

***Chairperson Nolan and other members of the Assembly Committee on Education:***

Our state constitution promises, "...a system of free common schools, wherein all the children of this state may be educated." That promise is unbounded and unqualified, made to all children, not merely those who are affluent, native-born, or spared from disabling conditions.

Our highest court has determined the promise means we must give all our children the opportunity for an education enabling them to succeed in life beyond school – to obtain competitive employment and to fulfill the responsibilities of citizenship.

Our public schools have been the vehicle for delivering on that promise for the overwhelming majority of this state's children. They are truly institutions of, by, and for the people. Our leaders are elected by and from the communities they serve. Our employees have chosen careers devoted to helping children learn, grow and thrive; for most, it is their life's work. Our schools are charged to serve all children, whatever their circumstances, wherever they come from, whenever they arrive.

As a state, we are not meeting the noble promise of our constitution for all our children. Our results for children who are English Language Learners are especially discouraging and unacceptable. This hearing is an opportunity to discuss how all of us may begin to better fulfill our obligations to children for whom English is not their first language.

As superintendents, we bring to this discussion the practical perspective of being charged with leading the translation of policies enacted for the whole state or whole nation into local practices that can work for the diverse communities that we serve and that you represent.

**Funding for Success**

Our work needs to begin by committing to fulfill the promise of a sound basic education for all children. The state is now at least \$3.8 billion behind in phasing in the Foundation Aid formula enacted in 2007 as part of the resolution of the Campaign for Fiscal Equity lawsuit which found New York's system of funding schools to be unconstitutional.

Last week, the Educational Conference Board released its annual school finance paper. The ECB determined that a state aid increase of \$1.5 billion would be needed to enable schools to maintain current services and recommends that most of that additional aid be devoted to increasing Foundation Aid as the first step of a three-year phase-in of full funding.

When it was enacted in 2007, the Foundation Aid formula was a significant accomplishment in public policy: it generally delivered the greatest aid per pupil to the neediest districts while promising all districts greater predictability in aid going forward. But 10 years have passed, and much has changed

in that span. For one thing, many districts are serving more ELL students: since 2007, nearly one-third of districts have experienced double-digit percentage increases in the numbers of ELL students they serve and nearly one-tenth of districts had ELL students in 2015 after not having had any in 2007. Accordingly, ECB calls for studies to update some components of the formula, including weightings to address pupil needs, including that for ELL students.

But the Foundation Aid formula cannot be updated and fully funded in a single year while the need for districts to accommodate surging ELL enrollments exists now. Therefore, ECB also calls for a transitional formula to direct additional aid to districts to support ELL services while an adjusted Foundation Aid formula is being phased-in.

ECB also recommends resurrecting a Growth Aid formula. Where most state aid formulas distribute aid using pupil counts from the preceding school year, the prior Growth Aid formula provided additional aid based on current year pupil counts, if enrollment growth that year exceeded a minimum threshold.

A new Growth Aid formula could incorporate a factor addressing current year growth in ELL counts; this could be especially helpful to districts accommodating unforeseen numbers of unaccompanied immigrant children. New York ranks fourth among the states in the number of unaccompanied immigrant children taken in over the past three years, with over half these children settling on Long Island.

There is another facet of school finance that has changed in the 10 years since the Foundation Aid formula was enacted: we did not have the school property tax cap in 2007. The tax cap dramatically restricts the ability of districts to raise local revenue. The consequence is that any rising costs, whether arising from enrollment growth or new mandates, must be supported primarily with either additional state funding or by cutting back on other services. The latter course of action can provoke divisive debates within a school community.

We also support the State Education Department's request for funding to translate the grades 3 through 8 math assessments and Regents Examinations into more languages.

### **Staffing for Success**

A critical component to school district success in educating ELL students must be to address teacher shortages. The success of Part 154 regulations and ELL education is largely dependent on ensuring districts have access to highly-qualified teachers certified to teach bilingual education and English as a New Language classes. Our members report there just are not enough such teachers now.

Some of our members have shared stories – with remorse – of how their districts have met their own needs for teachers with the required certification by hiring teachers employed by smaller, poorer neighbors – whose students may need the best teachers the most. In some cases, these teachers were shared by multiple districts each whose ELL enrollments were too small to support full-time employment for an English for Speakers of Other Languages (ESOL) or bilingual education teacher.

We encourage the legislature to work with the State Education Department to create incentives for individuals to become bilingual and ESOL teachers and for postsecondary institutions to offer dual

certification programs. We support SED's efforts to evaluate expedited methods to certify additional bilingual educators as well as steps the Department has already taken.

### **Federal Policy Issues**

Nine years ago, your committee held another hearing on ELL services. We said then,

It is a source of terrible frustration for superintendents that students who have been in this country for as little as a year and a day are required to take the grades 3 through 8 state English language arts assessments. Put simply, it is just senseless and cruel to set children up to fail by requiring them to take a test that they cannot read. Research says it takes five to seven years to become proficient in a new language. Why then is it imperative to test in year one?

So THE COUNCIL has supported SED's efforts to obtain testing waivers from Washington relating to ELLs as well as the 2014-15 enacted budget language that directed the Commissioner to seek such waivers.

As part of the flexibility waiver process that the Obama administration established prior to last year's enactment of the Every Student Succeeds Act (ESSA), SED applied for an important waiver from the United States Education Department. SED's proposal would have authorized the state to exempt newly arrived ELLs from the English language arts (ELA) assessment for two years. The waiver proposal would have also authorized districts, at local option, to administer a native language arts assessment to those students.

This waiver request was ultimately denied by then U.S. Education Secretary Arne Duncan. The Secretary argued that outside of a limited exception for ELL students in the U.S. for less than 12 months, the law required annual assessments in ELA and the federal Education Department supported those requirements as necessary to ensure that teachers and parents of all students have information on their students' proficiency and progress in ELA.

Based on the statutory authority of the ESSA, Secretary of Education's authority to grant waivers has been limited to a few distinct areas so the administrative route to gain flexibility for ELLs may have passed. Nonetheless, THE COUNCIL urges the legislature and governor to work with our state congressional representatives to seek an amendment to ESSA that would provide ELLs with additional testing flexibility. It is vitally important that school districts receive valid data from ELA assessments and that students only take assessments that are likely to impart this data. The existing ELA assessment system as it relates to ELLs may not effectively accomplish this goal.

The ESSA also requires each state to develop a new accountability system. This new system requires English language proficiency for ELLs to be a factor in the overall score for all schools. This critical indicator could be the deciding factor in whether a school is identified in the bottom 5 percent of schools. THE COUNCIL does not shy away from this fact, and embraces the opportunity to focus more on ELL students, but it does increase the stakes. We ask that the legislature recognize this reality and use it to make the case that additional resources for ELLs are critical.

### **State Regulatory Issues**

We do want to share some reflections on the State Education Department's Part 154 regulations prescribing service requirements for English Language Learners.

An essential point is that our state is remarkably diverse. New York City serves roughly 150,000 ELL students and 15 other districts serve over 1,000 each. But in 2014-15, 199 districts had no ELL students and 182 served fewer than 10 apiece. Rules that may make perfect sense for New York City will not work for districts with very few ELLs.

Individual superintendents and regional associations have made recommendations for adjustments to the regulations which deserve consideration by the State Education Department and Board of Regents. We will share just a few examples with you.

First, the regulations require that English as a New Language and bilingual education classes encompass no more than two contiguous grades. This has dramatically increased staffing needs in some districts. Again, superintendents commonly report there just are not enough appropriately certified teachers to be found and this contributes to the ultimately harmful zero-sum competition described above. We recommend allowing a three-year grade span, as was previously permitted for ELL classes and remains permissible in special education. This is especially sensible when students are newly arrived siblings and likely have the same level of English proficiency.

Second, the pool of personnel who are permitted to administer entry assessments such as the Home Language Questionnaire should be expanded. Current requirements essentially restrict eligibility to staff with teacher certification. This requirement may be manageable in larger districts where in-take processes are centralized. But in small districts, it leads to disruption in instruction, as certified teachers are frequently and inconsistently pulled out of classrooms.

Third, Language Proficiency Teams (LPTs) should be given more discretion in decision-making for ELL students who are also receiving special education services. For example, districts should be permitted to submit alternatives to the NYSESLAT for students to demonstrate English proficiency for approval by SED – Part 154 allows for this option, but the Department has yet to identify any alternatives. The LPTs should also have authority to prioritize services within the limited school day for students who have both severe developmental disabilities and language needs.

We also recommend exploring other possibilities for differentiation in requirements based on the numbers of ELL students a district serves.

We anticipate further discussions with our members to formulate more recommendations to the State Education Department to help more schools better serve their ELL students. The commitment of our school professionals to the success of these students is proven by the fact that those who do exit ELL status achieve proficiency on state assessments and earn high school diplomas at rates on par with the entire student population.

## **Conclusion**

We conclude by expressing our gratitude for your support in last year's state budget and to urge your continued help in the year ahead.

Our annual surveys of superintendents have found improvement in the financial condition of our schools thanks to your efforts. In the last two years, we have seen a turn-around, with more superintendents reporting their district's financial condition has improved rather than worsened. In

the prior four annual surveys the opposite was true. Rising numbers of superintendents also anticipate their district budgets will result in improvements for specific student services.

But those hopeful assessments are not the whole story. In none of the of the six years of our finance surveys have more than a third of superintendents reported that their district's financial condition has actually improved. So there are probably many districts whose student services were badly damaged by cuts necessitated by the Great Recession and its aftermath which have seen little recovery in the years since.

We also asked superintendents to look ahead three years and tell us how optimistic or pessimistic they are about their schools' ability to provide services adequate to the needs of their students. Only 20 percent professed any degree of optimism. Six percent reported they cannot do so now – the equivalent of roughly 40 districts in a state of educational insolvency today. Most pessimistic were superintendents leading city and high poverty districts – districts that are home to the greatest numbers of children who are English Language Learners. The prospect of inadequate state aid is the leading cause of concern, followed by the property tax cap, and then by rising student needs.

We will continue to need your firm commitment to assuring the resources to fulfill the promise of our state constitution for all our students, especially those with the greatest needs, including our English Language Learners.