote:

Our district has utilized reserve funds to maintain educational programs and services for students. That strategy has worked short-term; however, reserves have not been replenished and cuts/reductions are now forthcoming.

### Why?

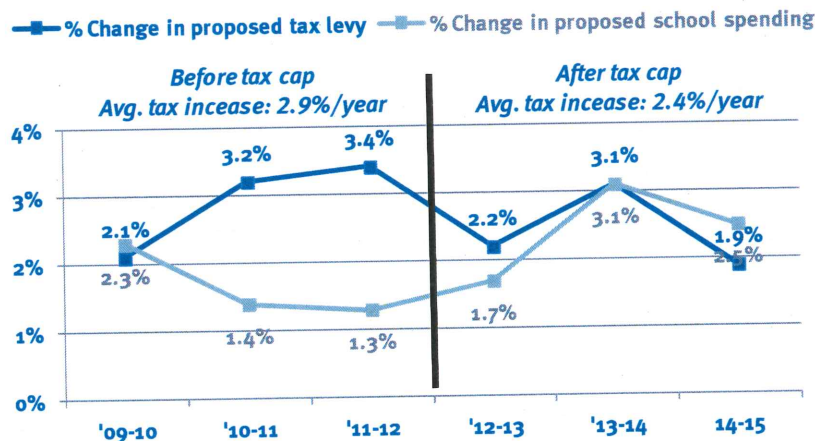
Why are districts still struggling financially?

First, despite your efforts over the past three years, over half the state's school districts are still receiving less state aid than in 2008-09, six years ago.

Second, the three prior years were exceptionally difficult. In two years (2010-11 and 2011-12) School Aid was cut, and in a third year (2009-10), most aid was frozen – cuts were avoided through federal stimulus aid. Many districts exhausted less damaging budget-balancing strategies during this stretch.

School districts were holding down spending and tax increases *before* the tax cap became law. Despite the austerity in state aid, local school tax increases in the three years prior to the tax cap were only slightly higher than in the years it has been in place.

**School District Spending and Tax increases  
before and after tax cap**



SOURCE: Council analysis of NYSED Property Tax Report Card data; Big 5 cities not available

Third, some costs have surged. Like all employers, school districts have struggled with the cost of health insurance. Even with anticipated rate reductions next year, the mandated district contribution rate for the Teachers Retirement System would still be at least 70 percent higher than in 2008-09.

Fourth, our version of a tax cap for schools is exceptionally restrictive. Massachusetts is cited as a model, but that state allows communities to increase their tax levy by up to 2.5 percent without voter

approval. In New York, school districts may not increase their tax levy at all without winning voter approval. New Jersey permits its schools to increase taxes to fund pension and health insurance costs without a tax cap over-ride; New York does not. Most states permit over-rides with a simple majority of voters; New York requires 60 percent.

Fifth, recent state education reforms have imposed demands upon schools. A Capital Region superintendent explained,

Over the past four years, there have been significant challenges in securing resources to support implementation of the Common Core Learning Standards... Revisions in 3-8th grade assessments and High School Regents exams necessitated allocation of increased resources to "close gaps" in student knowledge as assessments and learning standards shifted to the Common Core. Revisions in the APPR process also necessitated increased allocation of administrative time in order to assess teacher performance in accordance with the approved APPR plan. A Dean of Students was hired to provide additional support to meet the day-to-day needs of students while simultaneously freeing up time for certified administrators to complete teacher evaluations.

Last, other than the Tier VI pension reforms, there has been little significant mandate relief for schools.

Mandates partly explain New York's overall per pupil spending. We have found no other states with requirements exactly like New York's Triborough, Wicks, and Scaffold Laws. New York also has more extensive special education requirements than most states.

Whatever their merits, these mandates do drive up costs. Criticizing school costs while keeping mandates in place is like tying someone's feet together then complaining they don't run fast enough.

### **The Governor's School Aid proposal**

With no aid runs and no proposed formula changes it is impossible to assess the impact of the Governor's School Aid plan on individual districts. We can say, however, that the \$1.1 billion increase he recommends would not be enough to address widely shared concerns.

The Gap Elimination Adjustment was born with the Great Recession when the state had to close huge deficits. Schools shared in the painful choices that effort required. But now that gaps in the state budget are gone, district leaders cannot see how the state justifies the continued existence of the GEA. Ending the GEA in a single year would require increasing total School Aid by \$1.035 billion.

Funding increases under current law formulas for Building, Transportation, BOCES, special education and other categories would cost \$309 million. Nearly all this increase would reimburse costs that schools have already incurred.

These two actions would require an increase of more than \$1.3 billion, but would still leave some of the state's poorest districts that serve many of its poorest children short of the state aid they need.

Nor would this total advance goals of expanding opportunities for Career and Technical Education, strengthen services for English language learners, or accelerate availability of full-day prekindergarten.



Over the longer-term, it is essential for the state to rebuild a functioning operating aid system. The 2007 Foundation Aid formula was a significant accomplishment in public policy. Giving schools a basic operating aid formula they can count on year-in and year-out would help district leaders plan better budgets for the students and communities they serve.

### **Governor's education reforms**

Again, the Governor's refusal to provide School Aid runs to illustrate district-by-district allocations has diverted attention from the merits of the education reforms that he would require to accompany any increase in aid.

We support some of his initiatives, oppose some, and question others, as we explain below.

### **Annual Professional Performance Reviews – teacher and principal evaluations**

Several of the Governor's education reform proposals would build upon the state's system for teacher and principal evaluations – Annual Professional Performance Reviews (APPR). So it makes sense to start there.

The current evaluation system gives each teacher and principal a “composite effectiveness score” based 20 percent on a state growth score tied to student performance on state assessments or “comparable measures” developed locally for educators not covered by state tests; 20 percent based on locally assessed measures of student performance, and 60 percent based on “other measures,” with at least half the score on this last component based on observations of the educator's work. The composite effectiveness score is then translated into a “quality rating” of either ineffective, developing, effective, or highly effective.

The Governor proposes to eliminate the locally assessed student performance component so that the composite score would then be based 50 percent on the state growth score or comparable measures for non-tested educators and 50 percent on observations.

At least 35 of the observation points would be required to be from observations conducted by an “independent evaluator” – an administrator from another school or district, a college faculty member, or some other external party.

The Governor would have the State Education Commissioner prescribe “scoring bands” for both components of the score. The bands define the score ranges for each quality rating. Currently, the state prescribes scoring bands only for the state growth score or comparable measures and locally assessed student performance components; bands for the other 60 percent measures are resolved through negotiations between districts and local unions.

Finally, the Governor would provide that no student could be assigned a teacher rated ineffective two years in a row.

The purpose of an evaluation system has to be greater than merely accurately sorting educators into performance levels, but to help school districts make sound personnel decisions and provide feedback to help educators improve their work, both with an ultimate goal of raising student achievement.

A summer 2014 Council survey indicated that superintendents are finding value in the current APPR as a tool for helping teachers improve practice but, at best, are withholding judgment on its soundness

as a tool for making personnel decisions. Also, 69 percent of superintendents said the “other 60 percent measures” (chiefly classroom observations) are having a positive impact on improving teaching, while the student performance-based measures received much more mixed reviews. Reports of the system producing “false positives” and “false negatives” are common – weak educators rated strong, and vice versa.

The Council recommends these goals in evaluating possible changes to APPR:

1. Maximize value of the evaluations as a tool for improving practice in instruction and school.
2. Improve the soundness of individual results so that they are seen as a fair and reliable tool in making formal employment decisions.
3. Streamline administrative demands of the system to enable leaders and teachers to focus on the elements that produce the greatest value, and to attend to other priority responsibilities.
4. Reduce the impact of the system in creating needs for student testing and in contributing to an over-emphasis on standardized test results as a “gold standard” for gauging the performance of students, educators, schools, and districts.
5. Avoid or minimize the need for additional local collective bargaining and staff training to implement changes in state requirements.

We oppose requiring the use of independent evaluators. This proposal would increase costs and administrative demands for schools and likely diminish the efficacy of APPR as a feedback tool by reducing the interaction between teachers and their direct supervisors.

We support having scoring bands for all APPR components prescribed by the state as a step toward improving the soundness of the measures for use in making formal employment decisions.

We oppose raising the weight given to the state growth score or comparable measures to 50 percent. There is widespread skepticism about the soundness of the growth score, as well as criticism of the value of comparable measures in many districts. Raising the weight given to the growth score would also amplify emphasis on standardized test results as a measure of the value of teaching and learning.

A better structure would be to give each teacher or principal two ratings – one based on impact on student performance, one based on practice measures (the current “other 60 percent”), then vary consequences based on the combination of results. For example, a teacher rated ineffective on both components could subject to an expedited dismissal process. A teacher rated effective and developing might be allowed to develop his or her own improvement plan, while districts would dictate plans for teachers rated ineffective and developing.

The Governor’s proposal to establish that no educator could receive an overall effective rating unless rated effective or higher on both components is a step in the direction the Council recommends.

### **Tenure determination**

Many district leaders believe the last round of APPR changes made it more difficult for districts to dismiss unacceptable teachers. So we strongly support the Governor’s proposal to clarify the authority of districts to dismiss untenured personnel at any time for any statutorily or constitutionally permissible reason. On the other hand, requiring educators to earn five *consecutive* APPR ratings of



effective or better to receive tenure seems excessive and places extreme weight upon a system that has not yet satisfied our members that its outcomes are always accurate.

### **Tenured teacher and principal dismissal**

The Council supports the Governor's recommended changes in procedures for dismissal of incompetent or immoral tenured personnel. These would:

- revoke certification immediately of any person convicted of a violent felony against a child;
- require suspension without pay for any teacher accused of child abuse;
- require all 3020-a hearings to be conducted by a single hearing officer;
- provide that two consecutive ineffective APPR ratings shall constitute prima facie evidence of incompetence rebuttable only by clear and convincing evidence of fraud in calculation of composite effectiveness ratings;
- provide for reciprocal discovery so that, as with other adjudicatory proceedings, both sides would be required to disclose their witnesses and evidence at the outset; currently only the district is required to do so; and
- failure of a district to remediate or correct the behavior of the employee shall not be a defense and shall not be considered by the hearing officer

### **Charter Schools**

Alone among statewide public education groups, the Council did not oppose the original 1998 charter school law. But we did raise concerns about the financing mechanism, which required that every tax dollar going into a charter school come out of a district school. Districts rarely realize 100 percent savings when a student transfers to a charter school. Typically, district officials say the cost would be less if those students remained in district schools. If students transfer from private schools, districts experience costs with no savings. Also, districts must maintain some excess capacity to be able to take back students who leave charter schools mid-year.

So the Council opposes the Governor's proposals to increase the charter school cap by 100 schools and increase their supplemental basic tuition by \$75 per pupil until the damage the basic financing system creates for district schools is fixed.

We support the Governor's recommendations to provide for preferential admission to charter schools for students from economically disadvantaged backgrounds and to require greater reporting on student demographics by charter schools.

Finally, we would ask, if charter schools are a promising vehicle for improving student opportunities, why not extend some of their advantages to district schools?

### **Failing Schools and Districts**

The Governor has proposed an aggressive strategy for intervention in chronically under-performing public schools.

After evaluation by a district review team, the Education Commissioner would be authorized to appoint a receiver to oversee school districts falling in the bottom 2.5 percent of districts on a set of

performance measures. Receivers would automatically be appointed to oversee the bottom 5 percent of schools. Receivers could be a non-profit entity, another school district, or an individual. The Commissioner would have discretion to determine whether the state should pay the receiver or the district. The Governor's budget would appropriate \$8 million to support intervention efforts.

Receivers would have broad authority over districts and/or schools, including authority to supersede decisions of superintendents and school boards, to alter budgets, curricula, contracts, collective bargaining agreements, and other local plans. They would also be authorized to dismiss "unqualified administrators and teachers, and to abolish positions and require employees to reapply for positions with probationary status. When positions are abolished in a failing school, employees would be terminated in order of their APPR scores.

The proposal also includes measures to address non-school factors affecting student success, including authorizing receivers to create Community Schools (housing family services in school buildings) and promoting cooperation between schools and health, mental health and social services agencies.

We are reviewing these proposals with our members and will make recommendations soon. For now, we offer these observations:

- The same provision in the State Constitution that obligates the state to assure the funding to give all students the opportunity for a sound basic education also obligates and authorizes the state to intervene if schoolchildren are being denied that opportunity due to local mismanagement.
- The State Education Department cannot run schools or districts from Albany; therefore part of a strategy needs to impel and empower local authorities to act, ideally before unacceptable performance becomes chronic.
- No one can be required to be a teacher, principal, or superintendent, or to work in a failing school. We must be careful not to cast these positions as so risky and disgraced that no one with other options would accept them.

### **Education Tax Credit**

We will reserve more detailed testimony for the hearing covering tax policy, but do want to express our opposition now to proposals for an education tax credit. It would divert much needed state revenue to private school scholarship fund donors and diminish the state's capacity to aid public schools which serve roughly 85 percent of students and are required to serve all students, whatever their circumstances, whenever they arrive.

Also, there is no evidence this proposal will actually benefit private schools and their students by increasing total giving, rather than merely provide a tax benefit to current donors. While there is an element of this proposal reserved for donations to public schools, that money would be best put to the benefit of public schools in the form of increased School Aid.

### **Property Tax Relief**

We will reserve our detailed testimony for the hearing covering tax policy. The series of property tax reforms presented in the Governor's proposal appear to phase-down the STAR program in favor of a targeted income tax credit for the most burdened property owners and renters.



Since 2006, the Council supported a similar proposal to create a graduated income-based property tax relief program. We have said, “It is the most efficient way to direct the most help to taxpayers who have the hardest time making their property tax payments.”

In our testimony next week we will address implications of the Governor’s STAR proposals.

The Council supports the form of targeted property tax relief proposed by the Governor. But it is a partial fix that must be accompanied by reliable state support through School Aid and action to deliver significant mandate relief.

We do oppose the Governor’s proposal to limit eligibility for the credit to taxpayers in districts that budget under the tax cap. Over the four years the tax cap has been in place, an average of only about 5 percent of districts have attempted over-rides. The judgment by their elected school boards that circumstances warrant an over-ride attempt should be respected and allowed to be considered by their voters without injecting a monetary incentive to reward rejection.

As stated earlier in our testimony, schools were holding the line on property taxes several years prior to passage of the tax cap. Many external factors, including fluctuating state aid and laws that drive costs higher, have contributed to cost increases for taxpayers. While we offer support for the Governor’s approach more must be done to help schools control and reduce the overall burden on local property taxpayers.

#### **Support for reducing and improving standardized testing**

There is one step you can take to help lessen stresses over standardized testing, reduce the amount of field testing and enhance the value of those assessments for improving instruction. We support the State Education Department’s request for \$8.4 million for testing operations.

New York produces four versions of its tests, most states produce 20 versions. The added funding sought by SED would enable it to do as most states do – produce more versions of each test and embed a few field test questions in each actual test. This would eliminate the need for stand-alone field testing of multiple choice questions and enable the Department to release more test questions to the field.

#### **Conclusion**

Thank you for your consideration today and for all your past efforts to help our schools.

As I noted near the beginning of my testimony, so many educators fear that students attending their schools in years to come will never again have opportunities like those who came before have enjoyed.

We promise to work with you to produce a budget and state education policies that can give our schoolchildren the better opportunities they need and deserve.

