

## Foundation Aid and Other State Aid Issues

Governor Kathy Hochul's proposed state budget for 2023-24 follows through on the state's commitment to fully fund the Foundation Aid formula while also funding expense-based and other aids according to current law formulas. We are grateful for these proposals. We know, however, that the Legislature's resolve over many years in defending Foundation Aid and pursuing full funding has been crucial in reaching this historic point.

We make three requests regarding **Foundation Aid**:

- Complete the mission, fully fund the formula in the next state budget
- Expand upon the 3% guaranteed minimum increase proposed by the Governor. All districts must accommodate inflationary cost increases within the local revenue limits set by the property tax cap and many are struggling to fill positions. A further increase scaled based upon district wealth could cost less \$50 million—less than a 0.2% increase Foundation Aid.
- Third, commence a process to build consensus on steps needed to update and improve the formula. Since its enactment we have called Foundation Aid an under-appreciated achievement in public policy. But it is now a decade and a half old. Some factors have never been updated and problems have emerged with others. The Education Department should receive funding to lead critical research on measuring student needs, accounting for regional cost differences, establishing the cost of providing a sound basic education, and other issues.

There are also two gaps in state aid that we urge the Legislature to address:

- The budget does not provide increased aid to support ongoing career and technical education programs. **We support increasing funding for CTE opportunities for students** by phasing-in increases in the \$30,000 aidable salary limit to \$60,000 by 2025-26 and providing a commensurate increase in Special Services Aid for districts which are not BOCES members. The BOCES aidable limit has not been increased since 1990.
- We are grateful for the state's actions last year to provide forgiveness of district errors in district filing of Building and Transportation Aid claims. This will spare districts from penalties vastly out of proportion to the magnitude of their mistakes. We regret, however, that the budget would omit for the third consecutive year any funding for payment of prior year adjustments of aid owed to school districts. **We urge restoration of an appropriation of at least \$20 million for prior year adjustments.**

## High-Impact Tutoring Set-Aside

The Executive Budget proposes to require over 60% of the state’s school districts to set-aside a total of \$250 million in Foundation Aid to support “high-impact tutoring.” This service would be defined as small group or individual tutoring sessions for students at-risk of not meeting state standards in grades 3 to 8, with a focus on reading and math to be held at least twice a week for a duration of no less than 30 minutes, either before, or after, or during the school day, or on weekends.

***We ask that this proposal be rejected.***

- Districts have already been expanding extra academic help to students—it is one of the priorities for use of federal COVID-relief aid. In a Council survey, 79% expected their district budgets this year will have a positive impact on extra academic help for students who need it; 78% anticipated a positive impact on that priority from their 2021-22 budgets.
- Districts were required by the American Rescue Plan Act to devote at least 20% of their basic ARP funding to address “learning loss”—nearly \$1 billion statewide. The 2022-23 state budget also directed nearly 60% of districts to spend a total of \$629 million in additional ARP funding to reverse learning loss among students.
- The proposed budget language this year would effectively restrict use of the set-aside to providing tutoring for students in grades 3 through 8, precluding help to younger and older students. These restrictions lack any sound educational basis.
- Some districts with set-asides serve only elementary school grades and do not have students in grades 6, 7, and 8. The state’s three central high school districts have no students in the targeted grades yet all would have these set-asides.
- Many districts report being unable to find staff to provide all the help they believe their students should have. It is predictable that some would find it impossible to employ all the staff needed to fully expend their set-aside amounts.
- The set-aside could preclude districts from devoting funds to address other needs, including improving student mental health services, or offering competitive pay to fill essential positions, or holding down reliance on local property tax revenue.
- Finally, on principle, we oppose the use of Foundation Aid set-asides. The intended purpose of that aid as unrestricted general operating support should be honored.

## Support Career and Technical Education Opportunities for Students

Governor Kathy Hochul’s proposed state budget for 2023-24 would, at last, complete implementation of the 2007 Foundation Aid formula while also funding other School Aid categories as called for by current law. But one gap we prioritize for the Legislature to address is to increase funding to support opportunities for students to pursue career and technical education.

Specifically, we recommend that the final state budget:

- Increase the “aidable” salary for Boards of Cooperative Educational Services (BOCES) CTE instructors to \$60,000 over the next three school years—\$40,000 for 2023-24, \$50,000 for 2024-25, and \$60,000 in 2025-26; and
- Increase the per pupil cap and expand funding to include 9th grade students for Special Services Aid for CTE programs in the Big 5 city school districts and other districts which are not BOCES members.

The aidable salary limit for BOCES programs, including CTE, has not been increased since 1990. Over that time span, the Consumer Price Index has more than doubled. As a result, rising costs have been borne from other sources, including local taxes, and this has jeopardized the capacity to sustain these programs and to meet growing demands for skilled entry-level workers.

State per pupil funding for CTE programs in the Big 5 cities and other non-BOCES districts also falls short of meeting costs and does not provide support on behalf of students in 9th grade.

Our State Constitution promises “a system of free common schools, wherein all the children of this state may be educated.” We owe young people an education that prepares them for demands of adulthood. CTE programs deliver on that promise. In 2019-20, 90% of students in BOCES CTE programs graduated, above the statewide rate for that year. A high number directly entered the workforce, but more than half of 2018 CTE program graduates went on to college.

***The Council urges the Legislature to increase state funding for CTE programs, to assure opportunities for students and meet the needs of employers.***

## Universal Free Student Meals

During the 2020-21 and 2021-22 school years, federal waivers provided all schoolchildren with free breakfast and lunch. This allowed school districts to streamline their operations, expand the number of students fed during the school day, and eliminate stigma for children from low-income families.

The expiration of federal waivers resulted in more than 726,000 students in nearly 2,000 schools across the state losing access to free school meals. Regular eligibility requirements for free student meals are restrictive: families of four with incomes of no more than \$51,400.

The end of this initiative has also led to mounting deficits in school district nutrition programs as many families, now accustomed to free meals, have not made expected payments on their children's behalf.

School leaders in every corner of the state and every type of district have supported this initiative. Even in wealthier school districts, offering free meals to all student regardless of family income has reduced stigma and promoted a positive learning environment.

***The Council urges the Legislature to provide state funding to restore universal free student meals.***

## **Restore Local Control In Teacher and Principal Evaluations (Annual Professional Performance Reviews – APPR)**

***The Council supports restoring local control in teacher and principal evaluation procedures—Annual Professional Performance Reviews, or APPR.***

Beginning in 2010, the state enacted a series of laws to govern educator evaluations. A source of great controversy was linking APPR scores with student performance on state assessments, or with locally developed measures of impact on student achievement for classes with no state assessments, where applicable to the classroom teacher. Further changes in 2012 and 2015 made the controversial system even more convoluted and built further distrust.

A consensus among educators is that all these iterations have mandated practices which typically yield little or no benefit in improving teaching, leadership, or learning while imposing exorbitant time demands upon school personnel and additional costs for taxpayers.

- In a 2021 Council survey, only 11% of superintendents responded that state-required APPR plans were having a positive impact on efforts to improve teaching; over four times as many (46%) saw a negative impact and 43% reported little or no impact for all the effort and expense required.
- The initial linkage of state assessments to evaluations was a misuse of those tests and undermined the value of those tests as indicators of the alignment between school instruction and state standards.
- Requirements to incorporate other student performance measures resulted in local adoption of hard to justify indicators, such as evaluating kindergarten teachers in part based on how high school students perform on Regents examinations.
- The 2015 law barred schools from using valuable components of teacher observation rubrics, including evidence of sound lesson planning and goal-setting.

### **Recommendation**

We call for an end to detailed state prescriptions on what can or cannot be used in professional evaluations. Instead, school districts should be allowed to develop APPR plans through local negotiation, with requirements to specify the criteria they will use in evaluating teachers and principals, the numbers of observations to be conducted, and how feedback will be provided to those evaluated. District leaders would be required to certify that evaluations have been conducted in accordance with their approved plans and could be required report overall evaluation results. Districts which prefer to continue using existing APPR plans should be permitted to do so. Requiring the adoption of new plans by a state-imposed deadline would only repeat the mistakes of the past.

***Specific legislative changes should be developed through consultation with representatives of all directly engaged stakeholders—teachers, principals, superintendents, and school boards.***

## Unrestricted Reserve Fund Flexibility

**The Council SUPPORTS an increase in the unrestricted reserve fund balance limit as a tool to prevent educational damage in the event of an economic downturn**

The Council supports increasing the unrestricted fund balance limit of 4% to 8% through at least the 2026-27 school year. Financial experts recommend unrestricted fund balances well above 4%. Local governments in New York State have no cap on their unrestricted fund balance, yet schools are constrained by this low and fiscally unsound figure.

Recent strong infusions of state and federal help have enabled widespread improvement in what schools can offer their students. For example, an October 2022 Council survey found that majorities of superintendents statewide expect improvements in 11 areas of student services, including core instruction in elementary school (74%), middle school (66%), and high school (63%), and in student mental health services (82%), extra academic help (79%), summer enrichment programs (72%), school security (71%), and prekindergarten (58%). In nine annual surveys prior to 2021, only twice had a majority of superintendents anticipated a positive budget impact on *any* area.

*But our survey also found concerns about the ability to sustain improvements once the federal aid expires and what may happen if an economic downturn imperils the state's ability to maintain its support for schools.*

Raising the unrestricted fund limit balance to 8% would give school districts a tool to be prepared for economic challenges and to preserve what recent state and federal assistance has enabled them to build for students.

Again, municipal governments in New York have no specified percentage limit on unrestricted fund balance, yet schools operate with more financial disclosure requirements, a tighter tax cap, and annual budget approval referenda. Independent experts generally recommend that state and local governmental entities maintain an unrestricted fund balance equivalent to two months expenditures, or about 15%. Governor Hochul has set a target of having state “rainy day funds” reach 15% of projected expenditures.

School district leaders are charged with ensuring students are provided with every educational opportunity to succeed *and* with serving as proper stewards of taxpayer dollars. If the unrestricted fund balance limit is raised, school districts will *not* ask their voters to approve larger tax increases to build deeper reserves. Its main, and truly only purpose is to provide a planning tool to ensure ongoing educational and financial strength.

***The Council STRONGLY supports this legislation and urges its approval.***



# OPPOSE

## Oppose Charter School Expansion and Ensure Oversight

Charter expansion continued despite a lack of consistent success and proven discriminatory enrollment practices against students with disabilities and other at-risk students. The expansion of charter schools has been pervasive in certain big cities and other urban communities with charter schools accounting for greater than 30% of public school enrollment in certain instances.

The Executive budget would continue and accelerate the growth in charter schools and their enrollment figures by lifting the New York City specific cap on charter schools and restoring so called “zombie” charters. This would not only be detrimental to students attending public schools in the City, it would have a long-term budgetary impact on schools throughout the state as it would continue to divert public dollars from public schools through continued direct aid to charters due to the supplemental tuition formula and the New York City charter school building aid law.

Beyond opposing the Executive’s proposed charter school expansion, we support specific initiatives to protect our system of public education.

- Prohibit new charter schools in district where 5% or more of the public school enrollment attends charter schools, unless authorized by the board of education.
- Prohibit the SUNY charter school institute from illegally granting charter renewals that exceed the statutory limit of five years.

***The Council urges the Legislature to reject an expansion of charter schools and to take immediate action to constrain charter growth and ensure long-term accountability for charter schools and authorizers.***

## Streamline Paperwork Demands Upon School District Leaders, End Duplicative Financial Transparency Reports

An accretion of reporting and planning requirements is forcing school district leaders to divert time and attention from responsibilities more essential to students and taxpayers, especially in districts that are small, poor, or both. Some districts may have added administrative positions to satisfy these requirements.

The Executive Budget would add two more mandated reports, to gather data on participation in prekindergarten and progress toward zero-emission school bus transitions.

As a first step in streamlining paperwork demands, we urge ending the duplicative school level financial reporting imposed at the initiative. It should be allowed to expire—as scheduled—on June 30, 2023. Regrettably, the Executive Budget would extend this mandate for an additional five years.

The federal Every Student Succeeds Act required the nation's school districts to report *actual* per pupil expenditures for each school building, broken down by personnel and non-personnel spending and by funding source, starting by the end of the 2019-20 school year.

The 2018-19 state budget enacted a proposal by then Governor Cuomo to mandate that districts report similar school-level data for *planned* expenditures. This initiative was an attempt to divert attention from the state's own actions in funding public schools.

There is no value to mandating separate reporting of both planned and actual expenditures by school. There are many circumstances which result in justifiable variances in planned and actual school spending—arrivals and departures of students, needs to replace equipment, teachers going out on leave, and students found to need additional help, for example.

The State Education Department intends to launch a multi-agency review of all financial reporting requirements. But a review of *all* planning and reporting requirements is needed. Upon completion of a review, the Department should be empowered to terminate any obsolete or non-essential requirements, including some imposed under Education Law, with advance notice to the Governor and Legislature.

***To reduce pointless demands on school officials for information that does not add to greater public understanding of school performance and management, the Council urges repeal of the state school-level funding transparency reporting requirement and additional actions to relieve paperwork mandates.***



## Suspend the Limitation on Earnings in Retirement when Receiving a Pension

The Council supports the Governor's budget proposal to automatically waive, until June 30, 2024, the \$35,000 limitation on earnings for public employees working in a public school position while simultaneously receiving a pension.

Schools have been struggling with hiring shortages in multiple fields for several years. The Council has advocated for years to increase the limitation on earning in retirement. In 2019, the limit was increased by \$5,000. While that change was helpful, for the teaching staff, the impact was felt mostly around the edges with and helped more with substitute teaching availability than filling long term vacancies as teachers begin their careers at salaries higher than that amount.

As the pandemic has worn on, the school staff shortage issue has increased. Some schools struggle to employ educators in only difficult to staff subjects such as English as a new language or special education, while other schools experience hiring difficulties for almost all openings. Most schools have encountered immense challenges with employing bus drivers and substitute teachers.

Whether a school's hiring shortage challenge is significant or an intermittent challenge, this proposal will provide some relief. It offers a significant financial incentive to current and future pensioners to return to the classroom or school district. It is a tool that schools can immediately employ to fill vacancies with qualified and experienced employees.

The Legislature and the Governor should consider extending this provision through June 30, 2025 to provide greater certainty to schools and employees.

More must be done to address staffing shortages. In the interim, this proposal should provide relief and the ability for schools to hire highly qualified staff and teachers.

***The Council supports this legislation and urges its approval.***

## Civil Service Hiring Reforms

The civil service system as it relates to hiring for certain positions in schools is not just antiquated, it is broken and systematic reforms are necessary for schools and all public employers.

School leaders agree that the administration of tests for competitive positions are too infrequent to provide comprehensive lists of eligible potential employees and the tested material does not properly relate to the actual job duties.

The Governor has clearly recognized reform is needed and has proposed authorizing continuous recruitment for competitive positions without the local civil service commission first determining that there are not enough eligible candidates. This should provide some modest relief to public employers.

- The state can and should do more to help current and prospective civil service employees and their school-based employers.
- Provide that provisional employees become permanent employees after 9 months of service if a test is not offered during their first 9 months of provisional service;
- Require counties to provide electronic lists and allow electronic canvassing;
- Prohibit counties from placing residency restrictions of the canvassing lists they send school districts—45% of the state’s school districts north of Westchester and Rockland Counties cross county lines [or “serve communities that cross county lines.”].

School leaders in many regions of the state are desperately trying to find competent and qualified public servants to serve their schools and students. They are not seeking to make it easier to discipline or terminate civil service employees; they simply want to ensure the rules allow them to hold onto outstanding provisional employees and more easily recruit future staff.

***The Council supports the Governor’s proposal and urges further reforms.***

# OPPOSE

## Elimination of State Reimbursement for Residential Placements for Students with Disabilities

The Council of School Superintendents opposes the Executive Budget proposal to make permanent the elimination of state reimbursement for room and board costs for residential placements made by a school district committee on special education.

The enacted 2020-21 state budget eliminated the 18.424% state share of these costs. The legislation also required school districts to assume the 50% of costs previously paid by the state toward maintenance costs of students at the state schools for the blind and deaf at Batavia and Rome, respectively. This provision was set to sunset at the end of that fiscal year but was extended in the 2021-22 and 2023-24 budgets.

The new Executive Budget would make this state funding cut permanent and is projected to cost school districts outside New York City nearly \$28 million next school year. Schools already struggle with significant special education costs with prescriptive mandates that do not necessarily guarantee better outcomes for students.

This cost shift places an increased financial burden on local school districts. The impact can be especially dire for small, poor districts, where one additional placement might consume most or all of whatever revenue might be raised by a property tax increase within the tax cap.

It could also adversely affect some of our most vulnerable students and the special act school districts and other programs that serve them. The increased financial burden on districts threatens to close the door of access for students who suffer complex trauma due to abuse and who are affected by serious mental health conditions. Without access to the therapeutic services and the 24/7 stable environment provided by a residential placement, these youth may remain in cycles of crisis.

***The Council opposes permanently eliminating the state share for residential special education placement costs.***

## Increase School Capital Outlays Limit S.2990 (Harckham)/A.1459 (Thiele)

**THE COUNCIL SUPPORTS increasing the limit on the value of school district construction projects eligible for expedited state reimbursement.**

This legislation would increase from \$100,000 to a minimum of \$250,000 and a maximum of \$500,000 the value of school district construction projects which may be reimbursed through state Building Aid as “capital outlays.”

Under current law, most school district construction costs are reimbursed using “assumed amortization rates” – even if a district pays cash for a project or pays off debt service early, state Building Aid is paid as though project debt service is being paid off over periods of 15, 20 or 30 years for reconstruction, building additions, or new construction, respectively. This permits the state to spread out its payments but means that reimbursement to districts may not occur until years after costs were incurred. This financing structure can lead districts to delay making small but important facility improvements.

Current law does permit districts to have up to \$100,000 in construction costs reimbursed for one project each year as “capital outlays,” with all state reimbursement paid in the year after costs are incurred. This bill would increase that limit to a minimum of \$250,000 adjusted by the regional construction cost index used in Building Aid, up to a maximum of \$500,000.

These increases address inflation and other cost escalators that have diminished the value of the original \$100,000 limit. It would also increase the number of school districts that would likely utilize this building aid allowance.

Raising this limit would permit the state to avoid interest costs and enable districts to receive prompter state reimbursement. This can help districts to fix small building defects before they become bigger and more costly problems.

This legislation would also enable district to utilize these funds on more than one project each year and allow districts to seek the approval of the State Education Department on a multi-year basis. These commonsense provisions would enable a more efficient and economical use of these dollars.

***For all the foregoing reasons, the Council of School Superintendents strongly supports this legislation and urges its approval.***

## Property Tax Cap Adjustments

The Council of School Superintendents supports adjustments to the property tax cap law that would appropriately balance the concerns of property owners over tax burdens and the capacity of school districts to raise revenue to sustain and improve academic opportunities.

Now that the tax cap has been permanently enshrined in state statute, the Legislature should recognize that there are common sense reforms to the law that can be enacted without distorting its original purpose.

- **Eliminate negative tax levy limits:** Due to quirks in the tax cap statute, after accounting for certain exclusions, several school districts each year end up with negative levy limits. This means that to approve a budget with *no* increase in the tax levy, a supermajority of 60% of the voters would be required. If the budget fails, the district board of education could then adopt a levy with no increase, but would be forced to comply with contingency budget restrictions on specific spending which can be damaging.

The Legislature should eliminate this possibility by making the minimum levy limit that of the prior year. Affected school districts would then still need a supermajority to approve any increase in the levy above the prior year.

- **Pension Exclusion Flexibility:** Currently, schools can exclude from the tax cap a portion of pension obligations when the increase in the employer contribution rate exceeds two percentage points. This calculation drastically reduces the likelihood of the pension exclusion being utilized (for example, a rate increase from 8% to 10% of payroll is a 25% increase in the rate).

The law should be amended to exclude from the cap increases in pension costs greater than 5% over the preceding year.

- **PILOT Adjustments:** Properties generating payments in lieu of taxes (PILOTs) should be included in the tax base growth factor, either by regulation or statute—just as properties generating taxes are. New brick and mortar construction that is added to the traditional tax roll are included, recognizing that these additions may result in increased demands for public services. But excluding tax base additions that pay PILOTs lacks a rational policy basis and can discourage use of this economic development tool.

Governor Kathy Hochul has partly recognized this by proposing appropriate treatment of PILOTs generated by housing developments, but the treatment should be applied to all PILOT projects.

***The Council urges adoption of these proposed Tax Cap adjustments.***

## **Restore Local Control In Teacher and Principal Evaluations (Annual Professional Performance Reviews – APPR)**

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Beginning in 2010, the state enacted a series of laws to govern educator evaluations. A source of great controversy was linking APPR scores with student performance on state assessments, or with locally developed measures of impact on student achievement for classes with no state assessments, where applicable to the classroom teacher. Further changes in 2012 and 2015 made the controversial system even more convoluted and built further distrust.

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- In a 2021 Council survey, only 11% of superintendents responded that state-required APPR plans were having a positive impact on efforts to improve teaching; over four times as many (46%) saw a negative impact and 43% reported little or no impact for all the effort and expense required.
- The initial linkage of state assessments to evaluations was a misuse of those tests and undermined the value of those tests as indicators of the alignment between school instruction and state standards.
- Requirements to incorporate other student performance measures resulted in local adoption of hard to justify indicators, such as evaluating kindergarten teachers in part based on how high school students perform on Regents examinations.
- The 2015 law barred schools from using valuable components of teacher observation rubrics, including evidence of sound lesson planning and goal-setting.

### **Recommendation**

We call for an end to detailed state prescriptions on what can or cannot be used in professional evaluations. Instead, school districts should be allowed to develop APPR plans through local negotiation, with requirements to specify the criteria they will use in evaluating teachers and principals, the numbers of observations to be conducted, and how feedback will be provided to those evaluated. District leaders would be required to certify that evaluations have been conducted in accordance with their approved plans. Districts which prefer to continue using existing APPR plans should be permitted to do so. Requiring the adoption of new plans by a state-imposed deadline would only repeat the mistakes of the past.

***Specific legislative changes should be developed through consultation with representatives of all directly engaged stakeholders—teachers, principals, superintendents, and school boards.***